THE

JUSTICE OF THE PEACE

AND

Parish Officer.

BY

RICHARD BURN LL.D.

Preparing for Publication and shortly will be Published,

A GREAT VARIETY

OF

BLANK FORMS,

ON SEPARATE SHEETS OR IN BOOKS,

WITH FULL PRACTICAL DIRECTIONS HOW TO BE FILLED UP.

FOR THE IMMEDIATE

Use of Justices of the Peace,

CORONERS, CLERKS OF THE PEACE, SURVEYORS OF HIGHWAYS, OVERSEERS, AND OTHER PARISH OFFICERS,

AND

APPLICABLE TO EVERY TITLE AND SUBJECT

IN

BURN'S JUSTICE.

Those applicable to the Titles "Customs," "Excise," "Poor Laws," and "Taxes,"

BY

JOSEPH CHITTY, Esq. Barrister at Law,

AND THE REST BY

THOMAS CHITTY, Esq.

IN SIX VOLUMES.

VOL. I.

LONDON:

S. SWEET, 3, CHANCERY LANE; STEVENS & SONS, 30, BELL YARD; AND A. MAXWELL, 32, BELL YARD, LINCOLN'S INN:

Law Booksellers & Publishers.

1831.

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JUSTICE OF THE PEACE

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Parish Officer.

BY

RICHARD BURN, LL.D.

The Twenty-sixth Edition,

CORRECTED AND GREATLY ENLARGED;

AND CONTAINING

A NEW COLLECTION OF PRECEDENTS.

THE TITLES "EXCISE AND CUSTOMS," "POOR," AND "TAXES,"

BY

J. CHITTY, Esq.,

OF THE MIDDLE TEMPLE, BARRISTER AT LAW.

THE REST OF THE WORK BY

THOMAS CHITTY, Esq.,

OF THE INNER TEMPLE.

IN SIX VOLUMES.

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1831.

LONDON:

C. ROWORTH AND SONS, BELL YARD,
TEMPLE BAR.

TO

SIR THOMAS DENMAN, KNT.

HIS MAJESTY'S

ATTORNEY GENERAL,

THIS EDITION OF BURN'S JUSTICE

IS DEDICATED,

WITH THE DEEPEST RESPECT

FOR THOSE

AMIABLE QUALIFICATIONS AND THAT INDEPENDENT

PUBLIC CONDUCT,

WHICH, COMBINED WITH HIS TALENTS AS AN ADVOCATE,

HAVE SO JUSTLY ENDEARED HIM

TO THE PROFESSION AND TO THE PUBLIC AT LARGE.

ADVERTISEMENT

TO

THE TWENTY-SIXTH EDITION.

It will be observed by the title page, that only the subjects CUSTOMS and EXCISE, POOR LAWS, and TAXES, in this edition are edited by Mr. Chitty, sen. and that the rest of the work is by his son, Mr. Thomas Chitty.

With respect to the titles CUSTOMS and EXCISE, they have been recomposed and rendered practical treatises on those subjects, with directions and forms, enabling magistrates and others safely to conduct a prosecution for penalties and offences to the conclusion.

The title TAXES contains all the enactments and decisions on the subject, so arranged that it is hoped any person, even unconnected with the profession, may readily ascertain the law applicable to his case.

As regards the most important subject of the POOR LAWS, the fourth volume contains a complete collection of the principal statutes and decisions on the subject, and has been laboriously revised, and several new titles have been introduced; and great attention has been paid to the analytical arrangement of the subject. Some of the decisions even in last Hilary Term, and not yet in print, are inserted in the body of the work, or in the Addenda. A very ex-

tensive collection of new forms applicable to this subject has been carefully prepared, and this volume, relating to Poor, concludes with a new Index, which, it is trusted, will render the whole subject very ready of access. The editor is greatly indebted to his friend Mr. Montague B. Bere, of the Western Circuit, for his very valuable assistance in preparing for publication that part of this volume which relates to Settlements and the very copious Index.

In the rest of the work edited by Mr. Thomas Chitty, it will be found that a great number of new titles have been introduced, and that the former titles have been revised and greatly enlarged, and, it is hoped, rendered more practically useful; and each subject has been rendered accessible by an analytical table of contents, with references to the subsequent pages.

In former editions the statutes have in general been merely abstracted, but in this, with few exceptions, the very words of each act have been printed from the *statutes* themselves. No magistrate should rely on a mere analysis. And the only safe mode of construing and pursuing the directions of a statute must be attained by consulting the very words themselves.

The "FORMS" inserted in this edition have been settled with the greatest care. Those originally published have been revised, and upwards of 1200 additional forms have been introduced, adapted to meet the exigencies of magistrates in each particular case, and by far the greater portion of which have been framed expressly for the purposes of this work. Each form, it will be seen, is numbered, and a list similarly marked is prefixed to each title, thereby greatly facilitating what in practice is of the very highest importance—ready access to any particular subject.

The sixth volume contains an Addenda of the latest cases, bringing down the decisions to the day of publication. In that volume will also be found an alphabetical Table of all the Cases referred to in the first, second, third, and fifth volumes, with a very large and extensive general Index of the contents of those volumes, on which great pains and labour have been bestowed.

In conclusion, it is hoped that the present edition will be found of considerable practical utility to magistrates acting singly or at sessions, and to barristers and other members of the profession, as well at sessions and on the circuit as in their general practice. If the present volumes be found to enable the magistrate and lawyer to execute with greater ease, certainty, and precision the duties of their respective stations, then the object for which alone the unambitious but useful function of editing this work was undertaken, will have been abundantly satisfied.

6th March, 1831.

LIST OF EDITIONS

OF

Dr. BURN'S JUSTICE OF THE PEACE.

1st and 2nd, in 2 small octavo vols.	in 1754 and 1756
3rd, in one vol. folio	in 1756
4th, in 3 vols. octavo	in 1757
5th, in 1 vol. folio	in 1758
6th, in 3 vols. octavo	in 1758
7th, ditto	in 1763
8th, in 2 vols. quarto	in 1764
9th, in 3 vols. octavo	in 1765
10th, in 4 vols. octavo	in 1766
11th, ditto	in 1770
12th, ditto	in 1772
13th, ditto	in 1776
14th, ditto	in 1780
15th, the last by Dr. Burn*, in 4 vols. octavo	in 1785
16th, by John Burn, his son, in 4 vols. octavo	in 1788
17th, ditto	in 1793
18th, ditto	in 1797
19th, ditto	in 1800
20th, in 4 vols. octavo, by Woodfall	in 1805
21st, in 5 vols. octavo, by Durnford and King	in 1810
22nd, in 5 vols. octavo, by King	in 1814
23rd, in 5 vols. octavo, by Mr. now Sir G. Chetwynd	in 1820
24th, in 5 vols. octavo, by Sir G. Chetwynd	in 1825
25th, in 5 vols. octavo, by G. W. Marriott, Esq.	in 1830

* Dr. Burn died in 1785.

PREFACE

TO THE

FIRST EDITION, BY DR. BURN.

THE Author proposeth in this Book to render the laws relating to the subjects it treats of, a little more intelligible than hath hitherto been done.

The method he makes use of is various.

The first thing regarded is the order of *time*. Thus, in the poor laws:—first, is set forth the appointment of *overseers;* next, the several branches of their duty, in finding *settlements* for the poor—in removing them to such settlements—in making *rates* for their relief—in *relieving* and otherwise ordering them—and, last of all, in *accounting* at the expiration of their office. Then again, in treating of *settlements*, it occurs, to consider distinctly, and as near to the said order as may be, ten different kinds of settlements, by *birth*—by the *parents'* settlement—by *apprenticeship*—by *service*—by *marriage*—by *inhabiting forty days after notice*—by paying *parish rates*—by serving a *parish office*—by *renting* 10*l. a year*—and by a person's *own estate*. In like manner in treating of the *rates;* first, is set forth the course of *laying the assessment*—then, the *allowance* thereof by the justices—*publishing* the same in the church—*appeal* against the rates at the sessions—levying the same by *distress*—and finally, *commitment*, where no distress can be had.

Thus to exhibit another instance. In the article of the *Woollen Manufacture*, which makes up a considerable part of the justice of the peace his duty, and of the officers subordinate to him, there is such a number and variety of statutes, that authors are generally overwhelmed with them. To avoid which perplexity, the laws are here digested in order, according to the natural progress of that business; from the shearing of the sheep, to the exportation of the wool manufactured, under the several heads of *winding of wool* by the shearer—laws to prevent its *exportation*—*working* of cloth—*fulling*—*measuring*—*dyeing*—*stretching*—*dressing*—*exporting*.(*a*)

Where there is no priority in point of time, the next method is that of Lord *Coke*, to frame a definition which takes in the whole subject, and then explain the several parts of such definition in their order. Thus, *grand larceny* is defined to be, *a felonious and fraudulent taking and carrying away by any person of the mere personal goods of another, above the value of* 12*d*.(*b*) In the handling of which the several branches of the definition are explained in the order as they stand; *viz. a felonious and fraudulent taking—and carrying away—by any person—of the mere personal goods—of another—above the value of* 12*d*. Under which heads the general learning relating to that whole title is comprehended.

(*a*) It will be seen that this arrangement has not in the present twenty-sixth edition been closely followed, the laws as to Woollen Manufactures having been in many respects altered since the first edition.

(*b*) It will be seen in Vol. III. p. 514, that the distinction between Grand Larceny and Petit Larceny is now abolished.

The like method is pursued in treating of the *commission of the peace*, the form of an *indictment*, the form of an *order of removal*, and other articles.

In general it is provided that one thing shall clear the way for another, and the subsequent paragraphs explain the preceding.

Under the influence of which conduct, the author hath attempted to bring together, under one general title, divers articles relating to the same subject, which in the common books are broken and detached under various separate titles; hoping thereby that what hath hitherto been thought introductory of confusion, may tend to render the subject more perspicuous, in exhibiting the whole under one comprehensive view. Thus the laws relating to the *game*, which are above forty in number, and are interspersed in the common books under about thirteen different titles, are here digested under one general title *Game*, to which the reader shall have recourse for the knowledge of whatsoever belongeth to that subject. For example, if any person would be satisfied what penalty the law hath proposed for *tracing hares in the snow*, by recurring to the general title concerning the game, he will find the game distinguished into three kinds, the *four-footed* game, the *winged* game, and the game of *fish*: the *four-footed* game are distributed into the several species of *deer*, *hares*, and *conies*; under which head concerning *hares*, he will readily find what is desired. In like manner, the *winged* game are subdivided into several branches, concerning *hawks and hawking—swans—partridges and pheasants—pigeons—wild ducks, wild geese, and other water-fowl—grouse or moor game—herons*—and *other fowl*; each of which have their peculiar laws.

In these large comprehensive titles, care is likewise taken to be as particular as may be without injuring the connection in the statutes, by inserting the whole law by itself, relating to each separate article. The benefit of which will appear by the following instance: if a person would know what number of horses or beasts in a cart or waggon are allowed by the statutes for the preservation of the roads; let him take what treatise at present he pleases concerning the highways, he must read over the whole, before he shall be sure that he hath found all which the law hath enacted concerning the same; and such is often the inaccuracy and confusion, that when he hath perused the whole, perhaps he may be still to seek. For as to this instance before us, there have been regulations made concerning the same, by ten different acts of parliament at very different times. Before he can have any competent knowledge thereof, he must lay all these ten acts together; and when he shall have done this, he will find amongst them so many repeals, and revivals, and explanations, and amendments, that it will even then be no easy matter to conclude with certainty how the law doth stand as to that article.(a) To spare the reader all which trouble, the author hath in this, and all other the like instances, laid the whole law together relating thereunto, or at least all that hath occurred to him, or which he hath thought it material to insert. So that the reader may receive satisfaction in a very small compass, as to what he shall be inquiring about; or at least he may be satisfied in this, that if he doth not find it there, he need not seek for it elsewhere in the book.

And by this method of bringing together into one general title, all those separate distinct titles, which have a mutual relation to and dependance upon each other, the author hath avoided one great inconvenience, of referring the reader from one title to another, and from that other back again to the first, and (which is not unusual in books of the like kind,) perhaps losing the thing to be treated of betwixt them.

Upon which account also, where one law occurreth under two different titles, it is usual with him to insert the same under both those titles, that so the reader's attention may not be interrupted by sending him to search other titles, and from those perhaps others again, which have no principal relation to the matter he hath in hand.

(a) It will be seen under title Highways, Vol. III. that the laws respecting the same are not in so confused a state as when Dr. Burn wrote this.

Also, upon another account, he hath sometimes made use of more words than otherwise he would have done, namely, to avoid the frequent repetition of the term *&c.* which is a vague expression, and apt to create an uneasiness in the reader's mind, for that he cannot be satisfied from thence how much, or how little, is intended to be understood.

He hath also been somewhat large in the matter of *precedents* under divers titles; and hath endeavoured to bring them much nearer to the statutes upon which they ought to be formed, than usually hath been done.

For all which enlargements he hath the more space allowed to him, for that he hath not thought it necessary (as others have done) to take up near one-fourth part of the book by inserting *Blackerby's* Justice at the end of it, by way of Index; hoping that the method he hath pursued will render every thing of that kind impertinent and useless.

The Materials which the author hath made use of are chiefly of four kinds: the *Statutes* at large—the several treatises concerning the *Pleas of the Crown*—the *Reports* of Cases adjudged in the Court of King's Bench—and the books concerning the *Office of a Justice of the Peace.*

As to the *Statutes* at large, or acts of parliament, the author hath not thought himself at liberty, as Mr. *Dalton* and others have done, to deliver the import thereof in his own words; but hath constantly abridged the act in the words of the act itself, leaving out nothing which may seem any way material. And to each distinct clause, he hath annexed the interpretation thereof, where the same hath been determined in the Court of King's Bench, or expounded by other good authority.

The treatises concerning the *Pleas of the Crown*, are those of *Stamford*, *Coke*, *Hale*, and *Hawkins*. Of the first of these the author hath made little use, further than as he is adopted by the other three. As to which three great authorities, the law hath been declared by Lord *Coke*, and not controverted by any other, nor altered since his time by any act of parliament, or judicial determination, the author hath given to him the preference. And where any of these differeth from the other, he hath noted the difference.

In citing of Mr. *Hawkins*, he hath not thought it allowable, as is usual with others, to omit the several degrees of caution and assent, with which he delivereth his opinion; as *it seemeth*, or *it hath been said by some*, or *it seemeth to be the better opinion*, or *it seemeth to be agreed*, and the like; which are by no means arbitrary words without much meaning, but are inserted by him with the utmost deliberation and judgment.

As to the books of *Reports*, where the cases therein have been considered by Mr. *Hawkins*, and the other learned persons before mentioned, the author hath judged it very proper to leave the matter there as settled by them. As to the rest, he hath by no means thought himself of ability to proceed in Mr. *Hawkins's* manner, by laying together all the reports on the same subject, and thereupon extracting an opinion out of the whole; but hath inserted the same at large, or what he hath thought most material thereof, and left the determination thereupon to the reader's better judgment.

And here it may be requisite, that the reader be admonished, not to expect that the book shall be more perfect than the materials of which it is composed. All the books of reports are not of equal authority. Many of them are only notes that had been taken for gentlemen's own private use. For these, or for any other, the author himself voucheth not; and as he doth not add to their credit, so he doth not detract from it: but leaveth every author (as he needs must) to answer for himself. For he hath made it an invariable rule, upon all occasions, to cite his authorities, what such soever they be; and in all material instances, in the very words of the original authors; that so what may be of good authority in itself, shall not be rendered less so by his handling of it. And where no authority is alleged, he desires the reader will look upon it as such, namely, as having no authority; the same being nothing but the author's own private observations, which are submitted to every reader's judgment, to approve or reject as he shall see cause.

The books of authority concerning the *Office of a Justice of the Peace*, are those of *Fitzherbert*, *Crompton*, *Lambard*, and *Dalton*; the last of which

was published in the reign of King *James* the First; since which time no book under that title hath been allowed as sufficiently authentic. And even the additions which have been made to *Dalton* since his death, seem to have no better claim to an uncontroulable authority, than other collections which have not obtained it. And *Dalton* himself is much injured in the modern editions in like manner, as was observed before of Mr. *Hawkins*, by delivering that as absolute, which Mr. *Dalton* published under the several degrees of assent or doubtfulness before mentioned; and which the author, in justice to Mr. *Dalton*, hath restored.

Where *Dalton* hath adopted *Lambard*, *Crompton*, and *Fitzherbert*, (which he doth most frequently in their words,) the author hath thought it sufficient to cite *Dalton's* single authority. And generally, in all other cases, where authors are agreed, he hath judged it unnecessary to allege more than one or two good vouchers.

Concerning the other books of this kind, which have been published since *Dalton's* time, it is unnecessary to enlarge, since of the most of them the author hath made no use, and of the rest very sparingly; and he will not seek to recommend his own book, by finding fault with others before him.

ORTON, WESTMORLAND,
Sept. 29, 1754.

ADVERTISEMENT

CONCERNING

THE FIFTEENTH EDITION, BY DOCTOR BURN.

WHAT alterations have been necessary to be made from time to time since the first publication of this book, may be easily conceived from the variety of materials which have been introduced from the Reports of Cases adjudged in the courts of Westminster Hall, and the Statutes enacted during that period.

When this book was first published, in the year 1754, there had been few Reports adjudged in the reign of King George the First, and almost none in the reign of King George the Second. But now this deficiency hath been abundantly supplied by a greater number of Reports of Cases, determined in matters subject to the jurisdiction of the justices of the peace, than had been in the whole period before that time, from the first institution of the office of that magistrate.

The Statutes, or Acts of Parliament, which have been made during the said time, connected more or less with the office of a justice of the peace, are in number above three hundred; besides almost half as many more that have been repealed, superseded, or permitted to expire.

By the means of which statutes, so many new matters are in every session of parliament brought under the jurisdiction of these justices, and so many alterations are made in subjects of which they before had cognizance, that every new edition, in order to keep pace with the law, is in effect a new book. And this is unavoidable. To publish those alterations separately, in an annual appendix, is a work of more difficulty than may be at first apprehended. For to effect this to any sufficient purpose, many titles must be taken in pieces, and wholly new modelled; sometimes one act of parliament breaks into several different titles, all of which must be surveyed, and rendered consistent with each other; and new titles frequently arise upon new emergencies. These alterations and additions in any one year would increase to a volume of no inconsiderable dimensions, and in two or three years' time would be productive of infinite confusion; and, notwithstanding all reasonable attention that might be employed, the book and the appendixes, and the several appendixes one with another, would be at variance. The best appendix that the author can imagine is, the statutes at large every year, so far as justices of the peace are concerned therein; which statutes, as no acting justice ought to be without, this would therefore, upon that account, create unto him no additional expense.

[The following Introduction is to be found for the most part in old editions of this work, and though perhaps in many respects rendered unnecessary for the purposes of the present edition, it is thought fit to retain it.]

INTRODUCTION,

CONSISTING OF

TWO PARTS;

CONTAINING

I. *Certain Abbreviations made use of in this Work.*

II. *Some General Rules to be observed in the Construction of Statutes or Acts of Parliament.*

I. *Certain Abbreviations made use of in this Work.*

IN order to keep the book within a reasonable compass, the following *abbreviations* are made use of.

Justice. 1. The word *justice* is always to be understood to mean *justice of the peace*, when not otherwise expressed.

One justice. 2. The words *one justice* shall be understood to signify *one or more justices*: so that what is directed to be done by one, shall not be intended thereby to exclude others from joining with him.

Two justices. 3. In like manner, *two justices*, when not otherwise expressed, shall be understood to signify *two justices or more*.

One witness. 4. So also a conviction on the oath of *one witness*, shall be understood to denote *one witness or more*.

Two witnesses. 5. And *two witnesses* shall denote *two or more witnesses*.

Quorum. 6. (1 *Q.*) shall be understood to signify *one whereof is of the* Quorum.

Majority. 7. The *justices in sessions* shall signify the said justices, or *the major part of them*.

Sessions. 8. The word *sessions* shall denote *the general quarter sessions*, if not otherwise expressed.

Warrant. 9. The word *warrant* shall always signify *warrant under hand and seal*, where not expressed otherwise.

Judge of assize. 10. Judges or justices of *assize* shall be understood to signify also those of *Nisi Prius, Oyer and Terminer, and general gaol delivery*.

Mayor. 11. The word *mayor* shall always be understood to imply *bailiffs and other chief officers in corporations*, by what appellation soever dignified.

Constable. 12. The word *constable* shall always be understood to imply *tythingmen, borsholders, headboroughs, and other peace officers* required to execute the justice's warrant.

Overseer. 13. The word *overseer* shall be understood to mean *overseer of the poor*, where not expressed otherwise.

Poor. 14. Where a penalty, or part thereof, is expressed to be given to the *poor*, that shall be always understood to denote *the poor of the parish where the offence was committed*, if not otherwise limited.

Penalty. 15. Where a penalty is to be recovered before the justices of the peace, it is thought indispensable to insert particularly the manner of recovering the

same; but where it is to be sued for in any of his majesty's courts of record at *Westminster*, it is judged not necessary to set forth the special method of procedure there: and generally, where it is expressed that a person shall do or not do such a thing, on pain of such a sum, without more, it shall be understood that such penalty is not recoverable before the justices of the peace, but only in the courts at *Westminster*.

Overplus.

16. In all cases of *distress and sale*, it shall be understood that the *overplus* must be returned to the owner, after the sum or sums to be thereout deducted shall be satisfied and paid.

Lands.

17. *Lands* shall be understood to stand for *lands, tenements, and hereditaments*.

Transportation.

18. Where *transportation* is directed for any offence, it shall always be understood, *that if the offender shall return before the time limited, he shall be guilty of felony*.

Blank spaces.

19. In the blank spaces for the names in the precedents, instead of inserting initial letters arbitrarily, it is thought it may be some help to the memory, that *A. O.* or *C. D.* shall signify the offender, *A. I.* or *A. B.* the informer, *A. W.* or *W. W.* the witness, *J. P.* the justice of the peace, and the like.

Figures.

20. Also for brevity's sake, sums of money and other numbers are usually expressed by figures, and not in words at length; but it is to be remembered, that in the forms of warrants, convictions, and other proceedings before the justices, they ought to be expressed in words at length, and not in figures.

Continuance of statutes.

21. Where a statute is said to be in force until such a day, month, and year, &c. it shall always be understood to imply, *and from thence to the end of the then next session of parliament*.

Citing of statutes.

22. In the statutes made in the reign of the late King *William*, it is thought not necessary upon all occasions to say *William the Third*, since there are no printed statutes in the reigns of *William the First and Second*.

Nor is it thought necessary in such statutes to add the name of Queen *Mary* to that of King *William;* but it is judged sufficient for the understanding thereof, to quote the statutes in this manner, viz.

1 *W. sess.* 2, *c.* 6, *c.* 3, to signify the statute made in the parliament holden in the first year of the reign of King *William* the Third and Queen *Mary*, the second session thereof, chapter the sixth, section the third.

Citing of books and adjudged cases.

23. Abbreviations in the names of books cited as authorities, or elsewhere occasionally noted, consist for the most part of some of the initial letters of the authors' names, and other common distinctions, and more particularly in quoting Sir *William Blackstone*, the following distinction is observed: 1, 2, 3, 4, *Black.* denotes *Blackstone's Commentaries*, the first, second, third, or fourth part. *Black. Rep.* signifies *Blackstone's Reports*, which, though in two volumes, yet the pages being numbered progressively without interruption through both volumes, it is judged that it will create less confusion to insert the pages only, and not the number of the volume.

The manner of quoting Sir *James Burrow* is different by different persons. That author, intending to publish reports of cases determined in the court of King's Bench during the times of the four last Lords Chief Justices *Hardwicke, Lee, Ryder*, and *Mansfield*, began with the last, justly supposing that the latest would be the first called for by the public expectation, and so purposing to advance by a kind of retrograde progression; in like manner as was done in the publication of *Croke's* Reports, during the reigns of Queen *Elizabeth, James I.* and *Charles I.* Those in the reign of *Charles I.* were first published, and so upwards through the times of *James* and *Elizabeth*, and are now commonly distinguished by the titles of *Croke Charles, Croke James*, and *Croke Elizabeth*. But as some authors quote the Reports in the time of King *Charles*, from their having been first printed, though last in the course of decision, by the distinction of 1 *Croke*, and those of *Elizabeth* by 3 *Croke;* so others, by the contrary rule, quote those of *Elizabeth* by 1 *Croke*, and those of *Charles* by 3 *Croke;* which is so far the parent of some confusion.

Sir *James Burrow* intitles his Reports during the time of Lord *Mansfield*, the *fourth part* of his Reports, and accordingly the same is quoted by some,

"4 *Burrow*." This fourth part, consisting of five volumes in folio, is quoted by others according to the number of volumes comprehending this fourth part, thus—"1, 2, 3, 4, 5, *Burrow*." But these five volumes having the pages numbered uniformly from 1 to 2835, it is thought most convenient in this book to keep this fourth part distinct, by the appellation of "*Burrow Mansfield*," and so referring to the page in which ever of the five volumes the matter sought for may happen to be. By which method, when the three other parts in process of time shall come to be published (which is a thing much to be desired) they may be denominated in like manner, "*Burrow Ryder*," "*Burrow Lee*," and "*Burrow Hardwicke*," which in some sort may prevent the confusion that happened in the publication of *Croke's* Reports.(*a*)

The said Sir *James Burrow*, however, considering that it must needs be a considerable length of time before his whole collection of cases could be published, and being desirous in the mean time to oblige the public with a regular course of decisions in *settlement cases*, selected out of his whole collection those relating solely to the settlement of the poor, during the times of the said four last lords chief justices, a most interesting period, comprehending the space of upwards of forty years; and published the same in two quarto volumes. These are quoted in this book by the title of "*Burrow's Settlement Cases*," or "*B. S. C.*"

The Lord Chief Justice *Hale* wrote a treatise in octavo, intitled "*Pleas of the Crown*," containing a sketch and plan of his larger work, which was published afterwards in two volumes folio, intitled "*The History of the Pleas of the Crown*." In quoting these, the former is distinguished thus, *Hale's Pleas;* and the latter *Hale's Hist.* or in a more abbreviated form, *H. H.*

So also the names of the terms in which the several cases were adjudged, to wit, Hilary, Easter, Trinity, and Michaelmas, are expressed by the initial letters *H. E. T.* and *M.*

II. *Some General Rules to be observed in the Construction of Statutes or Acts of Parliament.*

It is thought fit to arrange these rules, with a great variety of others relative to Statutes, more appropriately under a title by itself, which will be found under title STATUTES, Vol. V.

A Table and Explanation of the Abbreviations of Names of Books, as also a Table of the Names of the Cases cited and reported in this Work, together with an Addenda and Corrigenda, and a full Index, will be found in the Sixth Volume.

(*a*) Accordingly in former editions, Sir *James Burrow's* Reports were cited by the name of "*Burrow Mansfield;*" but his reports of the decisions by the other chief justices not having yet appeared, and those of Lord *Mansfield* being now printed in five volumes, they are in this edition printed and referred to, as "1, 2, 3, 4, and 5, *Burrow;* which is more consonant to the modern method of reference.

A TABLE

OF

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THE

JUSTICE OF THE PEACE

AND

PARISH OFFICER.

Abatement, Pleas in.*

[4 Anne, c. 16, s. 11; 7 Geo. IV. c. 64, s. 19.]

A PLEA in abatement consists of matter of defence, which merely defeats the present proceeding, and does not, like a plea in bar, show the defendant to be for ever discharged. What.

In criminal proceedings such a plea is pleadable only to indictments, informations in the Crown Office, and appeals of felony.

It is founded either on some defect apparent on the proceeding itself, or on some defect in matters of fact not so apparent, such as a misnomer of the defendant, or a mistatement of his addition.

Our present considerations will be confined only to pleas in abatement to indictments and informations in the Crown Office.

Pleas in abatement of misnomer, or of want of addition or wrong addition of the party pleading, are now rendered of little or no utility to such party, in consequence of the 7 Geo. IV. c. 64, s. 19, allowing an amendment, as will be seen *post*, p. 3. Inutility of.

We will now consider

I. *What may be Pleaded in Abatement*, 1.
II. *Time and Manner of Pleading it, and Affidavit of Truth*, 2.
III. *Amendment, Replication, Demurrer, and Issue, &c.* 3.
IV. *Evidence*, 4.
V. *Judgment. &c.* 4.
VI. *Forms*, 5.

I. What may be Pleaded in Abatement.

For Apparent Defects]—The defendant may plead in abatement any defect *apparent* on the face of the indictment. 2 *Hale*, 236. 238. As if it does What may be pleaded.

* As to these pleas in general see 2 *Hale*, 236 to 239; 2 *Hawk.* c. 34; *Buc. Ab. Abatement*; *Com. Dig. Abatement*; 1 *Chit. C. L.* 446. As to the Abatement of Nuisances, see title, Nuisance, Vol. III.

WHAT MAY BE PLEADED.

not state the defendant's addition as required by the 1 Hen. V. c. 5.* *Andr.* 145; 1 *Show.* 392; so if it does not state defendant's Christian name.

The want of certainty seems pleadable in abatement.

For Defects not Apparent]—The defendant may plead in abatement a defect *not apparent* on the face of the indictment; *Hawk.* b. 2, c. 25, s. 70; as if he be misnamed either in his Christian or surname, or his addition be mistated.† 1 *Leach*, 476; 2 *Hale*, 176. 236.

So if the description of an highway, in an indictment for the non-repair of it, be too indefinite, being equally applicable to several highways, defendant may plead in abatement, alleging that all such highways are equally known by the description in the indictment; and if indeed the description be true in fact, that seems the only mode of taking advantage of the objection. *Rex* v. *Hammersmith*, 1 *Stark. C. N. P.* 357.

The defendant cannot plead in abatement to an indictment that there is another indictment against him for the same offence; 1 *Jones*, 199; *Cro. Car.* 147; but sometimes in such case the Court will quash the first indictment; 2 *Hawk.* c. 34, s. 1; and as to where the Court will quash an indictment, *post*, **Indictment**, Vol. III.

Where several defendants.

Where several Defendants]—It should seem, in an indictment against several defendants, a misnomer of one cannot be pleaded by the others; see *Lutwyche*, 36; 1 *Moore & P.* 26; but each may plead distinct matters in abatement, or one may plead in abatement and the other in bar. See *R. T. Hardw.* 303. 2 *Hale*, 177.

II. Time and Manner of Pleading, and Affidavit, &c.

Time of pleading.

Time of Pleading]—The plea in abatement must be pleaded before any plea in bar. 2 *Hale*, 175; *Fost.* 16. It should be put in upon the arraignment, when the defendant is called upon to answer. 2 *Hale*, 175.

Manner of pleading.

Manner of Pleading]—These pleas, like pleas in civil actions, are required to be framed with the greatest accuracy and precision, and should be certain to every intent, and be pleaded without any repugnancy, and must point out the objection, so that it may be readily amended or avoided in another prosecution. The general rules which are to be followed in framing pleas in abatement in civil actions will, for the most part, be here applicable, and will be found collected in 1 *Ch. Pl.* 395 to 401; *Com. Dig. Abatement*, 1, 11.

In a plea of misnomer the defendant must disclose his real name, and by such name he will be concluded. 2 *Hale*, 238.

In a late case, where a peer pleaded in abatement his right to be tried before the House of Lords, it was held the plea should have stated he was a peer of the United Kingdom, and the mode in which he derived his title, because such plea was to be determined by the record. *Rex* v. *Cooke*, 2 *Barn. & C.* 618; 4 *Dowl. & R.* 592; S. C. 6 *Co. Rep.* 53 b.

In a prosecution for a felony, the defendant may plead over to the offence, together with a plea in abatement; and if he omit to do so, the Court will order it to be done, and insert it at the bottom of the parchment; *Dean's case*, 1 *Leach*, 478; 2 *Leach*, 712, n. a.; 2 *Hale*, 238; but the omission is no ground of demurrer, as defendant may plead over to the felony after the plea in abatement has been determined against him, and this is in *favorem vitæ*. *Id. Carth.* 55. In misdemeanors the defendant is not allowed to plead over together with or after plea in abatement. See *Rex* v. *Gibson*, 8 *East*, 107.

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* How to state such addition, see title, **Indictment**, Vol. III.

† As to the mode of stating defendant's name and addition, and what is a misnomer, see title **Indictment**, Vol. III.

The plea may be pleaded by attorney as well as in person. *Rex* v. *Westby*, 10 *East*, 83, n.; 2 *Hawk.* c. 34, s. 3, S. C. MANNER OF PLEADING.

Great accuracy is required in the commencement and conclusion of the plea. A plea of misnomer commencing thus, "and the *said* C. D. who is indicted by the name of E. D. comes, &c." would be bad, for by styling himself the *said* C. D., he concludes himself as the party indicted. 2 Hale, 175. It should conclude, "praying judgment on (or "of") the indictment and that it may be quashed." If the plea conclude in bar instead of in abatement, it will be bad. See 10 *East*, 83.

It has been decided the plea may be put in *ore tenus*; 2 *Leach*, 535; 1 *Leach*, 476; the present practice, however, does not warrant this, it being usual and therefore safest to put it in writing engrossed on parchment or paper. It should be signed by counsel. See *Cro. C. C.* 21; 1 *Ch. C. L.* 448.

Affidavit of Truth]—By the 4 Anne, c. 16, s. 11, it is provided, "That no dilatory plea shall be received in any court of record, unless the party offering such plea do by affidavit prove the truth thereof, or show some probable matter to the Court to induce them to believe that the fact of such dilatory plea is true." Affidavit of truth. 4 Anne, c. 16, s. 11.

This provision applies to pleas in abatement in criminal proceedings. *Rex* v. *Grainger*, 3 *Burr.* 1617. It is at all events necessary to add the affidavit to a plea in a prosecution filed in the Crown Office. *Id.* 2 *Stra.* 1161. It has been said, though for what reason it does not appear, that this affidavit is unnecessary on a trial at bar of an indictment for high treason. *Fost.* 16; 3 *Burr.* 1617; 2 *Hawk.* c. 34, s. 7.

The affidavit may, it seems, be made by the defendant or a third person. *Barnes*, 344. It should be properly entitled in the prosecution. It should state that the plea is true in substance and fact, and not merely that the plea is a true plea. 2 *Stra.* 705.

III. Amendment, Replication, Demurrer, and Issue.

Amendment]—If a plea of misnomer or want of addition be true, the prosecutor may, by the practice at common law, instead of replying, if the grand jury be still sitting, alter the indictment by substituting the name, &c. by which the defendant so pleaded for the name in the indictment, and have it again preferred and found, and the defendant again arraigned upon it, in which case he will be estopped from again pleading a misnomer or want of addition. Amendment.

But a more effectual course in this respect is provided by the 7 Geo. IV. c. 64, s. 19, which allows the Court to cause the indictment to be amended, and call on the defendant to plead over thereto, as if the plea in abatement had not been pleaded. The enactment of such provision is as follows:—"And for preventing abuses from dilatory pleas, be it enacted, that no indictment or information shall be abated by reason of any dilatory plea of misnomer, or of want of addition, or of wrong addition of the party offering such plea, if the Court shall be satisfied by affidavit or otherwise of the truth of such plea; but in such case the Court shall forthwith cause the indictment or information to be amended according to the truth, and shall call upon such party to plead thereto, and shall proceed as if no such dilatory plea had been pleaded." 7 Geo. 4, c. 64, s. 19.

The Court will not allow a *plea* in abatement to be amended.

Demurrer]—If the plea be insufficient in form, or bad in point of substance, the prosecutor may demur. *Rex* v. *Gibson*, 8 *East*, 83. The Court will not, in general, on motion, quash a bad plea in abatement. *Rex* v. *Cooke*, 2 *Barn. & C.* 618; 1 *Dowl. & R.* 43, S.C. Abbott, C. J. intimating that there was a great difference between quashing indictments and quashing Demurrer.

REPLICATION, &c.

pleas, and that it would in general be much too strong a measure to quash the latter, though it were clearly defective.

In cases of felony the demurrer and joinder may be *ore tenus*. *Fost.* 105; 1 *Leach*, 476. In indictments for treason the defendant must join in demurrer instanter. 6 *Harg. St. Trial*, 241.

Unless the plea be clearly defective, it is best not to demur, but to amend as above.

Replication.

Replication]—If the plea be untrue in fact, the prosecutor may reply denying such fact, or allege matter of estoppel. Thus to a plea of misnomer, he may either deny the plea, or reply that the defendant is known as well by one name as the other. 2 *Leach*, 476; 2 *Hale*, 237. The replication must not commence as to a plea in bar. See *Carth.* 187; *Bac. Ab. Abatement*, 8. The conclusion must be proper, and usually is to the country. On a plea of peerage the conclusion should be by the record, and not to the country; see *Countess of Rutland's case*, 6 *Rep.* 53; 2 *Hale*, 240; but an issue whether a woman is a peeress by *marriage*, may conclude to the country. *Id.* See 2 *B. & Cress.* 618; 4 *Dowl. & R.* 592, S.C.

Unless the plea be clearly untrue, it is best to amend.

Issue, &c.

Issue, &c.]—If the replication be bad in form or substance, the defendant may demur, and if he establish the insufficiency, he will have judgment: as where the defendant pleaded in abatement that he was a peer, and the Attorney-General replied, that he formerly petitioned the Lords to be tried by them and was refused; he obtained judgment on demurrer, inasmuch as the decision of the House of Lords is no judgment, and therefore the replication was invalid. *Rex* v. ———, 2 *Salk.* 209; *Holt*, 530.

Where issue is joined on a plea in abatement, the *venire* may be returned and the trial proceeded in instanter by a jury of the same county. 1 *Leach*, 478; 2 *Hale*, 238. At the sessions, however, where a misdemeanor only is in question, it is the usual practice after plea for the defendant to enter into a recognizance to prosecute the same with effect at the ensuing sessions, and then he must give four days' notice of his intention to try to the prosecutor, and if he does not reply, judgment will be entered for the defendant. *Cro. C. C.* 31.

IV. Evidence.

Evidence in misnomer.

In a plea of misnomer, where defendant alleges that he was "named and called," it is sufficient for him to prove that he was *generally* known by that name. But it is not sufficient in such case to prove that he has been called so once or twice. *Maester* v. *Hartz*, 3 *Maule & S.* 453. The usual proof in support of a plea in abatement of misnomer, is an examined copy of the register of his baptism, with evidence of identity by a party present at the ceremony or otherwise; and it is said that this proof of baptism is absolutely necessary when the plea alleges that defendant was "*baptized*" by the name. *Weleker* v. *Peletier*, 1 *Camp.* 479, *sed query*. Defendant may prove his name by letters of denization or a commission in the army by it, and proof that he has been known in other countries by that name is sufficient, see *id.*

Peerage.

A plea of peerage must be proved by letters-patent under the great seal. See 2 *Salk.* 509. As to proof of such letters, see title, **Evidence**, Vol. II.

V. Judgment, &c.

Judgment for defendant.

Before the 7 Geo. IV. c. 64, s. 19, the judgment for the defendant on a plea in abatement was, in case of a misdemeanor, that the indictment be quashed, and that he be not compelled to answer, but should depart the court without delay; 2 *Hale*, 238; 10 *East*, 87; but for felony or treason, though

the indictment were quashed, the court would not dismiss the defendant, but would cause him to be indicted *de novo*. *Cro. Car.* 371; 2 *Hale*, 176. 238; 2 *Hawk.* c. 34, s. 2. A judgment in abatement for one of several defendants would not affect the others. *R. T. Hardw.* 303; 2 *Hale*, 177. JUDGMENT ON.

But this is materially altered by the above statute, which, as we have seen, *ante*, 3, allows the court to cause the indictment to be amended, and to call on the party to plead thereto as if no dilatory plea had been pleaded.

The judgment for the king on a plea in abatement to an indictment for a misdemeanor is final; *Rex* v. *Gibson*, 8 *East*, 107; 2 *Hawk.* c. 31, s. 7; 1 *Leach*, 478; but in treason or felony the judgment is, that the defendant do answer over. 8 *East*, 110; 1 *Leach*, 478; 2 *Hale*, 239. And in both cases, on a judgment on demurrer, the judgment is that the defendant do answer over; *Trem. P. C.* 189, 190; 6 *East*, 583. 602; 2 *Wils.* 368; 1 *Ch. C. L.* 451; and the reason for this latter doctrine is, that every man shall not be presumed to know matter of law, which he leaves to the judgment of the court, but he is presumed to know whether his plea be true or false in matter of fact. Judgment for the King.

VI. Forms.

Plea in abatement of misnomer of defendant's christian name.*

The King against Sarah Lee, indicted by the name of Jane Lee. } *And Sarah Lee* (the real name), *who is indicted by the name of Jane Lee, in her own proper person* [or, *by her attorney,*] *cometh into court here, and prayeth judgment of the said indictment, because she saith that she, the said Sarah Lee, from the time of her baptism to this present time was, and still is, called and known by the name of Sarah, and by the said Christian name is, and during the whole time aforesaid was called, named, and known, without this, that she the said Sarah Lee now is, or at any time heretofore to this day, was called, named or known by the name of Jane, as is supposed by the indictment aforesaid; and this she, the said Sarah Lee, is ready to verify; for which reason, and because she, the said Sarah Lee, is not named in the said indictment by the name of Sarah Lee, she, the said Sarah Lee, prayeth judgment of the said indictment, and that the same may be quashed.* [Engross this plea on parchment or paper, and get it signed by counsel, and annex the following affidavit.]

Affidavit of truth of plea.

In the King's Bench. *The King against Sarah Lee, indicted by the name of Jane Lee.*

Sarah Lee, of , in the county of , maketh oath and saith, that the plea hereunto annexed is true in substance and matter of fact.

Sarah Lee.

Replication thereto that defendant is known as well by the one name as another.

And hereupon J. N. [the clerk of the peace, or clerk of the arraigns, or if the plea be to an information say, *and J. S. knight, of our said Lord the King,*] *who prosecutes for our said Lord the King in this behalf, saith, that the said indictment, by reason of any thing by the said Sarah Lee, in her said plea above alleged, ought not to be quashed; because he saith that the said Sarah Lee, long before, and at the time of the preferring of the said indictment, was, and still is known as well by the name of Jane Lee, as by the name of Sarah Lee, to wit, at the parish aforesaid, in the county aforesaid, and this she the said Sarah Lee prays may be inquired of by the country, &c.*

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* See other Forms of *Pleas* in Abatement of Misnomer, 4 *Ch. C. L.* 520; 1 *Cro. C. C.* 46; 10 *East*, 83; of want of addition. 4 *Ch. C. L.* 524; *Stark.* 705; of wrong addition, 4 *Ch. C.L.* 521; 3 *Burr.* 1517; *Stark.* 704; of peerage, 4 *Ch. C. L.* 523; 2 *B. & C.* 618; that there is no such parish as that named, 4 *Ch. C. L.* 525. See forms of entries of such pleas, *id.* 521. 525.

See also forms of demurrer and joinder in demurrer to pleas in abatement, 4 *Ch. C. L.* 525, 6.

Abduction of Women.*

[9 Geo. IV. c. 31, s. 20.]

THIS offence may be divided into two classes, *first*, the forcible abduction of a woman on account of her fortune, with intent to marry or defile her; and *secondly*, the unlawful abduction of a girl under the age of sixteen from her parents or guardians.

I. Abduction of Women on Account of their Property.

Abduction of a woman on account of her property against her will. 9 Geo. 4, c. 31, s. 19.

The 9 Geo. IV. c. 31, s. 19, enacts, "That where any woman shall have any interest, whether legal or equitable, present or future, absolute, conditional, or contingent, in any real or personal estate, or shall be an heiress presumptive or next of kin to any one having such interest, if any person shall, from motives of lucre, take away or detain such woman against her will, with intent to marry or defile her, or to cause her to be married or defiled by any other person; every such offender, and every person counselling, aiding or abetting such offender, shall be guilty of felony, and being convicted thereof, shall be liable to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, in the common gaol or house of correction for any term not exceeding four years." And the act repeals the 3 Hen. VII. c. 2; 39 Eliz. c. 9; and 3 Edw. I. c. 13; 1 Geo. IV. c. 115: as also so much of 6 Rich. II. st. 1, c. 6, as relates to ravishers and to women ravished.

Punishment.

See the general clauses affecting all the provisions of this act, *post*, Malicious Injuries *(to Persons)*, Vol. III.

What an offence as relates to the woman abducted.

What an Offence within the Act]—This enactment alters the law as it stood under former statutes; under those statutes the woman taken away must either have had lands or goods, or have been an heiress *apparent*, but this is not now requisite, and the terms of the new act, in this respect, are very general.

As relates to the taking and defiling, &c.

It is not necessary, as was the case under the prior statutes, that an actual marriage or defilement should take place. The taking or detaining, for the purposes of lucre, coupled with an *intent* to marry or defile, constitutes the offence. The taking must be against the will of the woman. It is no excuse, that the woman was at first taken away with her own consent, if she afterwards refuse to continue with the offender, because if she so refuse, she may from that time as properly be said to be taken against her will, as if she had never given any consent at all; for till the force was put upon her, she was in her own power. 1 *Hawk.* c. 42, s. 6; 1 *Russ.* 571. Moreover the *detaining* against her will is an offence. It seems also it is not material whether a woman so taken contrary to her will at last consent thereto or not, if she were under the force at the time, 1 *Hawk.* c. 42, for the offence is complete at the time of taking.

Accessaries.

It will be observed that the above enactment expressly makes accessaries before the fact liable as principals, which was a doubtful point under the prior statutes.

Indictment.

The Indictment]—The indictment must set forth that the woman taken away had the property, or that she was heir presumptive, &c. as required by

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* As to Offences against Women in General, see *post*, Women, Wife, Vol. V.; as to Child Stealing, see Children; Ravishing Women, see title, Rape, Vol. V.; Carnally Abusing Children, see title, Children; Abortion, see title, Abortion, *post*, page 9.

the act, in order to show defendant's interested motives. *Cro. Car.* 484. The place and manner of taking must also be set forth in the proceedings. *Id. ibid.* It must also be alleged that the taking was for *lucre*; *Hob.* 182; 1 *Hawk.* c. 41, s. 5; and with an intent to marry or defile. See 1 *Hale*, 660; see form, *post*, 8.

ON ACCOUNT OF PROPERTY.

Evidence]—To sustain the indictment the prosecutor should look to the averments in it, and prove them accordingly, and in the order stated in such indictment; as that the woman was possessed of the real or personal estate, or was the heiress presumptive or next of kin to some one having the property required by the act. It should be proved that the defendant, from motives of lucre, took away or detained the person mentioned in the indictment against her will. The motive may be shown by proof that the defendant had previously little or no acquaintance with the woman; or by other circumstances.

Evidence.

Witnesses]—The party injured, though the force continued till the time of the marriage, will be a good witness against the offender, because she is not his wife *de jure*, and may herself swear to the compulsion. 5 *Harg. St. Tr.* 456; 1 *Ventr.* 243; *Fulwood's case*, *Cro. Car.* 488. But some writers seem to think that where the actual marriage was good, in consequence of a subsequent consent, the wife cannot be sworn; though the better opinion seems to be that the offender should not be allowed to take advantage of his own wrong, and that the act of marriage, which is the completion of his offence, should not be construed to disqualify the witness on whose testimony he may be convicted. 1 *Hale*, 301; 4 *Bla. Com.* 209; 1 *East, P. C.* 454. And indeed, it would now probably be considered that a wife *de jure* may always be a witness against her husband in case of personal injuries. It seems that her dying declarations may be read against him on a trial for her murder; 1 *Leach*, 500; and it is certain that her testimony may be received when he is charged with assisting others to ravish her. 1 *Harg. St. Tr.* 387; 3 *Ch. C. L.* 819; and see [illegible]*ife*, Vol. V.

Witnesses.

Punishment]—This crime is a felony, and punishable accordingly with transportation for life or for not less than seven years, or with imprisonment, with or without hard labour, for not more than four years, 9 Geo. IV. c. 31, s. 19, *ante*, 6.

Punishment.

II. Abduction of Girls under Sixteen.

The 9 Geo. IV. c. 31, s. 20, enacts, "That if any person shall unlawfully take, or cause to be taken, any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her; every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable to suffer such punishment, by fine or imprisonment, or by both, as the court shall award." And the act repeals the 4 & 5 P. & M. c. 8.

Abduction of a girl under sixteen years. 9 Geo. 4, c. 31, s. 20.

Punishment.

This provision was passed in order to meet those cases where the girl is of so tender an age that she might be easily imposed on and her consent obtained. It alters the law as it stood under the 4 & 5 P. & M. c. 8.

What an Offence within the Act]—An illegitimate child appears to be within the act. *Rex* v. *Cornforth and others*, 2 *Stra.* 1162; better reported in *Bott*, by *Const.* It seems that if the taking were with the consent of the parent or person having the charge of the child, no restriction could do away with the effect of such approval. 3 *Mod.* 169. Under the prior act it was holden, that if a parent place a daughter under the care of another, who, by collusion, marries her to his own son, the case was not within the act if the marriage were solemnized in a parish church, at a canonical hour, and without any attempt at privacy. 3 *Mod.* 83. The principle of this case was disputed

What an offence within the act.

OF GIRLS UNDER 16.

by Mr. East, who contended, that it would protect a school-mistress in disposing of the female infants under her care in marriage; when it is manifest no power of that kind is ever deputed, but is impliedly reserved by the parent. 1 *East's P. C.* 457.

Offence at common law.

It appears to be an offence at common law to take a child from her parents or guardians, or others entrusted with the care of her, by any sinister means; either by violence, deceit, conspiracy, or any other corrupt or improper practices, as by intoxication, for the purpose of marrying her, although she herself might have consented to the marriage. 1 *East, P. C.* 459; 3 *Chit. C. L.* 713; and *post*, **Conspiracy**.

Indictment.

The Indictment]—No particular observation as to the framing the indictment is here necessary. It should follow the words of the act with the usual averments of time and place, and other requisites of an indictment in general. See *post*, **Indictment**, Vol. III. and the form, *post*, 9.

Evidence.

Evidence]—The prosecutor should be prepared to prove that the defendant took away the girl out of the custody of the parent or temporary guardian, that she was under sixteen years of age, that the taking was against such parent's or guardian's consent, and for which purpose any of these parties may be called.

Punishment.

Punishment]—This offence is a misdemeanor and punishable by fine or imprisonment, or by both, as the court think fit. See the 9 Geo. IV. c. 31, s. 20, *ante*, 7. Hard labour cannot be imposed.

Forms.

Commitment for the abduction of a woman on account of her property, on 9 Geo. 4, c. 31, s. 19.

Kent.—[The county wherein the commitment is made.] *J. P. Esq. one of his Majesty's justices of the peace for the said county, to the constable of in the said county, and to the keeper of the common gaol at in the said county.*

These are to command you the said constable, in his Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol the body of C. D., charged this day before me, the said justice, on the oath of A. B. of and others, for that he the said C. D. [state the offence, thus:] *on, &c. at, &c. feloniously did, from motives of lucre, take away and detain one A. B. against her will, she the said A. B. being then* [*a woman having an interest in certain real* or *personal estate,* or *the heiress presumptive to a person having an interest in certain real estate,* or *the next of kin to a person having an interest in certain personal estate*], *with intent her the said A. B.* [*to marry,* or *defile,* or *to cause to be married to,* or *defiled by J. F.,* or *by some person unknown*:] *against the form of the statute in that case made and provided.* [Conclude as usual, thus:] *And you the said keeper are hereby required to receive the said C. D. into your custody in the same common gaol, and him there safely to keep until he shall be thence delivered by due course of law. Herein fail you not. Given under my hand and seal the day of in the year of our Lord*

J. P.

Indictment for a like offence.*

—— *The Jurors for our Lord the King upon their oath present, that C. D. late of, &c. (yeoman,) on, &c. at, &c. with force and arms, feloniously did, from motives of lucre, take away and detain one A. B. against her will, she the said A. B. then and there being* [*a woman having an interest in a certain real estate, to wit, in certain lands, tenements, and premises, situate at, &c.* or *in a certain personal estate, to wit, in certain goods and chattels, that is to say,* [describe generally the personalty,] or *the heiress presumptive, &c.* or *the next of kin, &c.*] *with intent her the said C. D. to marry; against the form of the statute in such case made and provided, and against the peace of our Lord the King his crown and dignity.* [Add counts, if the case be in any way doubtful as to the proofs, varying the statement as to the property, &c. of the woman, and a count stating the intent to be to "*defile*" her, or that some other person should do so.]

* See a precedent on the 3 Hen. VII. c. 2, being also against accessories. *C. C. C.* 529. See *post*, p. 13, title **Accessary**.

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Commitment for the abduction of a girl under sixteen, on 9 Geo. 4, c. 31, s. 20.

Commencement as usual, as *supra.*] *on, &c. at, &c. unlawfully did take one A. B. out of the possession and against the will of J. B. her father* [or, *mother*; or, *person having the lawful care and charge of her*], *she the said A. B. then and there being an unmarried girl, and under the age of sixteen years, to wit, of the age of years; against the form of the statute in that case made and provided. And you the said keeper, &c.* [conclude as usual, as *supra.*]

Indictment for a like offence.

Commencement same as last form of indictment.] *unlawfully did take one A. B. out of the possession and against the will of J. B. her father* [or *mother*], *she the said A. B. then and there being an unmarried girl, under the age of sixteen years, to wit, of the age of years; against the form of the statute in such case made and provided, and against the peace, &c.* [Add a count stating *J. L.* to be *a person then and there having the lawful care and charge of the said A. B.*]

Abettor. *See* Accessary.

Abjuration, Oath of. *See* Oaths.

Abortion.*

[9 Geo. IV. c. 31, s. 13.]

When murder at common law.

IF a woman be with child, and any give her a potion to destroy the child within her, and she take it, and it work so strongly that it kills her, this is murder; for it was not given to cure her of a disease, but unlawfully to destroy her child within her, and therefore he that gives her a potion to this end must take the hazard, and if it kill the mother, it is murder. 1 *Hale*, 429, 430.

And if a woman quick or great with child took, or another gave her, any potion to make an abortion, or if a man struck her, whereby the child within her was killed, though it were a great crime, yet it was not murder nor manslaughter by the law of *England*, because it was not yet *in rerum naturâ*, nor could it legally be known whether it were killed or not. 1 *Hale*, 433. Though if the child were born alive, and afterwards died of the poison or bruises it received in the womb, it was murder in such as administered or gave them. 1 *Hawk.* c. 31, s. 16; 4 *Bla. Com.* 198.

By 9 Geo. 4, c. 31, s. 13.

Using any means to procure the miscarriage of a woman quick with child, a felony.

The like as to a woman not quick with child.

9 Geo. 4, c. 31.

But this omission in our criminal code was in a great degree corrected by statute 43 Geo. III. c. 58; and now by the 9 Geo. IV. c. 31, s. 13, which wholly repeals the 43 Geo. III. it is enacted, "That if any person, with intent to procure the miscarriage of any woman then being quick with child, unlawfully and maliciously shall administer to her, or cause to be taken by her, any poison or other noxious thing, or shall use any instrument or other means whatever with the like intent; every such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony; and being convicted thereof shall suffer death as a felon. And if any person, with intent to procure the miscarriage of any woman not being, or not being proved to be, then quick with child, unlawfully and maliciously shall administer to her, or cause to be taken by her, any medicine or other thing, or shall use any instrument or other means whatever, with the like intent; every such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony, and being convicted thereof shall be liable,

* As to concealing the birth of children, see *post*, Children; also Homicide, Vol. III.

at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years nor less than seven years, or to be imprisoned with or without hard labour, in the common gaol or house of correction, for any term not exceeding three years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit,) in addition to such imprisonment.

See the general clauses affecting all the provisions of this act, *post*, Malicious Injuries *(to Persons)*, Vol. III.

What an offence within the act—"Quick with child."

What an Offence within the Act]—The words "quick with child" are to be construed according to the common understanding, in which they signify that the woman has felt the child move within her. Thus in *Rex* v. *Phillips, Monmouth Sum. Ass.* 1812, 3 *Campb.* 77, upon an indictment on the 43 Geo. III. for endeavouring to procure abortion, the woman, in point of fact, was in the fourth month of her pregnancy, but swore that she had not felt the child move within her before the taking the medicine, and that she was not then quick with child. The medical men, in their examinations, differed as to the time when the fœtus may be stated to be quick, and to have a distinct existence; but they all agreed, that, in common understanding, a woman is not considered to be quick with child till she has felt the child alive and quick within her, which happens with different women in different stages of pregnancy, although most usually about the fifteenth or sixteenth week after conception. And Lawrence, J. said, that this was the interpretation that must be put upon the words, "*quick with child,*" in the statute; and as the woman had not felt the child alive within her before taking the medicine, he directed the jury to acquit the prisoner.

To constitute an offence under the *first* part of the above section of the statute, it seems unnecessary that the thing administered should be *noxious*, the statute making it an offence "*to use* any instrument or *other means whatever.*" It must at all events be administered or some means must be used to procure the miscarriage; if it be administered with any other intent it is not within the act. The poison or noxious thing must be taken by or applied to the woman. *Rex* v. *Cadman, post*, 11.

Not quick with child.

To constitute an offence under the *second* part of the above section, the woman must be with child, but not *quick* with it. *Rex* v. *Scudder*, 3 *C. & P.* 605; *sed vide Rex* v. *Phillips*, 3 *Campb.* 74, 75. It is immaterial whether the thing administered be noxious or not. If the prisoner believed at the time that it would procure abortion, and administered it with that intent, the case is within the act. See *Rex* v. *Phillips*, 3 *Campb.* 74, *infra.*

Indictment.

The Indictment]—The indictment should follow the words of the act with the usual requisites of indictments in general. *Post*, Indictment, Vol. III. Unnecessary averments need not be proved. See *infra.*

Evidence—where woman quick with child.

Evidence—Where a Woman is quick with Child]—It must be proved, in support of an indictment for endeavouring to procure the abortion of a woman *quick with child*, that she was so quick. As to what is being quick with child, see *supra.* The woman must have felt the child move. *Rex* v. *Phillips*, 3 *Campb.* 77, *supra.*

It must also be shown, according to the fact stated in the indictment, either that the defendant administered or caused to be administered to, or taken by, the woman, the drug, &c. mentioned in the indictment; or perhaps proof of any other substance or thing, *ejusdem generis*, would be sufficient, as in the case of murder. *Post*, Homicide, Vol. III. and see *Rex* v. *Phillips*, 3 *Campb.* 74, *post*, 11. It is not sufficient, however, that the defendant merely imagined that it would have the effect intended. It does not seem necessary to prove that the drug administered was either a "poison," or a "noxious thing." The proof may be according to the fact stated in the indictment, that the defendant used other means to procure the abortion. The intent to procure the abortion must be satisfactorily proved. If the intent was for some other innocent purpose the case would not come within the act.

It is necessary that the thing administered was taken by or applied to the person to whom it was administered; merely giving it, if no part is taken or applied, is not sufficient; but if any part be taken, it is not necessary it should be *swallowed*. In a case where the prisoner was indicted for administering poison to E. D. with intent to murder her, the proof was that the defendant gave her a bit of cake, which contained arsenic and sulphate of copper. She put this into her mouth and spit it out again, but did not swallow any part of it: this was held not a sufficient administering within the 43 Geo. III. c. 58. *Rex* v. *Cadman*, 1 *R. & M. C. C.* 114. *Carr. C. L.* 237, 3d ed. S. C.

The dying declaration of the woman is sometimes admissible in evidence. *Post*, **Evidence**, Vol. II.

Evidence—where woman not quick with child.

Evidence — Where Woman not quick or not proved to be quick with Child] —In support of anindictment for endeavouring to procure the miscarriage of a woman not quick, or not proved to be quick, with child, it must appear she was *with child*, though she was not *quick* with it. *Rex* v. *Scudder*, 3 *C. & P.* 605. *R. & M. C. C.* 216. S. C. If she was not with child the prisoner would be acquitted. *Ibid. Sed vide Rex* v. *Phillips*, 3 *Campb.* 74. The administering of the thing or using other means to procure such miscarriage must be proved as in the preceding case. The intent to procure the miscarriage must be proved. Where an indictment on a similar enactment to this, by section 2 of the 43 Geo. III. c. 58, charged the prisoner with having administered to a woman a decoction of a certain shrub called *savin*, and it appeared upon the evidence that the prisoner prepared the medicine, which he administered, by pouring boiling water on the leaves of a shrub; the medical men who were examined stated that such a preparation is called an infusion, and not a decoction, (which is made by boiling the substance in the water,) upon which the prisoner's counsel insisted that he was entitled to an acquittal, on the ground that the medicine was misdescribed: but *Lawrence*, J. overruled the objection, and said that infusion and decoction are *ejusdem generis*, and that the variance was immaterial: that the question was, whether the prisoner administered any matter or thing to the woman to procure abortion. *Rex* v. *Phillips*, 3 *Campb.* 74, 75.

In the same case, witnesses having been called on behalf of the prisoner to prove that the shrub he used was not savin, the counsel for the prosecution insisted that he might, notwithstanding, be found guilty upon the last count of the indictment, which charged, that he administered a large quantity "of a certain mixture, to the jurors unknown, *then and there being a noxious and destructive thing*." The prisoner's counsel objected, that unless the shrub was savin, there was no evidence that the mixture was "noxious and destructive." *Lawrence*, J. held, that in an indictment on this clause of the statute it was improper to introduce these words; and that though they had been introduced, it was not necessary to prove them. And he further said, "it is immaterial whether the shrub was savin or not, or whether or not it was capable of procuring abortion, or even whether the woman was actually with child; if the prisoner believed at the time that it would procure abortion, and administered it with that intent, the case is within the statute, and he is guilty of the offence laid to his charge."*

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* In addition to the foregoing, it may be of some utility to give the following surgical observations on this offence. They frequently become very material in the evidence. They will be found collected in Mr. Carrington's work on the Criminal Law, 3d edition, xxx.

Abortion may arise from various causes: external violence, any sudden shock, sudden influence on the passions, rapid and uneasy travelling, dancing, walking, &c. 3 *Par.* p. 95. Sometimes the causes are constitutional; many women are predisposed to it, and females in a disreputable way of life are more so than others. *Sm. For. Med.* p. 296; 1 *Par.* p. 271, *acc.*

What are symptoms of Abortion having taken place. Dr. Gordon Smith states these to be—a bloody and ichorous [thin, watery] discharge from the vagina, the vagina itself dilated and relaxed, the labia enlarged and soft, and the os uteri (mouth of the womb) open; and the further preg-

Punishment.

Punishment]—The offence of endeavouring to procure abortion of a woman *quick with child*, is a felony, and punishable with death. 9 Geo. IV. c. 31, s. 13, *ante*, 9.

If the woman be *not quick*, or be not proved to be quick with child, the offence is also a felony, and punishable with transportation for not more than fourteen years, nor less than seven years; imprisonment, with or without hard labour, for not more than three years; and if a male, to be once, twice, or thrice publicly or privately whipped, in addition to such punishment. *Id.*

Forms.

Commitment on 9 Geo. 4, c. 31, s. 19, for administering drugs, &c. to procure the abortion of a woman quick with child.

Commencement as usual, as *ante*, p. 8.] *on, &c. at, &c. unlawfully, maliciously and feloniously, did cause to be administered to and taken by S. L. a large quantity of a certain noxious thing, to wit, a noxious thing called savin,* [or, *a certain poison, to wit, a poison called, &c.*; or, *use a certain instrument, &c. to wit, an instrument called, &c.*] *with intent then and there and thereby to procure the miscarriage of the said S. L., she the said S. L. then and there being quick with child: against the form of the statute in that case made and provided. And you the said keeper, &c.* [conclude as usual, as *ante*, p. 8.]

The like if the woman were not quick with child.

Commencement as usual, as *ante*, p. 8.] *on, &c. at, &c. unlawfully, maliciously, and feloniously did administer to and cause to be taken by one S. L. a large quantity of a certain medicine, to wit, a medicine called savin,* [or, *a certain thing, &c. called, &c.*; or, *use a certain instrument, &c. called, &c.*] *with intent then and there and thereby to procure the miscarriage of the said S. L., she the said S. L. then being with child, but not then being quick with child: against the form of the statute in such case made and provided. And you the said keeper, &c.* [conclude as usual, as *ante*, p. 8.]

Indictment on 9 Geo. 4, c. 31, for administering poison to procure the miscarriage of a woman quick with child.

—— *The jurors for our Lord the King, upon their oath present, that C. D. late of, &c. on, &c. with force and arms, &c. at, &c. feloniously, wilfully, maliciously and unlawfully did administer to and cause to be taken by one S. L. a large quantity of a certain noxious thing, to wit, a noxious thing called (savin), to wit, four ounces of the said noxious thing, with intent then and there and thereby to procure the miscarriage of the said S. L., she the said S. L. at the time of the administering and taking the said thing*

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nancy has advanced, there will be a stronger resemblance to the process of parturition. *For. Med.* p. 300.

Progress of the Fœtus in size, &c. From the 26th to the 28th day from conception, the embryo reaches a size that is perceptible. It is composed of two masses, the larger being the head. About the sixth week it reaches the size of a large bee, and the navel-string is formed, the twisting of which begins after the tenth week. Before the thirteenth week the sex is not readily distinguishable, as the female clitoris is so disproportionate as to resemble the penis of the male. By the end of the third month, the head is covered with down. At four months and a half, the embryo is about seven inches long. After the fifth month, the abdomen seems to predominate over the thorax. At the sixth month, the fœtus measures about nine inches, and the testes of the male begin to descend into the scrotum, but are not found there till the eighth. From the fifth to the seventh month, it may be born alive, but can never maintain a separate existence; but beyond the seventh month we cannot carry the consideration of abortion, the child being then on the same footing with one perfectly mature, and only deficient in size and weight; and about this time the membrana pupillaris disappears. *Sm. For. Med.* p. 292.

Of Savine and Colocynth. These are things commonly taken by women to procure abortion. They generally do not answer their intended purpose, and always do injury to the health of the woman who takes them. Savine is a shrub, whose leaves have a hot and bitter taste, and a disagreeable smell. It is a powerful stimulant, and it acts on the nerves, the stomach, and rectum, but has no specific effect on the uterus. 2 *Par.* p. 379. Colocynth (also called Colloquintida, or Bitter Apple) is bitter in taste, and is a powerful drastic purgative. *Id.* p. 377. For these there are no chemical tests.

As to symptoms of pregnancy and diseases that have the effects of recent delivery; see *post*, **Children, Concealing Birth of.**

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as aforesaid being quick with child, to wit, at the parish aforesaid, in the county aforesaid: against the form of the statute in such case made and provided, and against the peace, &c. [If the facts justify it, add a count or more, stating the administering of the thing differently; and add a count for administering, &c. *a certain noxious and destructive thing to the jurors aforesaid unknown*, with the like intent. Add another count more general, stating defendant used *an instrument*, or other means to procure the abortion, according to the fact.]

Indictment on 9 Geo. 4, c. 31, for administering poison to procure the miscarriage of a woman not quick with child.

Begin as in the preceding form.] *feloniously, wilfully, and maliciously did administer to and cause to be taken by one S. L. a large quantity of a certain drug, to wit, a thing called (savin) to wit, four ounces of the said drug, with intent then and there and thereby to procure the miscarriage of the said S. L., she the said S. L. at the time of the administering and taking the said drug as aforesaid being with child, but not quick with child, to wit, at, &c. aforesaid: against the form of the statute in such case made and provided, and against the peace, &c.* [Add a count, substituting for the words *being with child, but not quick with child*, the words *not being quick with child*. Add also other counts, charging the defendant with having administered, &c. *a large quantity of a certain medicine to the jurors aforesaid unknown*, and a count varying the statement as to the thing administered; also a count stating defendant used an instrument or other means to procure the abortion, according to the fact.]

[See forms on 43 Geo. III. c. 58. 3 *Chit. C. L.* 797.]

Accessary.*

I. *Of Principals in General*, 14.
[7 & 8 *Geo. IV. c.* 29, *s.* 31; 7 & 8 *Geo. IV. c.* 30, *s.* 26.]

II. *Of Accessaries in General*, 17.
[7 & 8 *Geo. IV. c.* 29, *s.* 55.]

III. *Of Accessaries before the Fact*, 18.

IV. *Of Accessaries after the Fact*, 19.

V. *Of the Proceedings against Accessaries.*

1. *In General*, 21.
2. *Indictment against*, 23.
3. *Trial of*, 26.
4. *Evidence*, 28.
5. *Punishment of*, 30.
[7 *Geo. IV. c.* 64, *s.* 9, 10, 11; 7 & 8 *Geo. IV. c.* 29, *s.* 54, 55, 56, 60, 61, 62; 7 & 8 *Geo. IV. c.* 30, *s.* 26; 9 *Geo. IV. c.* 31, *s.* 3, 31.]

VI. *Particular Enactments against Receivers of Stolen Goods*, 32.
[7 & 8 *Geo. IV. c.* 54, 55, 56, 60; 2 *Geo. III. c.* 28, *s.* 12, 14, 18, 19; 39 & 40 *Geo. III. c.* 87, *s.* 22; 1 & 2 *Geo. IV. c.* 75, *s.* 1, 12, 15, 21, 22.]

VII. *Forms*, see *List of*, post, 37.

I. Of Principals in General.

IN order to ascertain who are accessaries, it will be expedient to inquire in the first place who are principals.

* As to Accessaries in general, see 1 *Ch. C. L.* 256 to 275.

OF PRINCIPALS.

Who are principals.

Who are]—A party guilty of an offence may be either a principal in the *first* degree, a principal in the *second* degree, or an accessary *before* or *after* the fact.

A principal in the *first* degree is he that is the actor or actual perpetrator of the offence, and in the *second* degree, he who is *present aiding and assisting, with a felonious intention to commit the felony.* 1 *Hale,* 233, 615; 4 *Bla. Com.* 34.

The former doctrine, that principals in the second degree were only *accessaries* at the fact, is now exploded; see 1 *Ch. C. L.* 256; and in confirmation of this, principals in the second degree may be arraigned and tried before the principal in the first degree has been outlawed or found guilty; 1 *Hale,* 437; 2 *Hale,* 223; 9 *Co.* 67 b.; and he may be convicted though the principal in the first degree has been acquitted. 1 *Leach,* 360; 1 *Salk.* 334; 1 *Hale,* 437, &c.; 1 *Ch. C. L.* 260; *Rex* v *Towle and others, Russ. & R. C. C.* 314; 3 *Price,* 145; 2 *Marsh.* 465, S. C.

Offender must be present.

Implied presence.

The Offender must be present]—To constitute a principal in the second degree, he must be *present* at the time the offence was committed.

But the presence need not be an actual standing within sight or hearing of the act, an active co-operation in the crime at the time of its commission completes the felony; as if several persons set out together, or in small parties, upon one common design, be it murder or other felony, or for any other purpose unlawful in itself, and each taketh the part assigned him, some to commit the fact, others to watch at proper distances and stations to prevent a surprise, or to favour, if need be, the escape of those who are more immediately engaged. They are all, provided the fact be committed, in the eye of the law *present* at it: for it was made a common cause with them, each man operated in his station at one and the same instant towards the same common end; and the part each man took tended to give countenance, encouragement, and protection to the whole gang, and to insure the success of their common enterprise. *Fost.* 350.

In case of stealing in a shop, if several are acting in concert, some in the shop and some out, and the property is stolen by one of those in the shop, those who are on the outside are equally guilty as principals in the offence of stealing in a shop. *Rex* v. *Gogerley, Russ. & R. C. C.* 343; and see *Rex* v. *Owen,* 1 *Ry. & M. C. C.* 96.

If several act in concert to steal a man's goods, and he is induced by fraud to trust one of them, in the presence of the others, with the possession of such goods, and another of them entices him away, that the man who has the goods may carry them off, all are guilty of felony as principals. *Rex* v. *Standley, Russ. & R. C. C.* 305.

All persons aiding and abetting the personating a seaman are principals; the offence is not confined to the person only who personates the seaman. *Rex* v. *Potts, Russ. & R. C. C.* 353. So in simony all are principals. *Cro. Eliz.* 789.

If several combine to forge an instrument, and each executes by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are nevertheless all guilty as principals. *Rex* v. *Bingley, Russ. & R. C. C.* 446.

If one encourages another to commit suicide, and is present abetting him while he does so, such person is guilty of murder as a principal; and if two encourage each other to murder themselves, and one does so, the other being present, but the latter fail in the attempt upon himself, he is a principal in the murder of the first: but if it be uncertain whether the deceased really killed himself, or whether he came to his death by accident before the moment when he meant to destroy himself, it will not be murder in either. *Rex* v. *Dyson, Russ. & R. C. C.* 523.

So if several persons come to a house with intent to commit an affray, and one be killed while the rest are engaged in riotous and illegal proceedings, though they are dispersed in different rooms, all will be principals in the murder. *Dalt. J.* c. 161; 1 *Hale,* 439; *Hawk.* b. 2, c. 29, s. 8.

The offender, to constitute him a principal, it is not necessary that he should be present during the whole of the transaction, it is sufficient to show that he originally assented to the felony, and was present aiding and abetting when the offence was consummated, although he was not at the inception; as where the servants of *A.* feloniously removed goods in *A.*'s warehouse from one part of it to another, and *B.* several hours afterwards assisted in removing the goods *from* the warehouse, he was held a principal, since it was a continuing transaction. 2 *East, P.C.* 768; and see *Rex* v. *Bingley, R. & R. C.C.* 446, *ante*, 14; *sed vide Rex* v. *Kelly, R. & R. C.C.* 421, and *id.* 332, *infra*.

Presence during the whole of offence.

In some cases even a person absent may be principal; as he that puts poison into any thing to poison another and leaves it, though not present when it is taken: and so it seems all that are present when the poison is so infused and consenting thereto are principals. *Hale's Sum.* 216. Turning out a wild beast with intent to do mischief, so that thereupon death ensues, the party offending is guilty of murder as a principal. *Fost.* 349; 1 *Hale*, 514.

When a party absent guilty as a principal.

But if one came casually, not of the confederacy, though he hindered not the felony, he is neither principal nor accessary, although he apprehend not the felon; but for his negligence he is punishable by fine and imprisonment. *Hale's Sum.* 216; 2 *Hawk.* c. 29, s. 10.

Persons not present, nor sufficiently near to give assistance, are not principals: thus where Brighton uttered a forged note at Portsmouth, the plan was concerted between him and two others, to whom he was to return when he had passed the note and divide the produce. The three had before been concerned in uttering another forged note; but at the time this note was uttering in Portsmouth, the other two stayed at Gosport. The jury found all three guilty; but on a case reserved, the judges were clear, that as the other two were not present, nor sufficiently near to assist, they could not be deemed principals, and, therefore, they were recommended for a pardon. *Rex* v. *Soares, Atkinson, and Brighton*, 2 *East, P. C.* 974; *Russ. & R. C. C.* 25, S. C.; and see *Rex* v. *Stewart and others*, *Russ. & R. C. C.* 363; and *Rex* v. *Badcock and others*, *Russ. & R. C. C.* 249.

Going towards the place where a felony is to be committed, in order to assist in carrying off the property, and assisting accordingly, will not make a man a principal if he were at such a distance at the time of the felonious taking as not to be able to assist in it. *Rex* v. *Kelly*, *Russ. & R. C. C.* 421.

Where H. and S. broke open a warehouse and stole thereout thirteen firkins of butter, &c. which they carried along the street thirty yards, and then fetched the prisoner, who was apprised of the robbery, and he assisted in carrying the property away; he was held not a principal, the felony being complete before he interfered. *Rex* v. *King*, *Russ. & R. C. C.* 332; *Rex* v. *M'Makin*, *id.* 333, note.

If several are out for the purpose of committing a felony, and upon an alarm run different ways, and one of them maim a pursuer to avoid being taken, the others are not to be considered principals in such act. *Rex* v. *White*, *Russ. & R. C.C.* 99.

If a wife, by her husband's order, but in his absence, knowingly uttered a forged order and certificate for prize money, the presumption of coercion at the time of uttering does not arise, as the husband was absent, and the wife may be convicted. *Rex* v. *Morris*, *Russ. & R. C.C.* 270.

It is not sufficient to make a person a principal in uttering a forged note that he came with the utterer to the town where it was uttered, went out with him from the inn at which they had put up a little before he uttered it, joined him again in the street a short time after the uttering, and at some little distance from the place of uttering, and ran away when the utterer was apprehended. *Rex* v. *Davis and another*, *Russ. & R. C. C.* 113; and see *Rex* v. *Else and another*, *id.* 142.

Offender must be aiding and assisting.

The offender must also be *aiding, assisting, and abetting* to constitute him a principal in the second degree. Mere presence is not enough: thus if two

Accessary—(in General.)

Concerning which, Lord *Coke* observes generally, that when an offence is thing, either by the common law or by statute, all accessaries both before and after are sufficiently included. 3 *Inst.* 59.

But as to felonies by act of parliament, Lord *Hale* distinguishes thereupon a difference, applying (he says) to an act of parliament, Lord *Hale* distinguishes thereupon them, though it mentions nothing of accessaries *before* or *after*, yet virtually and consequently those that counsel or command the offence are accessaries ever, and those that knowingly receive the offender are accessaries *after*. (1 *Hale*, 614. But if the act of parliament, that makes the felony, in express some additional accessaries before, and make no mention of accessaries after, the expression of principals, necessarily excludes accessaries before; as there can be no accessaries after, which is an offence of a lower degree than accessaries before. 1 *Hale*, 614. Yet, says Mr. Hawkins, I take it to be settled a rule of construction, there it seems to be a rule, that, in those and all other cases, where a statute makes any thing felony, which is an offence of a lower degree than accessaries before, it involves the receiver of the offender in the same manner as in the principal felon, and subjects him to the same punishment. 2 *Hawk.* c. 29, s. 14. And although it be generally true that an accessary before the fact cannot be guilty of felony, unless the principal be guilty of the same degree of felony, consequentially, accessaries before the fact sometimes varies the case. 1 *Hale*, 615. Thus the statute of 1 Edw. c. 2, made the coming in of a Jesuit seminary, or the receiving or relieving of him knowingly, felony, the contributing of money to the like a premunire. No other acts of parliament, according to Lord *Coke* and Mr. J. *Foster*, constitute accessaries before the fact in many cases. 1 *Hale*, 615. 2 *East's P. C.* 641.

A statute which excluded the principals from the benefit of clergy did not thereby exclude the accessaries before or after: neither did a statute excluding the accessaries thereby exclude the principals. 2 *Hawk.* c. 33, s. 26.

There may be an accessary to a person who was accessary before the fact, as if *A.* advise and procure *B.* to murder *C.*; by this *A.* is accessary *before* the fact; and though but accessary, yet if *D.* receives and conceals him from justice, *D.* hereby becomes an accessary; but there cannot be an accessary to a person who was accessary *after* the fact. 3 *P. Wms.* 475.

Accessary to an accessary

III. Of Accessaries before the Fact.

Accessary before the fact.

An accessary before the fact committed, is he that, *being absent at the time of the felony committed, doth yet procure, counsel, command, or abet, another to commit a felony.*

What the absence

Being absent at the Time of the Felony committed]—For if he be present, he is not an accessary, but a principal.

As if divers come to commit an unlawful act, and be present at the time of the felony committed, though one of them only doth it, they are *all* principals. Hawk. Pleas, 313, sect. 14. So if one present move the other to strike; or if one command another to assist the party if needful; or if one encourage another to strike him; or if one present deliver his weapon to another to strike; or if one present abet, shelter, or comforting. them, they are present aiding; that is a sufficient presence in law to make them principals. Hawk. Pleas, 313, sect. 14.

Counsel, or abet.—But here note some diversities: As, if one command another to kill a man, and he doth it accordingly, this command is void, and the party commanded is not guilty, but the commander is guilty of murder, as principal, if the fact be committed; for the command is void, and the party commanded is not guilty, but the commander is guilty of murder, as principal, if the fact be committed; for the command is void, and the

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therefore if one command another to lay hold upon a third person, and he lays hold upon him and robs him, the person commanding is not accessary to the robbery, for his command might have been performed without any robbery. *Hale*, c. 141, p. 369, and see 1 C. & P. 202.

But if the command had been to beat him, and the party commanded doth kill him, or beat him so that he dieth thereof, the person commanding shall be accessary to the murder, for it is a hazard in beating a man that he may die thereof. *Id.* Sed quære, if this does not mean where the command was to beat the other *violently*. See 1 *Hale*, 442, 1 *East*, P. C. 257.

(2) *He that commandeth or counselleth any evil or unlawful act to be done, shall be adjudged accessary to all that shall ensue upon the same evil act, but not to any other distinct thing.* As if one command another to steal a horse, and he stealeth an ox; or to rob a man by the highway of his money, and he robs him in his house of his plate; or to burn such a one's house, and he burneth the house of another: these are other acts and felonies than he commanded to be done, and therefore he shall not be adjudged accessary to them. *Id.*

(3) *But if a person counsel the same felony which another did commend or counsel to be done, though he doth it at another time, or in another place, or in another sort than was commanded or counselled, yet here such person commanding or counselling shall be accessary.* As if he doth counsel to kill a man by poison, and he kills him with a dagger; or to kill him by the highway, and he kills him in his house; or to kill him one day, and he kills him on another day; in these and the like cases he shall be accessary to the murder, *id.*, for the means used are immaterial so that the criminal object be effected.

(4) *Those offences, which in the construction of law are sudden and unpremeditated, cannot have any accessaries before.* As killing a man in manslaughter in his own defence, or manslaughter, for in such case there can be no procuring, counselling, commanding, or abetting. 1 *Hale*, 616.

(5) It seems to be generally agreed, that *he who barely counsels a felony which he knows to be intended, or gives aid to a suspicious act of felony, and shall not be adjudged an accessary*, for this is not procuring, counselling, or abetting. 2 *Hawk.* c. 29, s. 23.

This words that seem to imply more persuasion, as if one informs another that he is about to commit a felony, and the latter replies, "you may do your pleasure for me," this does not implicate him as an accessary, but it only lays him with the guilt of a misprision. 1 *Hale*, 616. 2 *Hawk.* c. 29, s. 23, 24.

(6) Also if a man counsel or command another to kill a person, and before he hath killed him, he who counselled or commanded it repents and countermands it, charging him not to kill him, and yet after he doth kill him; here such person countermanding shall not be adjudged accessary to the murder: for, generally, the law adjudgeth no man accessary to a felony before the fact, but such as continue in that mind at the time that the felony is done and executed. *Hale*, c. 141, p. 372.

(7) But if a person advise a woman to kill her child as soon as it shall be born, and she kill it in pursuance of such advice; he is an accessary to the murder, though at the time of the advice the child not being born, no murder could be committed of it; for the influence of the felonious advice continuing till the child was born, makes the adviser as much a felon as if he had given his advice after the birth. 2 *Hawk.* c. 29, s. 18.

(8) If the crime advised to be committed be not perpetrated, the adviser may still be indicted for a misdemeanor in having made the motion. *Rex* v. *Higgins*, 2 *East*, 5; see *post*, Attempts.

OF PRINCIPALS.

persons are fighting, and a third comes by and looks on, but assists neither, he is not guilty of homicide in any degree, though he may be fined for a misprision if he neglect to exert himself to apprehend the offenders. *Hale's Sum.* 216; 2 *Hawk.* c. 29, s. 10; *post*, Arrest.

But if several come with intent to do mischief, though only one does it, all the rest are principals in the second degree. 1 *Hale*, 440; 2 *Hawk.* c. 29, s. 8. And if one present command another to kill a third, both the agent and the contriver are guilty. *Id.* And where many are engaged in the perpetration of a criminal act, and one of them is guilty of murder in the pursuit of their common object, all who were engaged in the riot or disorder are principals in the second degree. 1 *Hale*, 442; 2 *Hawk.* c. 29, s. 8.

Offender must be participating in the felonious design.

The offender must also be *participating in the felonious design*, or at least the offence must be within the compass of the original intention. 1 *East*, *P. C.* 257; *Kel.* 109, 117. For if a master assaults with malice prepense, and the servant, being ignorant of his master's malignant design, takes part with him, the servant is not an abettor of murder, but of manslaughter only. So if an affray arise between two parties, and constables interfere and are killed, those who killed them, knowing their office, are principals in the first degree; those who abetted them, not knowing or having the means of knowing the constable's office, are guilty in the second degree of manslaughter only; and those who were present and concerned in the original affray, but desisted from interfering on the approach of the officers, are not at all concerned, for this was a new outrage independent of the original quarrel. 1 *Hale*, 446; 1 *Ch. C. L.* 258.

And in order to render persons liable as principals in the second degree, the killing or other act must be in pursuance of some unlawful purpose, and not collateral to it. 1 *East*, *P. C.* 258.

Indictment against principals in second degree.

Indictment against Principals in Second Degree]—The indictment may charge all the parties as principals in the first degree. *Fost.* 351; 2 *Hawk.* c. 23, s. 76; *Rex* v. *Young*, 3 *T. R.* 105. But there are exceptions to this rule as to the structure of indictments under particular statutes, which make the punishment different; and it is best not to charge all the parties as principals in the first degree, when there is any doubt as to the evidence to prove them all equally guilty; for if one were altogether innocent, having repented of his purpose and left the others before the felony, and it is uncertain which is guilty, both must be acquitted. 1 *Leach*, 387. See further as to the joinder of principals, *post*, Indictment, Vol. III.

Punishment.

Punishment]—Principals in the second degree are liable to the same punishment as the actual perpetrators of the crime, and this not only in offences at common law, but in cases of felony created by statute, to which the same implication extends. 1 *Leach*, 64; 4 *Burr.* 2076. Though when the act is *necessarily* personal there are exceptions; see 1 *Ch. C. L.* 252; and some particular statutes impose on the actual perpetrator a different punishment.

7 & 8 Geo. 4, c. 29, s. 61.

The 7 & 8 Geo. IV. c. 29, s. 61, relative to larceny and offences connected therewith, enacts, "That in the case of every *felony* punishable under this act, every principal in the second degree, and every accessary before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessary after the fact to any felony punishable under this act (except only a receiver of stolen property) shall, on conviction, be liable to be imprisoned* for any term not exceeding two years; and every person who shall aid, abet, counsel or procure the commission of any *misdemeanor*, punishable under this act, shall be liable to be indicted and punished as a principal offender."

7 & 8 Geo. 4, c. 30, s. 26.

The 7 & 8 Geo. IV. c. 30, s. 26, relative to malicious injuries to property, enacts, "That in the case of every *felony* punishable under this act, every

* Or imprisoned and kept to hard labour, *id.* s. 4, *post*.

principal in the second degree, and every accessary before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessary after the fact to any felony punishable under this act shall on conviction be liable to be imprisoned for any term not exceeding two years. And every person who shall aid, abet, counsel, or procure the commission of any *misdemeanor* punishable under this act shall be liable to be indicted and punished as a principal offender."

Let us now consider as to *first*, Accessaries in *General*; *secondly*, Accessaries *before* the Fact; and *thirdly*, Accessaries *after* the Fact.

II. Of Accessaries in General.

Who are accessaries.

An accessary *(quasi accedens ad culpam)* is he who is not the chief actor in the offence, nor present at its performance, but is some way concerned therein, either *before* or *after* the fact committed. 4 *Black. Com.* 35.

In treason there are no accessaries.

In the highest capital offence, namely, *high treason*, there are no accessaries, either *before* or *after* the fact; for all consenters, aiders, abettors, and knowing receivers and comfortors of traitors are principals. 1 *Hale*, 613. 4 *Bla. Com.* 35. *Sed vide Fost.* 342, *contrà*. But yet as to the course of proceeding, it hath been the course, that those who did actually commit the very fact of treason should be first tried, before those that are principals in the second degree; because otherwise this inconvenience might follow, that the principals in the second degree might be convicted, and yet the principals in the first degree may be acquitted, which has been considered absurd. 1 *Hale*, 437, 613; 2 *Hale*, 223; 9 *Co.* 67 b.

In inferior treasons there are.

The rule that there are no accessaries in treason does not hold in the case of *inferior treasons*, as those which relate to the coins, &c. for in these no advice to commit them, unless they are actually performed, can make a man a principal traitor. *Fost.* 342; 4 *Bla. C.* 35.

In offences below felony no accessaries.

In cases that are criminal, but not capital, being below the degree of felony, as in *misdemeanors* and *trespass* at common law, there are no accessaries; for all the accessaries *before* are in the same degree as principals; and accessaries *after*, by receiving the offenders, cannot be in law under any penalties as accessaries, unless the acts of parliament that inflict those penalties do expressly extend to receivers or comforters, as some do. 1 *Hale*, 613; 12 *Rep.* 81; *Evans's case*, *Fost.* 73; 4 *Blac. Com.* 36. (See 7 & 8 Geo. IV. c. 29, s. 55, *post*, 31, 32.)*

If indeed the act of the receiver amount to a rescue, or to the obstructing an officer of justice in the execution of his duty, or the like, he would undoubtedly be indictable for it as for a misdemeanor. 2 *Hawk.* c. 29, s. 4.

In this respect the highest and lowest offences are alike; the former, as it should seem, on account of the magnitude and danger of the guilt; the latter, because the crime is so small that the law does not condescend to mark the minor shades of distinction.

Accessaries only in capital felonies.

Therefore the business of this title of accessary refers only to *capital felonies*, whether by the common law or by act of parliament.

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* By the stat. 7 & 8 Geo. IV. c. 29, s. 55, it is enacted, that if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, or converting whereof is made an *indictable misdemeanor by this act*, (relating to larceny and acts connected t[illegible] such person [illegible] been unlaw[illegible] guilty of a *misdemeanor*, and may be indicted and convicted thereof. See this provision in full, *post*, 31, with provisions as to the trial and punishment of offenders. See also the provisions of the 7 & 8 Geo. IV. c. 29, s. 61, and 7 & 8 Geo. IV. c. 30, s. 26, *ante*, 16, enacting the [illegible]y and punishment of accessaries [illegible]d after the fact in felonies and [illegible]anors under those acts.

IN GENERAL.

When implied in felony.

Concerning which, Lord *Coke* observes generally, that when an offence is felony, either by the common law or by statute, all accessaries both before and after are incidentally included. 3 *Inst.* 59.

In felonies by statute.

But as to felonies by act of parliament, Lord *Hale* distinguishes thereupon as follows; regularly (he says) if an act of parliament enacts an offence to be felony, though it mention nothing of accessaries *before* or *after*, yet virtually and consequently those that counsel or command the offence are accessaries *before*, and those that knowingly receive the offender are accessaries *after*. 1 *Hale*, 613. But if the act of parliament, that makes the felony, in express terms comprehend accessaries *before*, and make no mention of accessaries *after*, namely, receivers or comforters, there it seems there can be no accessaries *after*; for the expression of procurers, counsellors, abettors, all which import accessaries before, makes it evident, that the law-makers did not intend to include accessaries *after*, which is an offence of a lower degree than accessaries *before*. 1 *Hale*, 614. Yet, says Mr. Hawkins, I take it to be settled at this day, that, in these and all other cases, where a statute makes any offence treason or felony, it involves the receiver of the offender in the same guilt with himself, in the same manner as in treason or felony at common law, unless there be an express provision to the contrary. 2 *Hawk.* c. 29, s. 14.

And although it be generally true that an act of parliament, creating a felony, renders, consequentially, accessaries *before* and *after* within the same penalty, yet the special penning of the act sometimes varies the case. 1 *Hale*, 614. Thus the statute of 27 Eliz. c. 2, made the coming in of a Jesuit treason, the receiving or relieving of him felony, the contributing of money to his relief a *præmunire*. So that acts of parliament may diversify the offences of accessary or principal, according to the various penning thereof, and so have done in many cases. 1 *Hale*, 615.

Lord *Coke* and Mr. *J. Foster* considered the word *comman*d as comprehending all those who incite, procure, set on, or stir up, any other to do the fact. 2 *East's P. C.* 641.

A statute which excluded the principals from the benefit of clergy did not thereby exclude the accessaries before or after; neither did a statute excluding the accessaries thereby exclude the principals. 2 *Hawk.* c. 33, s. 26.

Accessary to an accessary.

There may be an accessary to a person who was accessary before the fact, as if *A.* advise and procure *B.* to murder *C.*; by this *A.* is accessary *before* the fact; and though but accessary, yet if *D.* receives and conceals him from justice, *D.* hereby becomes an accessary; but there cannot be an accessary to a person who was accessary *after* the fact. 3 *P. Wms.* 475.

III. Of Accessaries before the Fact.

Accessary before the fact.

An accessary before the fact committed, is he that, *being absent at the time of the felony committted, doth yet procure, counsel, command, or abet, another to commit a felony.*

Must be absent.

Being absent at the Time of the Felony committed]—For if he be present, he is not an accessary, but a principal.

As if divers come to commit an unlawful act, and be present at the time of the felony committed, though one of them only doth it, they are *all* principals. *Hale's Sum.* 215, *ante*, 14. So if one present move the other to strike; or if one present did nothing, but yet came to assist the party if needful; or if one hold the party while the felon strikes him; or if one present deliver his weapon to the other that strikes: for they are *present* aiding, abetting, or comforting. *Hale's Sum.* 216. And we have already seen what is a sufficient presence to constitute a party an offender as a principal, *ante*, 14.

Must procure, counsel and abet.

Procure, counsel, command, or abet]—But here note some diversities: As,

(1) *When the principal doth not accomplish the fact altogether in the same sort as it was beforehand agreed between him and the accessary;* and

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therefore if one command another to lay hold upon a third person, and he lays hold upon him and robs him, the person commanding is not accessary to the robbery, for his command might have been performed without any robbery. *Dalt.* c. 161, p. 369; and see 1 *Ch. C. L.* 262.

But if the command had been to beat him, and the party commanded doth kill him, or beat him so that he dieth thereof; the person commanding shall be accessary to the murder; for it is a hazard in beating a man that he may die thereof. *Id. Sed query*, if this does not mean where the command was to beat the other *violently*. See 1 *Hale*, 442; 1 *East, P. C.* 257.

(2) *He that commandeth or counselleth any evil or unlawful act to be done, shall be adjudged accessary to all that shall ensue upon the same evil act, but not to any other distinct thing.* As if one command another to steal a horse, and he stealeth an ox; or to rob a man by the highway of his money, and he robs him in his house of his plate; or to burn such a one's house, and he burneth the house of another: these are other acts and felonies than he commanded to be done, and therefore he shall not be adjudged accessary to them. *Id.*

(3) *But if a person commit the same felony which another did command or counsel to be done, though he doth it another time, or in another place, or in another sort than was commanded or counselled, yet here such person commanding or counselling shall be accessary.* As if he doth counsel to kill a man by poison, and he kills him with a dagger; or to kill him by the highway, and he kills him in his house; or to kill him one day, and he kills him on another day; in these and the like cases he shall be accessary to the murder, *id.*; for the means used are immaterial so that the criminal object be effected.

(4) *Those offences, which in the construction of law are sudden and unpremeditated, cannot have any accessaries before.* As killing a man by misadventure in his own defence, or manslaughter; for in such case there can be no procuring, counselling, commanding, or abetting. 1 *Hale*, 616.

(5) It seems to be generally agreed, that *he who barely conceals a felony which he knows to be intended, is guilty only of a misprision of felony, and shall not be adjudged an accessary*; for this is not procuring, counselling, or abetting. 2 *Hawk.* c. 29, s. 23.

Thus words that seem to imply mere *permission*, as if one informs another that he is about to commit a felony, and the latter replies, "you may do your pleasure for me," this does not implicate him as an accessary, but it only fixes him with the guilt of a misprision. 1 *Hale*, 616. 2 *Hawk.* c. 29, s. 23. 28.

(6) Also if a man counsel or command another to kill a person, and before he hath killed him, he who counselled or commanded it repents and *countermands* it, charging him not to kill him, and yet after he doth kill him; here such person countermanding shall not be adjudged accessary to the murder: for, generally, the law adjudgeth no man accessary to a felony before the fact, but such as continue in that mind at the time that the felony is done and executed. *Dalt.* c. 161, p. 369.

(7) But if a person advise a woman to kill her child as soon as it shall be born, and she kill it in pursuance of such advice; he is an accessary to the murder, though at the time of the advice, the child not being born, no murder could be committed of it; for the influence of the felonious advice continuing till the child was born, makes the adviser as much a felon as if he had given his advice after the birth. 2 *Hawk.* c. 29, s. 18.

(8) If the crime solicited to be committed be *not perpetrated*, then the adviser may still be indicted for a misdemeanor in having made such solicitation. *Rex* v. *Higgens*, 2 *East*, 5; see *post*, **Attempts**.

AFTER THE FACT.

IV. Of Accessaries after the Fact.

Accessary after.

An accessary after the fact, is where a person *knowing the felony to have been committed by another, relieves, comforts, or assists the felon.*

He must have notice.

Knowing the Felony to be committed]—There can be no doubt but that it is necessary that the receiver have notice of the felony, either express or implied; and it must be laid in the indictment, that the receiver *knew* that the person received by him had committed the principal felony. 2 *Hawk.* c. 29, s. 32. Some particular evidence appears necessary to raise a presumption of knowledge. 1 *Hale*, 323. 622; 3 *P. Wms.* 496.

There must be a felony.

The Felony]—This, as hath been said, holds place only in *felonies*, and in those felonies where by the law judgment of death regularly ought to ensue; and therefore ought not in misdemeanors. See 1 *Hale*, 618.

And it seems if a person do barely receive, comfort, and conceal an offender guilty of *any common trespass, or inferior crime of the like nature*, though he knew him to have been guilty, and that there is a warrant out against him, (which by reason of such concealment cannot be executed), yet he is not an accessary to the offence; but perhaps in such case he may be indictable for a contempt of the law in hindering the due course of justice. 2 *Hawk.* c. 29, s. 4.

The felony must be *completed*. If therefore *A.* gives *B.* a mortal stroke, and *C.* receives or relieves *A.*, or helps him to escape before the death of *B.*, and *B.* afterwards dies, *C.* is not an accessary, because at the time when he harboured *A.* no felony had been completely committed. 1 *Hale*, 622; 2 *Hawk.* c. 29, s. 35.

He must relieve, comfort, or assist the felon.

Relieves, comforts, or assists the Felon]—In the explication of these words several things are considerable:

(1) Generally, any assistance whatsoever given to one known to be a felon, in order to hinder his being apprehended, or tried, or suffering the punishment to which he is condemned, is sufficient to bring a man within this description, and make him accessary to the felony; as where one assists him with a horse to ride away with, or with money or victuals to support him in his escape. 2 *Hawk.* c. 29, s. 26.

(2) But if a man know that a person hath committed a felony, but doth not discover it, this doth not make him an accessary, but it is a misprision of felony, for which he may be indicted, and upon his conviction fined and imprisoned. 1 *Hale*, 618, *post*, Felony, Vol. II.

(3) Also if a man see another commit a felony, but consents not, nor yet takes care to apprehend him, or to levy hue and cry after him, or upon hue and cry levied doth not pursue him; this is a neglect punishable by fine and imprisonment, but it doth not make him an accessary. 1 *Hale*, 618.

(4) In like manner, if one commit a felony, and come to a person's house before he be arrested, and such person suffer him to escape without arrest, knowing him to have committed a felony, this doth not make him an accessary; but if he take money of the felon to suffer him to escape, this makes him accessary: and so it is if he shut the fore-door of his house, whereby the pursuers are deceived, and the felon hath opportunity to escape, this makes him an accessary; for here is not a bare omission, but an act done by him to accommodate the felon's escape. 1 *Hale*, 619.

(5) Also it seems to be settled at this day, that whosoever rescues a felon from an arrest for the felony, or voluntarily suffers him to escape, is an accessary to the felony. 2 *Hawk.* c. 29, s. 27.

(6) But if a felon be in prison, he that relieves him with necessary meat, drink, or clothes, for the sustentation of life, is not accessary. 1 *Hale*, 620.

(7) So if he be bailed out, it is lawful to relieve and maintain him, for he is *quodammodo* in custody, and is under a certainty of coming to his trial. 1 *Hale*, 620.

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(8) But if a felon be in gaol, for a man to convey instruments to him to break prison to make an escape, or to bribe the gaoler to let him escape, makes the party an accessary; for though common humanity allows every man to afford such persons necessary relief, yet common justice prohibits all unlawful attempts to cause their escapes. 1 *Hale*, 621, *post*, Escape, Vol. II.

(9) The sending a letter in favour of a felon, or advising to labour witnesses not to appear, makes no accessary; but it is a high contempt. *Hale's Sum.* 219.

(10) A man may be accessary to an accessary before the fact, by the receiving of him, knowing him to be an accessary to felony. 1 *Hale*, 622, *ante*, 18.

(11) If a man have goods stolen, and he receive his goods again, simply, without any contract to favour the felon in his prosecution, this is lawful; but if he receive them upon agreement not to prosecute, or to prosecute faintly, this is theftbote, punishable by imprisonment and ransom, but yet it makes him not an accessary; but if he takes money of him to favour him, whereby he escapes, this makes him accessary. 1 *Hale*, 619.

(12) It seems agreed, that the law hath such a regard to that duty, love, and tenderness which a wife owes to her husband, as not to make her an accessary to felony by any receipt given to her husband. Yet if she be any way guilty of procuring her husband to commit it, it seems to make her an accessary before the fact, in the same manner as if she had been sole. Also it seems agreed, that no other relation besides that of a wife to her husband will exempt the receiver of a felon from being an accessary to the felony; from whence it follows, that if a master receive a servant, or a servant a master, or a brother a brother, or even a husband a wife, they are accessaries in the same manner as if they had been mere strangers to one another. 2 *Hawk.* c. 29, s. 34, *post*, Wife, Vol. V.

But if the wife alone, the husband being ignorant of it, do receive any other person, being a felon, the wife is accessary, and not the husband. 1 *Hale*, 621.

But if the husband and wife both receive a felon knowingly, it shall be adjudged only the act of the husband, and the wife shall be acquitted. *Id.*

(13) A person may be indicted for receiving stolen property if it remain the same in substance though the name be changed, and therefore a principal may be indicted for stealing a live sheep and the accessary with receiving twenty pounds of mutton. *R.* v. *Cowell*, 2 *East*, *P. C.* 781; and see *R.* v. *Puckering*, *R. & M. C. C.* 242.

V. Of the Proceedings against Accessaries.

(1) In general.

Conviction of principal, when necessary.

In general]—Formerly accessaries could not be prosecuted with effect until the principal was convicted and attainted, and this is still law as to accessaries in general *after the fact;* now, however, by the recent statute, 7 & 8 Geo. IV, c. 64, s. 9, accessaries *before the fact* to felonies are to be deemed guilty of a substantive felony, and may be proceeded against as felons whether or not the principal have been convicted. See the provision in full, *post*, 29.

And *receivers of stolen goods* may be tried and convicted, whether or not the principal be convicted or be amenable to justice, either as accessaries or for a substantive felony, if the stealing was a felony, or may be indicted and convicted for a misdemeanor if the stealing was a misdemeanor, 7 & Geo. IV. c. 29, s. 54, 55, *post*, 31.

Attainder of principal, when necessary.

And with respect to attainder, by the stat. 7 Geo. IV. c. 64, s. 11, which recites, that in order that all accessaries may be convicted and punished in cases where the principal felon is not attainted, it is enacted, "That if any principal offender shall be in anywise *convicted* of any felony, it shall be lawful to proceed against any accessary, either before or after the fact, in the

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same manner as if such principal felon had been attainted thereof, notwithstanding such principal felon shall die or be admitted to the benefit of clergy, or pardoned, or otherwise delivered before attainder; and every such accessary shall suffer the same punishment, if he or she be in anywise convicted, as he or she should have suffered if the principal had been attainted." This provision is substituted for that contained in the stat. 1 Ann. st. 2, c. 9, s. 1, which is repealed.

Where the principal is erroneously attainted.

If the principal be erroneously attaint, yet the accessary shall be put to answer, and shall not take advantage of the error in that attainder; but the principal reversing the attainder reverseth the attainder of the accessary. 1 *Hale*, 625. Where an indictment for receiving stolen goods averred that the principal felon had been *duly convicted*, upon an objection that the record which was produced was not sufficiently formal and correct to support the averment, it was held that the *judgment* was not necessary, and might be rejected; that the *conviction was sufficient*; that in the common case where the receiver is tried with the thief, there is no judgment on the thief before the verdict against the receiver; and that although the record produced was full of errors, yet an erroneous attainder of the principal is sufficient, as against the accessary, until it is reversed. *Baldwin's case*, Monmouth Summer Assizes, 1812, *cor. Thompson, B.*; 3 *Campb.* 265.* And it should seem the reversal will not now be of any avail to the accessary if he be not indicted *as an accessary*, but for a substantive felony according to the foregoing recent enactments.

Where a person is charged as accessary to more than one.

Formerly if a man had been indicted as accessary in the same felony to several persons, he could not have been arraigned till all the principals were convicted and attainted: but now, if a man be indicted as accessary to two or more, and the jury find him accessary to one, it is a good verdict, and judgment may pass upon him; 9 *Rep.* 119; *Fost.* 361.

And therefore the court in their discretion may arraign him as accessary to such of the principals who are convicted; and if he be found guilty as accessary to them or *any* of them, judgment shall pass upon him; but on the other hand, if he be acquitted, that acquittal will not discharge him as accessary to the others.

Accessary when may be tried twice.

By statute 7 Geo. IV. c. 64, s. 9, *post*, 9, it is provided, that no person who shall be once duly tried for any such offence† whether as an accessary before the fact or as for a substantive felony, shall be liable to be again indicted or tried for the same offence.

Again the 10th section of the same act, *post*, 10, provides, that no person who shall be once duly tried *for any offence of being accessary*, shall be liable to be again indicted or tried for the same offence.

But if one person be indicted as principal, and another as accessary, and both be acquitted, yet the person indicted as accessary may be indicted as principal, and the former acquittal as accessary is no bar; 1 *Hale*, 626.

It has been said, if a person be indicted as principal, and acquitted, he shall not be indicted as accessary *before*: and if he be, he may plead his former acquittal in bar, for it is in substance the same offence; 1 *Hale*, 626. But Mr. Justice *Foster* observes upon this, that in the eye of the law the offences of principal and accessary do specifically differ; and if a person indicted as principal cannot be convicted upon evidence tending barely to prove him to have been accessary before the fact, which must needs be admitted, it doth not appear how an acquittal upon one indictment can be a bar to a second for an offence specifically different from it; *Fost.* 362. And the distinction is also taken in *Rex* v. *Winifred Gordon*, 1 *East's P. C.* 352: and there it was held by all the judges, that *W. G.* having been indicted as accessary before the fact, and acquitted upon that indictment, might be indicted again as principal.

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* The judgment upon an indictment must be taken to be good until it is reversed by a writ of error; as in the case of proceedings against the accessary. So if there be a judgment against the husband for treason, not reversed by error, it is sufficient to deprive the wife of her dower. *Per Lawrence*, J. *Holmes* v. *Walsh*, 7 *T. R.* 465.

† *Vis.* of being accessary before the fact to a felony.

So if a man be indicted as principal, and acquitted, he may be indicted as accessary *after*, for they are offences of several natures; 1 *Hale*, 626. PROCEEDINGS IN GENERAL.

And so it is if he be indicted as accessary *before*, and acquitted; yet for the same reason he may be indicted as accessary *after*. *Id.*

No particular observations seem necessary as to the proceedings themselves against accessaries, excepting perhaps as regards—the indictment; the evidence; the trial; and the punishment of them; each of which proceedings we shall consider accordingly.

(2) The Indictment.*

Since the 7 Geo. IV. c. 64, s. 9, and 7 & 8 Geo. IV. c. 29, ss. 54, 55, the points relative to indictments against accessaries, collected in the prior editions of this and other works, are for the most part inapplicable. Indictment.

By the former of these enactments accessaries *before* the fact to felonies may be indicted and convicted either as an *accessary together with the principal*, or *after conviction* of the principal, or he may be indicted for a *substantive felony*, whether or not the principal has been convicted or is amenable to justice; see *ante*, 21, and the words of the act, *post*, 29. Against accessaries *before* the fact.

By the 7 & 8 Geo. IV. c. 29, s. 61, and 7 & 8 Geo. IV. c. 30, s. 26, accessaries before the fact to *misdemeanors* punishable under those acts may be indicted as principals. See the words of these enactments, *ante*, 16.

With respect to accessaries *after* the fact, it has been already observed that at common law an accessary could not be tried without his consent before the conviction of his principal; *Post.* 365; 2 *Hawk.* c. 29, s. 45; 1 *Hale*, 623, *ante*, 21; and this appears to be still law in the case of accessaries *after* the fact, except in particular cases of receivers of stolen property, provided for by the 7 & 8 Geo. IV. c. 29, s. 54 & 55, *post*, 31. Accessaries *after* the fact.

By the first of these sections (54) accessaries after the fact to receiving stolen property as therein mentioned, the stealing whereof amounts to a felony, may be indicted and convicted *as such accessary* after the fact, or for a *substantive felony*, and in the latter case, whether or not the principal has been convicted or is amenable to justice. See this enactment in full, *post*, 31.

Also by the other section (55) the receiver of stolen property, the stealing whereof is a misdemeanor, by that act may be indicted and convicted of a misdemeanor, whether the principal has been convicted or not, or whether or not he be amenable to justice.† See this enactment in full, *post*, 31.

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* As to the framing of indictments in general, see *post*, Indictment, Vol. III.

† Formerly where the principal was amenable to justice, the receiver ought still to have been prosecuted as an accessary to the felony, and not for a misdemeanor only, under the 3 W. & M. c. 9, s. 4, and 5 Anne, c. 31, s. 6. *By all the judges*, 2 *MS. Sum.* 309; *Post.* 373. Thus *Jonathan Wild* was indicted for a misdemeanor, in receiving stolen goods, knowing them to have been stolen. Upon the prosecutor's evidence it appeared that the felons had been convicted and executed. Whereupon it was objected that this indictment would not lie, being only given in case where the felon cannot be taken, this being only a jurisdiction given under these particular circumstances. And *Pratt*, C. J. being of that opinion, the defendant was acquitted. *Jonathan Wild's case, O. B.* 5 Geo. I. 2 *East's P. C.* 746. *W. Wilkes* was convicted on statute 3 W. & M. c. 9, s. 4, and 5 Anne, c. 31, s. 6, as for a misdemeanor in receiving stolen goods; but it appearing that the prosecutor had had an opportunity of taking the principal, which he had neglected to do, though the latter could not be taken at the time of finding the indictment, judgment was respited until the opinion of the judges could be taken. In Trinity Term, 1774, seven of the judges against four were of opinion that there ought to be judgment on the conviction. The four other judges thought that where a prosecutor had it once in his power to take the principal, and neglected it, it took the case out of the statutes. But the seven held that the word "*cannot*" in the statute, must be applied to the time of the prosecution for the misdemeanor, if the principal be then without collusion out of custody, which was the case here; *Wilkes's case, Warwick Lent Ass.* 1774. 2 *East's P. C.* 746.

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With respect to the *venue* in the indictment, see *post*, 27, 28.

Venue.

Choice of remedies.

The prosecutor has now the option, in prosecuting an accessary *before the fact*, to indict him either as an accessary in an indictment against him with the principal, or to indict him alone as an accessary after the conviction of the principal, or to indict him alone for a substantive felony. In the choice of these remedies it would be best to adopt the first, as the prosecutor would only have to prove the guilt and not to procure the *conviction* of the principal, as he would under the first proceeding,* and would not have to *prove* the *conviction*,† as he would under the second.

In prosecuting an accessary *after* the fact, unless in the cases provided for by the 7 & 8 Geo. IV. c. 29, ss. 54, 55, *ante*, 23, *post*, 31, he must be indicted as such accessary either with the principal, or without him if the principal has been convicted; 1 *Hale*, 623; the former course being the most usual and best. If he be indicted under the cases provided for by the above provisions the prosecutor has the same choice of remedies as he has against an accessary *before* the fact.

Joinder of offences.

It is no objection in point of law that an indictment charges prisoners in one count as principals and in another as receivers. *R.* v. *Galloway*, *R. & M. C. C.* 235.

Or that the prisoners are tried without having the prosecutor put to his election on which charge to proceed, though the prisoners asked it. *Id.*

But *semble*, it it reasonable to put the prosecutor to his election, and the officers ought not to join both charges. *Id.*

Indictment against principal and accessary jointly.

Indictment against Accessary together with his Principal]—Where the parties are thus joined in the same proceeding, the proper course is first to state the guilt of the principal according to the facts as if he alone had been concerned, and then in case of accessaries before the fact to aver "that C. D. late of, &c. *(the procurer)* before the committing of the said felony and murder, *(or* burglary, *as the case is,)* in form aforesaid, to wit, on, &c. with force and arms, &c. did maliciously and feloniously incite, move, procure, aid, and abet, *(or* counsel, hire, and command, *following the words of the statute if the defendant be made an accessary thereby, or else the effect of such words;* see *Rex* v. *Grevil*, 1 *And.* 195;) the said A. B. *(the principal felon)* to do and commit the said felony and murder, and in manner aforesaid against the peace," &c. see form, *post*, 40.

And where a man is indicted as accessary *after* the fact together with his principal, the original felony is to be stated in the same way, and the conclusion must aver that the accessary *did receive, harbour, and maintain, &c.* the principal felon, *well knowing* that he had committed the felony; see form, *post*, 41. The averment of knowledge is indispensably requisite, because without it the guilt does not manifestly appear; 1 *Hale*, 622; *Com. Dig. Justices*, t. 2; 2 *Hawk.* c. 29, s. 33; c. 25, s. 67; 2 *Lev.* 208.

A person may be indicted for receiving stolen property, if it remain the same in substance, though the name be changed; and, therefore, a principal may be indicted for the stealing of a live sheep, and the accessary with receiving twenty pounds of mutton. *Rex* v. *Cowell and Green*, 2 *East, P. C.* 781. *R.* v. *Puckering*, *R. & M. C. C.* 242.

In an indictment against the receiver of stolen property, the property stated to have been received should agree with that averred to be stolen; but in *Morris's case*, *Leach*, 525, where the indictment charged the principal with stealing two bank notes, the property of S. S., and charged the accessary with receiving the said notes, the property and chattels of the said S. S., it was holden that the word "chattels" might be rejected as surplusage.

It is not necessary to use the word "accessary" in the indictment, *Rex* v. *Burridge*, *Plow.* 477, or to set forth the means by which the accessary before the fact incited the principal to commit the felony, or the accessary after received, concealed, or comforted him; for it is perfectly immaterial in what

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This was remedied by the 22 Geo. III. c. 58, and now by the above act of 7 & 8 Geo. IV. c. 29, s. 55.

* As to this, see *post*, 25.

† As to proof of such conviction, see *post*, Evidence, Vol. II.

way the purpose of the one was effected, or the harbouring of the other secured; and as the means are frequently of a complicated nature, it would lead to great inconvenience and perplexity if they were always to be described upon the record. *Co. Entr.* 56, 57; *Rast. Entr.* 48; 9 *Co.* 114; 2 *Hawk.* c. 29, s. 17.

If two are charged jointly with receiving stolen goods, a joint act of receiving must be proved; proof that one received in the absence of the other and afterwards delivered to him will not suffice. Successive receivers are all separate receivers and all punishable. *R.* v. *Messingham, R. & M. C. C.* 257.

Indictment against accessary alone after conviction of principal.

Indictment against the Accessary alone after the Conviction of the Principal]—It is not necessary in this case to aver, that the latter committed the felony, or on the trial to enter into a detail of the evidence adduced against him; but it is sufficient to recite with certainty the record of the conviction, because the Court will presume every thing on the former occasion to have been rightly and properly transacted. *Holmes* v. *Walsh*, 7 *T. R.* 465; *Fost.* 365.

It is sufficient in an indictment for felony against a receiver of stolen goods to state, that the principal was "*tried and duly convicted,*" without going on to show what *judgment* was passed upon him, or how he was delivered. *Hyman's case*, 2 *Leach*, 925.

Indictment against accessary alone for a substantive felony or misdemeanor.

Indictment against Accessary alone for a substantive Felony or Misdemeanor]—In this case it is not, it seems, necessary to allege the original felony or misdemeanor with that particularity as to time and place as in an indictment against the defendant together with the principal. See 1 *Stark. C. L.* 168; *R.* v. *Scott*, 2 *East, P. C.* 781. The indictment against a receiver of stolen goods need not allege time and place to the fact of the stealing the goods, it is sufficient if they be alleged to the fact of the receipt. 2 *East's P. C.* 780.

In this indictment it is not necessary to aver that the principal has not been convicted. *R.* v. *Baxter*, 5 *T. R.* 83.

In other respects the indictment will assimilate that against principal and accessary jointly. See form, *post*, 41.

If the principal felon be unknown, the indictment may state the offence to have been committed by "some person or persons to the jurors aforesaid unknown.' Thus in the case of *John Thomas* the indictment was for receiving goods stolen by persons unknown, which was objected to be insufficient in not ascertaining the principal thief, and that it ought to appear to whom in particular the prisoner was accessary. This objection being referred to the judges, they were unanimously of opinion that the indictment was good; that the great view of the statutes was to reach the receivers where the principal thieves could not easily be discovered. *R.* v. *Thomas*, 2 *East, P. C.* 781.

Where the principal, however, is known, it seems proper to state it according to the truth: and the common form of the indictment is to state the fact of stealing the goods by the principal, and the receipt of them by the receiver, he then and there well knowing the said goods and chattels to have been feloniously stolen, &c. *R.* v. *Hyman*, 2 *Leach*, 925.

Where in an indictment against an accessary to a felony it was stated, that the felony was committed by a person to the jurors unknown; and it appeared that the principal felon was a witness before the grand jury, it was held, that the indictment could not be supported. *R.* v. *Walker*, 3 *Camp.* 264.

If a charge against an accessary be that the principal felony was committed by persons unknown, it is no objection that the same grand jury have found a bill imputing the principal felony to J. S. Thus in *R.* v. *J. Bush*, the prisoner was tried before Mr. Baron *Garrow*, at the Gloucester Summer Assizes, 1818, and was convicted, and received sentence of transportation for fourteen years, but execution was stayed in order that the opinion of the judges might be taken upon the propriety of the conviction. The indictment stated, that "a certain person or persons to the jurors unknown," the dwelling-house of *Hannah Wilmot* burglariously did break and enter, and certain silver plate, commonly called a silver cream jug, her goods, did steal, and that *Bush* feloniously did receive and have the same, he then and there well knowing

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the same to have been feloniously and burglariously stolen, &c. Upon the trial it appeared, that among the records of indictments returned by the same grand jury, there was one charging one *Henry Moreton* as principal in the burglary, and the prisoner *Bush* as accessary after, in receiving the cream jug. Mrs. *Wilmot* proved that her house had been broken but once, that she had lost only one cream jug, and that she had preferred two indictments to the grand jury. The counsel for the prosecution had declined to proceed on the indictment against *Moreton*. *Ludlow*, for the prisoner, objected, that the allegation in the present indictment, that the person or persons who committed the burglary were unknown to the jurors, is negatived by the other record, and that the prisoner was entitled to be acquitted. This point was reserved for the opinion of the judges, who, in Michaelmas Term, 1818, held the conviction right, being of opinion that the finding by the grand jury of the bill imputing the principal felony to J. S. was no objection to the second indictment, although it stated the principal felony to have been committed by certain persons to the jurors aforesaid *unknown*. *R. & R. C. C.* 372.

In a late case it was made a question, but not decided, whether upon a charge of receiving from T. S., the receipt from T. S. must be proved, the statute making it criminal without regard to the person from whom the stolen property is received. *R.* v. *Messingham*, *R. & M. C. C.* 257.

(3.) Trial of Accessaries.

Time of trial where accessary indicted as such with principal.

Time of Trial, &c.]—Where the accessary is indicted as such, *together with his principal*, it seemeth the accessary may be put to answer before the principal hath appeared; but his plea cannot be tried before such appearance, unless he desire it himself; but if he will put himself upon the trial before the principal be tried he may, and his acquittal or conviction upon such trial is good. 2 *Hawk.* c. 29, s. 45; 1 *Hale*, 623. But it seemeth necessary in such case to respite judgment till the principal be convicted and attaint, for if the principal be after acquitted, that conviction of the accessary is annulled, and no judgment ought to be given against him: but if he be acquitted of the accessary, that acquittal is good, and he shall be discharged. 1 *Hale*, 623, 624.

If the principal and accessary appear together, and the principal plead the general issue, the accessary shall be put to plead also; and that if he likewise plead the general issue, both may be tried by one inquest; but that the principal must be first convicted, and that the jury shall be charged, that if they find the principal not guilty, they shall find the accessary not guilty. But it seems agreed, that if the principal plead a plea in bar or abatement, or a former acquittal, the accessary shall not be forced to answer till that plea be determined; for if it be found for the principal, the accessary is discharged; if against the principal, yet he shall after plead over to the felony, and may be acquitted. 2 *Hawk.* c. 29, s. 47; 1 *Hale*, 624.

Even in a case where the principal was indicted for burglary and larceny in a dwelling-house, and the accessary charged in the same indictment as accessary before the fact to the said "felony and burglary," and the jury acquitted the principal of the burglary, but found him guilty of the larceny: it seems the judges were of opinion that the accessary should have been acquitted; for the indictment charged him as accessary to the burglary only, and the principal being acquitted of that, the accessary should be acquitted also. *R.* v. *Dannelly and Vaughan*, 1 *Russell*, 30; 2 *Marsh.* 571; 1 *R. & R. C. C.* 310, S. C.

Formerly if a man had been indicted as accessary in the same felony to several persons, he could not have been arraigned till all the principals were convicted and attainted; but as the law now stands, if a man be indicted as accessary to two or more, and the jury find him accessary to one, it is a good verdict, and judgment may pass upon him. *Lord Sanchor's case*, 9 *Rep.* 119; *Fost.* 361; 1 *Hale*, 624.

And therefore the Court in their discretion may arraign him as accessary to such of the principals who are convicted; and if he be found guilty as accessary to them or any of them, judgment shall pass upon him: but on the other hand, if he be acquitted, that acquittal would not discharge him as

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accessary to the others; but by statute 7 & 8 Geo. IV. c. 29, s. 54, and 7 Geo. IV. c. 64, s. 9 and 10,* it is provided, that no person shall be tried more than once for the same offence of being accessary if once duly tried.

Where accessary *before* the fact is indicted for a substantive felony.

Where the defendant is *indicted by himself* for a substantive felony, and which he may be under the 7 Geo. IV. c. 64, s. 9, the time of his trial need not be regarded as in the case of other accessaries. By that statute, for the more effectual prosecution of accessaries *before the fact* of *felony*, it is enacted, "that if any person shall counsel, procure, or command any other person to commit any felony, whether the same be a *felony* at common law, or by virtue of any statute or statutes made or *to be made*, the person so counselling, procuring, or commanding, shall be deemed guilty of *felony*, and may be indicted and convicted either as an accessary before 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 the principal felon shall or shall *not* have been previously *convicted*, or shall or shall *not* be *amenable to justice*, and may be punished in the same manner as any accessary before the fact to the same felony, if convicted as an accessary, may be punished." The section then provides for the place of trial of such accessaries, for which see *post*, 28, and concludes with enacting, "that no person who shall be once duly tried for any such offence, whether as an accessary before the fact, or as for a substantive felony, shall be liable to be again indicted or tried for the same offence."

Where triable.

Not to be tried twice.

Accessaries *after* the fact when triable.

There is no legislative provision as to the trial of accessaries in general *after the fact*, altering the common law principle, that the principal shall be tried and convicted before the accessary, *ante*, 21. The common law, in this respect, therefore, now prevails; but the following legislative provisions are made as to the receivers of stolen property.

Receiver of stolen goods guilty of *felony*.

By the 7 & 8 Geo. IV. c. 29, s. 54, with regard to *receivers of stolen property*, it is enacted, "that if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing or taking whereof shall amount to a *felony*, either at common law or by virtue of *this act*, such person knowing the same to have been feloniously stolen or taken, every such receiver shall be guilty of *felony*, and may be indicted and convicted either as *an accessary* after the fact, or for a *substantive felony*, and in the latter case whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice." The section then provides for the punishment of such receivers, for which see *post*, 31, and concludes with enacting, "that no person howsoever tried for receiving as aforesaid shall be liable to be prosecuted a second time for the same offence."

Receiver of stolen goods guilty of *misdemeanor*.

By the same statute, sect. 55, it is enacted, "that if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, or converting whereof is made an indictable *misdemeanor by this act*, such person knowing the same to have been unlawfully stolen, taken, obtained, or converted, every such receiver shall be guilty of a *misdemeanor*, and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been previously *convicted* thereof, or shall or shall not be *amenable to justice*." The section then provides for the punishment of such receivers, for which see *post*, 31.

Place of trial.

Place of Trial]—Formerly when the accessary became guilty in a county different from that in which the principal felony was committed, it was doubted, from the strict locality of offences at common law, whether he could be indicted in either; 2 *Hawk.* c. 29, s. 48; but this doubt was removed by the statutes 2 & 3 Edw. VI. c. 24, s. 2 and 3, and 43 Geo. III. c. 113, s. 5, since repealed.†

7 Geo. 4, c. 61.

Accessary *before* the fact of felony.

And now by 7 Geo. IV. c. 64, s. 9, for the more effectual prosecution of *accessaries before the fact of felony*, it is enacted, "that if any person shall counsel, procure, or command any other person to commit any felony,

* A re-enactment of the 43 Geo. III. c. 113, now repealed.

† By the 7 Geo. IV. c. 64, and 9 Geo. IV. c. 31.

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7 Geo. 4, c. 64, s. 9,

whether the same be a felony at common law or by virtue of any statute or statutes made or to be made, the person so counselling, procuring, or commanding, shall be deemed guilty of felony, and may be indicted and convicted either as an accessary before 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 the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may be punished in the same manner as any accessary before the fact to the same felony, if convicted as an accessary, may be punished; and the offence of the person so counselling, procuring, or commanding, 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 such offence had been committed at the same place as the principal felony, although such offence may have been committed either on the high seas or at any place on land, whether within his Majesty's dominions or without; and that in case the principal felony shall have been committed within the body of any county, and the offence of counselling, procuring, or commanding shall have been committed within the body of any other county, the last-mentioned offence may be inquired of, tried, determined, and punished in either of such counties. Provided always, that no person who shall be once duly tried for any such offence, whether as an accessary before the fact or as for a substantive felony, shall be liable to be again indicted or tried for the same offence."

may be tried by any court which has jurisdiction to try the principal felon, although the offence be committed on the seas or abroad.

If the offences be committed in different counties, accessary may be tried in either.

Not to be tried twice.

Accessary *after* the fact of felony

And by section 10 of the same act, for the more effectual prosecution of *accessaries after the fact of felony*, it is enacted, "that if any person shall become an accessary after the fact to any felony, whether the same be a felony at common law, or by virtue of any statute or statutes made or to be made, the offence of such person 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 whereof such person shall have become an accessary had been committed at the same place as the principal felony, although such act may have been committed either on the high seas or at any place on land, whether within his Majesty's dominions or without; and that in case the principal felony shall have been committed within the body of any county, and the act by reason whereof any person shall have become accessary shall have been committed within the body of any other county, the offence of such accessary may be inquired of, tried, determined, and punished in either of such counties. Provided always, that no person who shall be once duly tried for any offence of being an accessary shall be liable to be again indicted or tried for the same offence."

may be tried by any court which has jurisdiction to try the principal felon.

If the offences be committed in different counties, accessary may be tried in either.

Not to be tried twice.

Receivers of stolen goods

By the 7 & 8 Geo. IV. c. 29, s. 56, relating to the *receivers of stolen goods*, it is enacted, "That if any person shall receive any chattel, money, valuable security, or other property whatsoever, knowing the same to have been *feloniously* or *unlawfully* stolen, taken, obtained, or converted, every such person, whether charged as an accessary after the fact to the felony, or with a substantive felony, or with a misdemeanor only, may be dealt with, indicted, tried, and punished in any county or place in which he shall have or shall have had any such property in his possession, or in any county or place in which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried, and punished in any county where he actually received such property."

may be tried where the principal is triable, or where the property is found in their possession, as well as where the receiving takes place.

Admiralty jurisdiction.

As to the place of trial of accessaries in the Admiralty jurisdiction, see *post*, **Admiralty Court.**

(4) Evidence against Accessaries.

Evidence.

On Indictment against Principal and Accessary before the Fact]—The evidence in this case must consist of proof of the guilt of the principal, so as to

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obtain his conviction; see *ante*, 20. The accessary may enter into the full defence of the principal, and avail himself of every matter of fact and every point of law tending to the acquittal of the principal; for the accessary in this case is to be considered as *particeps in lite*, and this sort of defence necessarily and directly tendeth to his own acquittal; *Post.* 365, *infra.*

The prosecutor must prove that the accessary had previous to the crime procured, hired, advised, or commanded the principal to commit it, and whether this were done directly, or through the intervention of a third person, is immaterial; *Post.* 125. It must appear the accessary was *absent* when the crime was committed, so that he was not a principal, *ante*, 14, 18; and see *ibid.* as to what is necessary to constitute a party an accessary before the fact.

Against accessary after the fact.

On Indictment against an Accessary after the Fact together with the Principal]—The prosecutor should prove the guilt of the principal, as *ante*, 20. He must prove that the defendant received, harboured, or maintained him, as *ante*, 20; and knew he had committed a felony, as *ante*, 20. This knowledge may be proved either from the defendant's admissions, or the like, or by evidence of circumstances, from which the jury may fairly presume it. Buying stolen goods at an under value is a presumptive evidence that the buyer knew they were stolen; 1 *Hale*, 619. If the prisoner, at different times, receive property stolen from the prosecutor, although the substantive charge must be confined to some one receiving, yet the other receivings may be given in evidence to show a guilty knowledge that the goods were stolen; *Rex* v. *Dunn*, *Carr. C. L.* 131; *R. & M. C. C.* 146, S. C.; and see *Rex* v. *Burridge*, 3 *P. Wms.* 439.

Against accessary after conviction of principal.

On Indictment against the Accessary after Conviction of Principal]—In this case the prosecutor should prove the conviction of the principal. Where the accessary is tried in the same county in which the principal was convicted, this is easily effected by the clerk of assize or clerk of the peace attending at the trial with the record. But if the accessary be tried in a different county, it is necessary to produce either the record itself, or at least an examined copy of it; see *post*, **Evidence**, Vol. II. p. 42, 43. This is evidence against the accessary sufficient to put him upon his defence, for it is founded upon a legal presumption, that every thing in the former proceeding was rightly and properly transacted. *Holmes* v. *Walsh*, 7 *T. R.* 465.

But a presumption of this kind must, as it seemeth, give way to facts manifestly and clearly proved; *Post.* 365. As against the accessary, therefore, the conviction of the principal will not be conclusive; it is as to him *res inter alios acta*: for an accessary may controvert the guilt of the principal, notwithstanding the record of his conviction; *Smith's case*, *O. B. Dec.* 1783, 1 *Leach*, 289. And therefore if it shall come out in evidence upon the trial of the accessary, as it sometimes hath and frequently may, that the offence of which the principal was convicted did not amount to *felony* in him, or *not to that species of felony with which he was charged*, the accessary may avail himself of this, and ought to be acquitted; *Post.* 365; and see *Danelly's case*, 1 *Russ.* 30; 2 *Marsh.* 371; *Russ. & R. C. C.* 310, S. C.; *ante*, 17, 18.

And as in point of *law*, so also in point of *fact*, if it shall manifestly appear in the course of the accessary's trial that the principal was innocent, common justice seemeth to require that the accessary should be acquitted. As suppose a man is convicted upon circumstantial evidence, strong as that sort of evidence can be, of murder; another is afterwards indicted as accessary to this murder; and it cometh out upon the trial, by incontestable evidence, that the person who was supposed to be murdered is still living: in this case certainly the person indicted as accessary shall be acquitted. Or suppose the person to have been in fact murdered, and that it should come out in evidence, to the satisfaction of the court and jury, that the witnesses against the principal were mistaken in his person (a case of this kind Sir Michael Foster says he has known), that the person convicted as principal was not nor could possibly have been present at the murder. *Post.* 367, 368; 1 *Hawk.* 457.

EVIDENCE. After proof of the conviction then prove the defendant's guilt as accessary; see *ante*, 18, 20, as to what will render him one.

For a substantive felony. *On Indictment against Defendant alone for a Substantive Felony*]—In this case the prosecutor should prove the offence stated in the indictment, and that the same was committed by the principal therein stated. As to proof of a commission of the offence by persons unknown, see *ante*, 25. The defendant's guilt as an accessary should be proved as in other cases, see *ante*, 18. 20.

Witnesses. *Competency of Witnesses*]—The principal, though not convicted or pardoned, may be examined as a witness against the receiver. In two prosecutions for a misdemeanor on statute 22 Geo. III. c. 58, the principal felons, though not convicted, were admitted as witnesses on the part of the crown. *Rex* v. *Patram, Bridgewater Sum. Ass. cor. Grose, J.* 1787; *Rex* v. *Haslam*, 2 *Leach*, 418. So in *Jonathan Wild's case*, on a prosecution on statute 4 Geo. I. c. 11, for taking a reward to help to stolen goods. 2 *East's P. C.* 782, 783. See further as to the competency of witnesses, *post*, **Evidence**, Vol. II. p. 63 to 78.

(5) Punishment of Accessaries.

Accessary *before* the fact. *Accessaries before the Fact*]—Accessaries *before* the fact are in general punishable in the same manner as principals, for they are frequently more deeply criminal than the principal; see *Dalt.* c. 161. But there are several legislative provisions pointing out the punishment in different offences. Thus,

In *abduction, bigamy, assaults, child stealing, rape, and unnatural crimes*, the punishment of accessaries before the fact is provided for by the 9 Geo. IV. c. 31, s. 31, whereby it is enacted, "that every accessary before the fact to any felony punishable under this act, for whom no punishment has been hereinbefore provided, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding three years;" and it then provides for accessaries after the fact, as *post*, 31; and concludes, "that every person who shall counsel, aid, or abet, the commission of any misdemeanor punishable under this act, shall be liable to be indicted and punished as a principal offender." See titles, **Abduction**, **Assault**, **Buggery**, **Children**, **Polygamy**, **Rape**, **Malicious Injuries to Persons**.

In *murder*, the 9 Geo. IV. c. 31, s. 3, provides, that "every person convicted of murder, or of being an accessary before the fact to murder, shall suffer death as a felon." See title, **Homicide**, Vol. III. p. 256.

In *larceny, robbery, embezzlement, sacrilege, and other offences* under the Larceny Act, 7 & 8 Geo. IV. c. 29, it is enacted, by section 61 of that act, "that in the case of every *felony* punishable under this act, every principal in the second degree, and *every accessary before the fact*, shall be punishable with death, or otherwise, in the same manner as the principal in the first degree is by this act punishable;" "and every person who shall *aid, abet, counsel, or procure* the commission of any *misdemeanor* punishable under this act, shall be liable to be indicted and punished as a principal offender."

By section 62 of the same act it is enacted, "that if any person shall *aid, abet, counsel, or procure* the commission of any offence which is by this act punishable on *summary conviction*, either for every time of its commission, or for the first and second time only, or for the first time only, every such person shall, on conviction before a justice of the peace, be liable, for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence, as a principal offender, is by this act made liable." See further, titles, **Larceny**, **Robbery**, and **Sacrilege**.

PUNISHMENT.

As to accessaries in *forgery*, see *post*, **Forgery**, Vol. II.

In *malicious injuries to property* within the 7 & 8 Geo. IV. c. 30, that act, section 26,* contains a provision as to the punishment of accessaries similar to the 61st section of the 7 & 8 Geo. IV. c. 29, *ante*, 30, and see title, **Malicious Injuries** *(to Property)*, Vol. III.

Accessaries after the Fact]—The punishment of accessaries *after* the fact is at common law trivial, they being in most cases allowed the benefit of clergy; see *Fost.* 372; 3 *P. Wms.* 475. There are several legislative provisions pointing out the punishment in different offences. Thus, Accessaries *after* the fact.

In *abduction*, *bigamy*, *assaults*, *child stealing*, *rape*, and *unnatural crimes*, the 9 Geo. IV. c. 31, s. 31, provides that "every accessary after the fact to any felony punishable under this act (except murder) shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding two years; and every person who shall counsel, aid, or abet the commission of any misdemeanor punishable under this act, shall be liable to be indicted and punished as a principal offender." See titles, **Abduction**, **Assaults**, **Buggery**, **Child**, **Polygamy**, and **Rape**.

In *murder*, by 9 Geo. IV. c. 31, s. 3, it is enacted, "that every accessary after the fact to murder shall be liable, at the discretion of the court, to be transported beyond the seas for life, or to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding four years." See **Homicide**, Vol. III.

In *larceny*, by 7 & 8 Geo. IV. c. 29, s. 61, it is enacted, "that every accessary *after the fact* to any felony punishable under this act (except only a receiver of stolen property) shall on conviction be liable to be imprisoned for any term not exceeding two years."

In *larceny*, where it is a *felony*, with regard to *receivers of stolen property*, by 7 & 8 Geo. IV. c. 29, s. 54, it is enacted, "That if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing or taking whereof shall amount to a *felony*, either at common law, or by virtue of this act, such person knowing the same to have been feloniously stolen or taken, every such receiver shall be guilty of felony, and may be indicted and convicted either as an accessary after the fact, or for a substantive felony, and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and every such receiver, howsoever convicted, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned † for any term not exceeding three years; and if a male, to be once, twice, or thrice publicly or privately whipped, (if the court shall so think fit,) in addition to such imprisonment. Provided always, that no person, however tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence." Receivers. 7 & 8 Geo. 4, c. 29, s. 54.

In *larceny*, where it is a *misdemeanor*, the same act, section 55, enacts, s. 55. "that if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, or converting whereof is made an indictable *misdemeanor* by this act, such person knowing

* 7 & 8 Geo. IV. c. 30, s. 26, and be it enacted, "That in the case of every felony punishable under this act, every principal in the second degree, and *every accessary before the fact*, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessary *after the fact* to any *felony* punishable under this act, shall, on conviction, be liable to be imprisoned for any term not exceeding two years; and every person who shall *aid*, *abet*, *counsel*, *or procure* the commission of any *misdemeanor* punishable under this act, shall be liable to be indicted and punished as a principal offender."

† Or be imprisoned and kept to hard labour, s. 6, *post*.

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the same to have been unlawfully stolen, taken, obtained, or converted, every such receiver shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been previously convicted thereof, or shall or shall not be amenable to justice; and every such receiver shall on conviction be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned* for any term not exceeding two years; and if a male, to be once, twice, or thrice publicly or privately whipped, (if the court shall so think fit,) in addition to such imprisonment."

In *larceny*, where the original offence is punishable on *summary conviction*, by the 60th section of the 7 & 8 Geo. IV. c. 29, it is enacted, "that where the stealing or taking of any property whatsoever is by this act punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall, on conviction thereof before a justice of the peace, be liable, for every first, second, or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence of stealing or taking such property, is by this act made liable."

As to *forgery*, see *post*, **Forgery**, Vol. II.

In *malicious injuries* to property, under the 7 & 8 Geo. IV. c. 30, that act, section 26, enacts, "that every accessary after the fact to any felony punishable under this act shall, on conviction, be liable to be imprisoned for any term not exceeding two years." To this hard labour or solitary confinement may be added; *ibid.* sect. 26. See **Malicious Injuries** *(to Property,)* Vol. III.

VI. Particular Statutes against Receivers of Stolen Goods.

Receivers of stolen goods.

We have already noticed the provisions contained in the 54, 55, 56, and 60th sections of the 7 & 8 Geo. IV, c. 29, which is now the only statute in force affecting receivers of stolen goods in general. All the statutes prior to that statute are repealed,† and the only other acts in force on this offence are the 2 Geo. III. c. 28, relating to receiving stolen goods, &c. on the river Thames, and the 1 & 2 Geo. IV. c. 75, relating to anchors, cables, shipping, &c. which will be here noticed. The law therefore as it here stood in prior editions of this work is altered or re-established in another shape.

The provisions of the 7 & 8 Geo. IV. c. 29, as we have seen, *ante*, 31, extend to "receivers of any *chattel, money, valuable security or other property whatsoever*." So that the doubtful and difficult questions that have arisen

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* Or imprisoned and kept to hard labour, s. 6, *post*.

Repeal of former acts.

† The stat. 7 Geo. IV. c. 64, repeals the stat. 6 Ann. c. 31, *vulgo* 5 Ann. c. 31, "except the special provision affecting the sheriffs and under-sheriffs of London and Middlesex." And the stat. 7 & 8 Geo. IV. c. 27, repeals the following statutes on this subject, viz.— 3 W. & M. c. 9; 4 Geo. II. c. 32; 25 Geo. II. c. 10; 29 Geo. II. c. 30; 5 Geo. III. c. 14; 6 Geo. III. c. 36; 10 Geo. III. c. 48; 21 Geo. III. c. 68; 21 Geo. III. c. 69; 22 Geo. III. c. 58; 51 Geo. III. c. 41; and 3 Geo. IV. c. 24; and it also repeals so much of the stat. 31 Eliz. c. 12, "as enacts that all accessaries to horse-stealing shall be deprived of the benefit of clergy;" and the stat. 1 Ann. st. 2, c. 9, except so much thereof "as relates to witnesses on behalf of the prisoner on any trial for treason or felony;" and the stat. 4 Geo. I. c. 11, "except so much thereof as relates to the trial of piracy, felony, or robbery committed within the admiralty jurisdiction;" and sections 7 & 8 of 44 Geo. III. c. 92; and so much of the stat. 3 Geo. IV. c. 114, (Hard Labour Act,) "as relates to the punishment for receiving stolen goods, and for obtaining any property, as therein mentioned, by false pretences."

as to the nature of the property received being sufficient to create the offence of receiving, are now entirely set at rest.*

* The following are some of the decisions on the now repealed law:—

On the construction of the statutes of 3 W. & M. c. 9, s. 4, and 5 Anne, c. 31, s. 5, it was holden that they included *sheep*; and by the same reasoning, *fowls* and *other animals*. 2 *East's P. C.* 748. But it was clearly settled that the receivers of *money* were not within the words "goods and chattels" in those acts, for if every receiver of money which happened to have been stolen were liable to be called to account for it, it might be attended with serious inconvenience to the public in their general dealings; it being always difficult, and sometimes impossible, to account for the possession of each individual coin which passes in circulation, 2 *East's P. C.* 748. And in analogy to this, it was ruled by a majority of the judges (seven) in 1787, that *bank-notes* were not within the statutes against such receivers. *Rex* v. *Sadi and Morris*, O. B. July, 1787, 2 *East's P. C.* 748; 2 *Russ.* 1308, 1309. And this point was considered by the judges in *Rex* v. *Gase and another*, *Russ. & R. C. C.* 384. *Ann Gase* was convicted of stealing certain promissory notes for the payment of money, and *William Gase* (her husband) of receiving the said notes, knowing them to have been stolen; but on case reserved, eleven judges, in Easter Term, 1819, were unanimous that *William Gase* was not rightly convicted, and they founded their opinion upon the reason assigned by *Ashhurst*, *J.* in *Rex* v. *Sadi and Morris*, which was, that though a statute which creates a new felony will attach to that felony all the common law incidents to felony, so that accessaries thereto will be included, it will go no further, and a receiver of the goods, not being a common law accessary, is not included.

It appears to have been considered at one time, that the statute, 29 Geo. II. c. 30, related only to the metals mentioned in it, when in their common or raw state, as contradistinguished from wrought goods. *Scott's case*, *cor.* Adair, Serjt. C. J. of Chester, Chester Spring Assizes, 1798, cited in 2 *East's P. C.* 752; 2 *Russ.* 1353. It seems, however, that metals, though in a manufactured state, were deemed to be within the statute. A case occurred at Staffordshire Michaelmas Sessions, 1816, in which the subject underwent considerable discussion. The prisoner was indicted for unlawfully receiving a quantity of brass and copper, knowing it to have been stolen and unlawfully come by, against the form of the statute, &c. It appeared in evidence, that the articles received by the prisoner were brass and copper sockets, which form part of the moveable machinery used in spinning cotton, and are from time to time detached from the fixed machinery, and carried from place to place, for the purpose of discharging the cotton twist originally wound thereon. At the time of their being stolen, part of them were broken into pieces; the rest were whole, in the state in which they had been manufactured. With respect to the latter, the evidence was rejected, on the ground that the statute had uniformly been construed to extend to articles of the description therein mentioned, in their common or unmanufactured state, as iron and lead in pigs or sheets, bars of brass and copper, &c. and not to wrought or manufactured articles. But the evidence was admitted as to the broken sockets, they being considered as mere pieces of brass and copper, to which no appropriate name could be given; and the prisoner, upon that evidence, was found guilty. It was contended, on behalf of the prisoner, that the statute did not apply to these broken pieces of metal; and it was strongly urged, that it would be an extraordinary construction to suppose that the legislature should have protected, by a statute so highly penal, articles damaged and broken, and consequently of small value. The chairman said, that whatever his own opinion might be, he considered it his duty to reserve the point for the opinion of the judges of assize; and at the succeeding quarter-sessions he stated that several of the judges had very kindly permitted him to confer with them upon the question in this case, whether the broken sockets, by the circumstance of their becoming broken after they had been manufactured, lost the character of manufactured articles, so as to fall within the statute; and that those learned judges clearly thought the conviction right. And he further stated that they were also of opinion, that *manufactured* articles of brass, &c. whether broken or unbroken, were within the statute. *Dolphin's case*, Staffordshire Michaelmas Quarter Sessions, 1816, and Epiphany Quarter Sessions, 1817, 2 *Russ.* 1355; 1 *Burn's J.* 24th edit. p. 23. And in a subsequent case the same doctrine was acted upon by *Burrough*, J. in respect of articles which had become broken after having been manufactured. *Rex* v. *Wilson and Wife*, Stafford Lent

Questions on 3 W. & M. c. 9, s. 4. 5 Ann. c. 31, s. 5.

On 29 Geo. 2, c. 30.

RECEIVERS.

With respect to the apprehension and discovery of receivers of stolen goods in general, see **Arrest**, Vol. I.; **Larceny**, Vol. II.; **Rewards**, Vol. V.; **Search Warrant**, Vol. V.

(1). Goods, Cargoes, &c. of Vessels on the Thames.

Receivers, &c. of stolen cargoes of vessels on the Thames to be transported. 2 Geo. 3, c. 28.

With respect to the receivers of *stolen cargoes and goods, &c. of vessels on the Thames*, by the 2 Geo. III. c. 28, s. 12, it is enacted, "that from and after the 24th day of June, 1762, every person who shall buy or receive any part of the cargo or lading, or any goods, stores, or things, of or belonging to any ship or vessel in the said river, knowing the same to be stolen or unlawfully come by, or shall privately buy or receive any such goods, stores, or things, or any part of such cargo or loading, by suffering any door, window, or shutter to be left open or unfastened between sun-setting and sun-rising for that purpose, or shall buy or receive the same, or any of them, at any time, in any clandestine manner, from any person or persons whomsoever, shall, being thereof convicted by due course of law, (although the principal felon or felons, offender or offenders, has or have not been convicted of stealing or unlawfully procuring the same,) be transported for fourteen years to any of his Majesty's colonies or plantations in America, according to the laws in force for the transportation of felons."

Any person out of prison concerned in stealing, &c. who shall discover and convict two others of the like offence,

shall be entitled to pardon.

By sect. 14 it is enacted, "that if any person, being out of prison, shall, after the 24th day of June, 1762, by stealing or unlawfully receiving any part of any cargo or lading of, or any goods, stores, or things belonging to, or out of, or from any ship or vessel in the said river, and shall afterwards discover two or more persons who shall have bought or received any stolen or unlawfully procured goods, stores, or things, or any part of any cargo or lading of or belonging to, or by, from, or out of any ship or vessel in the said river, after the 24th day of June, 1762, knowing the same to be stolen, or unlawfully procured, so as two or more of the persons discovered shall be convicted of such buying or receiving, every person so discovering shall have and be entitled to the gracious pardon of his Majesty, his heirs and successors, for all such felonies by him or her committed at any time or times before such discovery made; which pardon shall be likewise a bar to any appeal brought for such felony."

Any person may apprehend an offender.

By sect. 18 it is enacted, "that it shall and may be lawful for any person or persons, by the authority of this act, and without any other warrant, to apprehend any offender or offenders committing any of the offences hereinbefore mentioned, and intended by this act to be redressed, and, with all convenient speed, to convey or deliver every such offender or offenders to a

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Assizes, 1817. On this occasion Mr. *Manley, amicus curiæ*, cited from the MS. of Mr. Serjt. *Manley*, a note of a case of *Rex* v. *Metcalfe*, on the Chester circuit at Mold, September 10, 1808, in which *Dallas*, C. J. said, "a doubt arose on the construction of this act,—whether wrought articles were within it, or whether it was not confined to goods in an unwrought state; but we are clear that the act extends to wrought goods, and to all goods mentioned in it, whether manufactured or not." 2 *Russ.* 1356, n. (*m*); 1 *Burn's J.* 24th edit. p. 23.

On 10 Geo. 3, c. 48.

A question arose upon the 10 Geo. III. c. 48, in the case of *E. Moses*, who was indicted at the Kent Summer Assizes in 1783, before *Gould*, J. The indictment stated that Mr. *Drummond* had been robbed in the highway of a gold watch, gold watch-case, a red cornelian seal set in gold, and a white one also set in gold; and then charged that the prisoner received the same knowingly, against the form of the statute. The prisoner having been convicted, judgment was respited to take the opinion of the judges, whether receiving a gold watch and such seals, knowing them to have been stolen, (being taken by a robbery on the highway,) were a felony within the act? This was first debated by all the judges in Michaelmas term, 1783, and adjourned for further consideration to the Hilary term following, when ten judges present (and one absent and concurring) held that the conviction was proper. Some thought that the gold in the watch might be deemed *plate*, (a term used in the act); others thought that was not the meaning of the act; but all held that the *seals* set in gold came under the word *jewels*. 2 *East's P. C.* 754.

constable or some other peace-officer of the county, city, division, liberty, or place, in or near to which the offence shall be committed, or the offender or offenders shall be apprehended, in order to be conveyed before some justice of the peace for such county, city, liberty, or place, there to be dealt with according to law."

Persons obstructing the execution of this act shall be transported for seven years.

By sect. 19 it is enacted, "that in case any person or persons, acting in the execution of any of the powers granted by this act, shall be obstructed therein, every person so obstructing, and all such as shall act in their assistance, shall, on being thereof convicted before the justices of the peace, at the general or quarter sessions of the county or city adjoining to the said river, upon the oath of two or more credible persons, be transported to any of his Majesty's plantations in America for the space of seven years, according to the law or laws now in force for the transportation of felons."

Offence a felony.

In the case of *Rex* v. *Wyer*, 2 *T. R.* 77, the Court of King's Bench were of opinion that the prisoner might be prosecuted as for a felony for an offence under this section of the act; and they refused to bail him.

39 & 40 Geo. 3, c. 87, s. 22.

But the legislature seems to have considered it only as a *misdemeanor*; for by the statute 39 & 40 Geo. III. c. 87, s. 22, (after reciting that by the last-mentioned act, 2 Geo. III. c. 28, persons guilty of certain offences are punishable by transportation for fourteen years; but the said offences not being by the said act declared to be felony, the trial thereof may in all cases be put off, by means of a traverse, to the next sessions after the finding of the bill of indictment for the same, and the offender be in the mean time liberated, on being admitted to bail, whereby justice has been in many instances eluded), for remedy thereof it is enacted, "that from and after the passing of this act, whenever any indictment shall be found against any person or persons for the said offences, or any of them, the person or persons so indicted shall plead to the same indictment, without having time to traverse the same, as is usual in cases of misdemeanors."

No traverse allowed.

(2). Receivers of Anchors, Cables, &c.

Receivers of anchors, cables, &c. 1 & 2 Geo. 4, c. 75.

With respect to the receivers of these articles, by the 1 & 2 Geo. IV. c. 75, after reciting that by the 49 Geo. III. c. 122, for remedying certain defects relative to the adjustment of salvage in England, under an act made in the twelfth year of Queen Anne, which act was to continue in force for seven years, and from thence to the end of the next session of parliament; and also that by an act passed in the fifty-third year of his late Majesty King George the Third, the said above-recited act (except so far as the same was altered and extended) was further continued in force for seven years from the passing of the said act, and from thence to the end of the next session of parliament, and no longer; and that it is fit and expedient that the said above-recited acts should be further continued, except so far as the same are altered by this act: it is enacted, "that all pilots, boatmen, hovellers, or other persons, who shall take up any anchors, cables, tackle, apparel, furniture, stores, or materials, or any goods or merchandize, which may have been parted with, cut from, or left by any ship or vessel within any harbours, rivers, or bays, or on any of the coasts of the kingdom, whether the same ship or vessel shall be or shall have been in distress or otherwise, and which shall have been weighed, swept for, or taken possession of, by any such boatman, pilot, hoveller, or other person, shall send a report in writing of the articles so found, and stating the marks, if any, thereon; and also an accurate and particular description of the bearings, distances, and situations, and time when and where the same were so found, to a deputy vice-admiral or his agent, at or near to the port or place where such boatman, pilot, hoveller, or other person shall first arrive with such articles, within forty-eight hours after his or their arrival at such port or place, or before he or they shall leave the port, if he or they shall quit it before that time shall expire; and shall also, within such period as aforesaid, deliver such articles so found into a proper warehouse, or such other place as the vice-admiral of each county shall appoint

Pilots and others to deposit anchors, cables, and other ship materials, taken possession of by them, in the places to be appointed by this act.

RECEIVERS.

for safe custody, until the same shall be claimed by the owner or owners thereof, or his, her, or their agent or agents, and the salvage, together with such other charges and expenses as are hereinafter directed to be paid in respect of such articles, paid by him or them, or security given for the payment thereof, to the satisfaction of the salvor or salvors thereof; and every such pilot, boatman, hoveller, or other person, who shall wilfully and fraudulently keep possession of, or retain, or conceal, or secrete any anchors or cables, tackle, apparel, furniture, stores, or materials, or any goods or merchandize, or deface, take out, or obliterate the marks and numbers thereon, or alter the same in any manner, with intent thereby, directly or indirectly, to prevent the discovery and identification of such articles so found, weighed, swept for, or taken possession of, as aforesaid, and shall not report and deliver the same at some proper warehouse or other place, in the manner aforesaid, and within the time hereinbefore limited, shall foreit all claim to salvage, and shall, on conviction, be adjudged and deemed guilty of receiving goods knowing them to have been stolen, and shall suffer the like punishment as if the same had been stolen on shore."

Concealing such articles forfeits claim to salvage, and subjects the offenders to punishment.

Persons fraudulently purchasing or receiving anchors, cables, &c. shall be considered receivers of stolen goods.

By section 12 it is enacted, "that if any person shall knowingly and wilfully, and with intent to defraud and injure the true owner or owners thereof, or any person interested therein as aforesaid, purchase or receive any anchors, cables, or goods or merchandize, which may have been taken up, weighed, swept for, or taken possession of, whether the same shall have belonged to any ship or vessel in distress or otherwise, or whether the same shall have been preserved from any wreck, if the directions herein-before contained with regard to such articles shall not have been previously complied with, such person or persons shall, on conviction thereof, be deemed guilty of receiving stolen goods, knowing the same to be stolen, as if the same had been stolen on shore, and suffer the like punishment as for a misdemeanor at the common law, or be liable to be transported for seven years, at the discretion of the court, before which he, she, or they shall be tried."

Punishing pilots and others selling or disposing of anchors or cables in foreign countries.

By section 15, after reciting that pilots, hovellers, boatmen, and other persons in small vessels have for many years conveyed anchors and cables, which may have been weighed, swept for, or taken possession of by them, as aforesaid, or which they may have purchased of other persons, knowing them to have been weighed, swept for, or taken possession of, without being reported as aforesaid, to foreign countries, and there sold and disposed of, to the manifest injury and loss of the owners thereof: for remedying whereof it is enacted, "that every pilot, hoveller, boatman, or the master of any such vessel, who shall convey any such anchor or cable to any foreign port, harbour, creek, or bay, and there sell and dispose of the same, shall be deemed and adjudged guilty of felony, and shall be transported for any term not exceeding seven years."

Inhabitants may be competent witnesses.

By section 21 it is provided and enacted, "that the inhabitants of any parish, township, or place, shall be deemed and taken to be competent witnesses for the purpose of proving the commission of any offence against this act, within the limits of such parish, township, or place, notwithstanding the penalty incurred by such offence, or any part thereof, is or may be given or applicable to the poor of such parish, township, or place, or otherwise, for the benefit or use, or in aid, or in exoneration of such parish, township or place."

Offences may be tried in the county where articles found, &c.

By section 28 it is enacted, "that all felonies, misdemeanors, and other offences under this act, shall and may be laid to be committed, and shall be tried in any city or county (being a county) where any such article, matter, or thing in relation to which such offence shall been committed, shall have been found in the possession of the person committing the offence; or if the same shall have been sold in foreign parts, then in the county or place in which the person selling the same shall reside."

[As to *Receivers of Public Stores, &c.* see **Carriage**, Vol. I.; **Stores**, Vol. V.]

VII. Forms, *List of.*

Information against a Principal in *second* degree, (No. 1.)—the like against Accessary *before* the fact, (No. 2.)—the like against an Accessary *after* the fact, (No. 3.)

Warrant to apprehend an Accessary *before* the fact, (No. 4.)—the like to apprehend an Accessary *after* the fact for harbouring the Principal, (No. 5.)—the like to apprehend an Accessary *after* the fact for receiving stolen goods, (No. 6.)

Commitment of a Principal in second degree, (No. 7.)—the like of an Accessary *before* the fact, with the Principal, (No. 8.)—the like without the Principal, (No. 9.)—the like of an Accessary *after* the fact, with the Principal, (No. 10.)—the like without the Principal, (No. 11.)—the like without the Principal, in another form, in case of a robbery, (No. 12.)

Conviction for receiving stolen property where the offence of the principal is punishable by conviction only on 7 & 8 Geo. IV. c. 29, s. 60, (No. 13.)—the like for a second offence, (No. 14.)—the like of an abettor or procurer in an offence punishable by 7 & 8 Geo. IV. c. 29, on summary conviction, (No. 15.)

Indictment against a Principal in *second* degree, (No. 16.)

Indictment against an Accessary *before* the fact with the Principal, in murder, burglary, or felony, (No. 17.)—Indictment against Lord Sanchor as an Accessary *before* the fact for murder, (No. 18.)—Indictment against an Accessary *before* the fact, the Principal being convicted, (No. 19.)—Indictment against an Accessary *before* the fact as for a substantive felony, (No. 20.)

Indictment against an Accessary *after* the fact with the Principal, (No. 21.)—Indictment against an Accessary *after* the fact, the Principal being convicted, (No. 22.)

Indictment against an Accessary for *receiving* stolen goods, the Principal being convicted in another county, (No. 23.)—Indictment againt a *Receiver* of Stolen Goods as for a substantive felony, (No. 24.)—Indictment against a *Receiver* where the offence of the Principal is a misdemeanor, (No. 25.)

(No. 1.)

Information to ground a warrant to apprehend a principle in the second degree.

} *A. J. of, &c. in the county of* —— [*gentleman,*] *maketh oath and saith, that* —— } *on, &c.* [Principals in the second degree may be described like principals in the first degree, as having actually committed the offence; or, in felony, where the principals in the first and second degrees are committed at the same time, after stating the offence of the principal in the first degree, the offence of the principal in the second degree may be described thus]:—*And that the said C. D.* [the principal in second degree] *feloniously was then and there present, aiding, abetting, and assisting the said E. F. to do and commit the said felony. And thereupon he the said A. J. prayeth that justice may be done in the premises.* *A. B.*

Sworn before me,
J. P.

(No. 2.)

Information against an accessary before the fact.

} *The information and complaint of A. J. of, &c. in the said county,* [*gentleman,*] —— } *taken upon oath before me J. P. Esq. one of his Majesty's justices of the peace in and for the said county, this day of in the year of our Lord one thousand eight hundred and ; who saith that one E. F.* [or if the principal be unknown, *a certain person or persons unknown,*] *on, &c. at, &c. did feloniously, &c.* [state the felony as usual, according to the fact,] *and that he hath just cause to suspect, and doth suspect that C. D. late of, &c. (labourer,) did counsel, hire, procure, or command the said E. F. (or person or persons unknown,) to commit the said felony. And thereupon the said A. J. prayeth that justice may be done in the premises.*

Sworn before me, *A. J.*
J. P.

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(No. 3.)

Information against accessary after the fact.

[If an accessary after the fact, then the form may be thus, after the usual commencement and stating the offence of the principal as in form (No. 2.) *supra:*]—*And also that the said A. J. hath cause to suspect and doth suspect that C. D. late of in the county of , (yeoman,) well knowing the said E. F.* [the principal] *to have done and committed the said felony as aforesaid, afterwards him the said E. F. did feloniously, and of his malice forethought, receive, aid, and comfort. And thereupon the said A. J. prayeth that justice may be done in the premises.*

Sworn before me, *A. J.*

J. P.

(No. 4.)

Warrant to apprehend an accessary before the fact.

—— } *To the Constable of in the County of and to all other Constables* } *and Peace Officers in the said County.*

Whereas A. J. of the parish of in the said county of (gentleman,) hath this day made oath before me, J. P. Esq. one of his Majesty's justices of the peace in and for the said county, that one E. F. [or if the principal be unknown, *a certain person or persons unknown,*] *on, &c. at, &c. did feloniously, &c.* [state the felony as usual] *and that he hath just cause to suspect, and doth suspect, that C. D. late of aforesaid, (labourer,) did counsel, hire, procure, or command the said E. F.* [or *person or persons unknown*] *to commit the said felony. These are therefore in his Majesty's name to charge and command you forthwith to apprehend and bring before me the said E. F. and C. D. to answer the said complaint, and to be further dealt with according to law. Given under my hand and seal this day of one thousand eight hundred and* *J. P.* (L. S.)

(No. 5.)

Warrant to apprehend an accessary after the fact, for harbouring the principal.

——. } *To the Constable of, &c.* [as in form (No. 4.) *supra.*]
to wit. }

Whereas E. F. of , stands charged before me J. P. Esq. one of his Majesty's justices of the peace in and for the said county, on the oath of A. J. with having [state the offence as in the information]. *And whereas G. H. hath this day also made oath before me, that C. D. of, &c. aforesaid, (labourer,) since the said felony was committed, hath received, harboured, and maintained the said E. F. in the dwelling-house of the said C. D. at aforesaid; he the said C. D. well knowing the said E. F. to have committed the said felony. These are therefore, &c.* [as in preceding form.]

(No. 6.)

Warrant to apprehend an accessary after the fact for receiving stolen goods.

[Commencement as *supra*, and then state the offence as in the information.] *And also that the said A. J. hath cause to suspect and doth suspect that C. D. of in the said county, (labourer,) hath feloniously received the said* [*silver tea-pot*], *knowing the same to have been feloniously stolen. These are therefore, &c.* [conclusion as in form (No. 4.) *supra.*

(No. 7.)

Commitment of a principal in second degree.

The form as to this in stating the offence may be collected from the form of an information against a principal in the second degree. The form of the commitment in other respects may be as in the following precedent.

(No. 8.)

Commitment of an accessary before the fact with the principal.

—— } *To the Keeper of his Majesty's Gaol at for the County of or his* } *Deputy.*

Receive [or the commencement may be as *ante*, (No. 8.)] *into your custody the bodies of E. F. and G. H. herewith sent you, brought before me J. P. Esq. one of his Majesty's justices of the peace in and for the said county, by A. C. constable of the parish of in the said county, the said E. F. being charged upon the*

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oath of A. B. with having [describe the offence as in warrant, and which may be thus in burglary,] *on the day of last, feloniously and burglariously broken and entered his dwelling-house, situate in the parish of in the said county,* [or as the case may be], *and feloniously stolen, taken, and carried away* [describe the property stolen] *the property of the said A. B.* [or *C. D.* as the case may be], *and the said G. H. being also charged upon the oath of the said A. B. with having counselled, hired, procured and commanded the said E. F. to commit the said felony and burglary,* [or as the case may be], *and them safely keep* [or the conclusion may be as in form, *ante*, page 8,] *in your custody until they shall be discharged by due course of law. Given under my hand and seal at in the said county, this day of one thousand eight hundred and .* J. P. (L. S.)

No. (9.)

[Commencement as usual, as *ante*, page 8,] *for that one E. F.* [or, if the fact, *some person unknown,*] *on, &c. at, &c. did feloniously, &c.* [describing the offence as in a commitment of the principal,] *and that the said A. B. before the said felony was so committed, did feloniously and maliciously incite, move, procure, counsel and command the said E. F.* [or *person unknown*] *to do and commit the said felony,* [following the form of the warrant]. *And you the said keeper, &c.* [Conclude as usual, as *ante*, page 8.]

The like, without the principal.

No. (10.)

Commencement as usual, as *ante*, page 8, and after describing the offence of the principal, proceed thus:]—*And that the said E. F. well knowing the said A. B. to have committed the felony aforesaid, did afterwards feloniously receive, harbour, and maintain the said A. B. And you the said keeper, &c.* [Conclude as usual, as *ante*, page 8.]

Commitment of an accessary after the fact, with the principal.

No. (11.)

Commencement as usual, as *ante*, page 8.] *for that one E. F.* [or, if the fact, *some person unknown,*] *on, &c. at, &c. did feloniously, &c.* [describing the offence as in a commitment of the principal,] *and that the said A. B. afterwards, well knowing the said A. B. to have committed the felony aforesaid, did feloniously receive, harbour, and maintain the said A. B. And you the said keeper, &c.* [as usual, as *ante*, page 8.]

The like, without the principal.

No. (12.)

Commencement as usual, as *ante*, page 8.] *for being an accessary after the fact, that is to say, by harbouring, relieving, comforting, and assisting one R. D. after he the said R. D. had feloniously assaulted the said A. B. on the said king's highway, put him in fear and feloniously taken from his person [a silver watch and seals] his property, he the said C. D. well knowing the said R. D. to have done and committed the said felony. And you the said keeper, &c.* [Conclude as usual, as *ante*, page 8.]

The like, without the principal, in another form, in case of a highway robbery.

No. (13.)

—— } *Be it remembered, that on, &c. at, &c. C. D. is convicted before me J. P. one to wit.* } *of his Majesty's justices of the peace in and for the said county, for that he the said C. D. on, &c. at, &c.* [*one birch tree of the value of two shillings,*] *the property of A. B. by one E. F.* (or *by a certain ill-disposed person unknown,*) *then lately before unlawfully stolen, taken, and carried away from a certain close of the said A. B. in which the same was then and there growing, did unlawfully receive from the said E. F.* (or *ill-disposed person,*) *he the said C. D. then and there well knowing the said* [*tree*] *to have been unlawfully come by as aforesaid, against the form of the statute in that case made and provided;* I the said J. P. do therefore adjudge, &c.* [conclude as in the form given by the 71st section of the 7 & 8 Geo. IV. c. 29, *post*, LARCENY, Vol. III.

Conviction for receiving stolen property, where the offence of the principal is punishable by conviction only, on 7 & 8 Geo. 4, c. 29, s. 60.

No. (14.)

Same as in form (13) to the *] *and it is now proved before me the said J. P. that the said C. D. was on, &c. at, &c. convicted before one of his Majesty's justices of*

Conviction for a second offence of like nature.

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the peace in and for the said county of for that he the said C. D. on, &c. at the parish of in the county aforesaid, one other birch tree, &c. [as in the former conviction, *mutatis mutandis*, to the *] *and the said C. D. was thereupon adjudged, &c.* [as in the former conviction to the end of the adjudication,] *I the said J. P. do therefore adjudge the said C. D. for such his said second offence, of which he is now convicted, to, &c.* [Conclude as in a conviction of the principal for a second offence, *post*, **Larceny**, Vol. III.]

No. (15.)

Conviction of an abettor or procurer in an offence punishable by 7 & 8 Geo. 4, c. 29, on summary conviction.

For aiding or abetting, the offender may be convicted in the same form as if he had actually committed the offence. For counselling or procuring another to commit the offence, the party may be convicted with the principal; stating that] *C. D. and E. F. are convicted before me J. P. one, &c. for that the said C. D. on, &c. at, &c.* [stating the offence of the principal in the ordinary way, and then stating the offence of procurer thus,] *and for that the said E. F. before the said offence was so committed as aforesaid, to wit, on, &c. at, &c. aforesaid, did unlawfully counsel and procure the said C. D. the said offence in manner and form aforesaid to do and commit; against the form of the statute in that case made and provided: I the said J. P. do therefore adjudge, &c.* [See Arch. Peel's Acts, 169.]

No. (16.)

Indictment against a principal in the second degree.

—— *The jurors for the Lord the King, upon their oath present, that C.D. late of, &c. on, &c.* [stating the offence of the principal in the first degree, as in other indictments, omitting the conclusion, and immediately before the conclusion of the indictment proceed thus,] *And the jurors aforesaid upon their oath aforesaid do further present, that E. F. late of, &c. on, &c. with force and arms, at, &c. aforesaid, feloniously was present, aiding, abetting, and assisting the said C. D. the felony and burglary* [according to the fact] *aforesaid to do and commit; against the peace, &c.* [In an indictment for murder, this is inserted immediately before the concluding clause, *and so the jurors, &c.*; and this clause then charges both the principals in the first and second degree with the murder, thus,] *And so the jurors aforesaid upon their oath aforesaid do say, that the said C. D. and E. F. the said A. B. in manner and form aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder; against the peace of our Lord the King his crown and dignity.*

No. (17.)

Indictment against an accessary before the fact together with the principal in murder, burglary, or felony.

—— *The jurors, &c.* [after framing the indictment against the principal in the usual form until the usual conclusion, omitting such conclusion, proceed thus,] *And the jurors aforesaid upon their oath aforesaid do futher present, that E. F. late of, &c. (labourer,) before the said felony,* [or *felony and murder*, or *burglary*, or *larceny*, as the case may be,] *was committed in form aforesaid, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, did feloniously and maliciously aid, abet, and procure,* [or if for murder, *did feloniously and maliciously incite, move, procure, aid, counsel, hire, and command*] *the said C. D. the said felony* [or *felony and murder*, or *burglary*, or *larceny*, as the case may be,] *in manner and form aforesaid to do and commit, against the peace, &c.* [and if against a statute, add *and against the form of the statute in such case made and provided.*]

No. (18.)

Indictment against Lord Sanchor as an accessary before the fact for murder.†

Middlesex. The jurors present for the Lord the King upon their oath, That whereas Robert Carliel, late of London, yeoman, and James Irweng, late of London, yeoman, not having God before their eyes, but being seduced by the instigation of the devil, on the 11th day of May, in the 10th year of the reign of our Lord James, by the grace of God, of England, France, and Ireland, King, defender of the faith, and so forth, and of Scotland the 45th, at London, that is to say, in the parish of St. Dunstan in the West, in the ward of Farringdon Without, London, aforesaid, &c. with

† This was the indictment, taken from the report in 9 Coke, 116, on which Robert Creighton, Esquire, Lord Sanchar, of Scotland, was convicted and hanged.

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force and arms, &c. feloniously, and of their aforethought malice, in and upon one John Turner, then and there in the peace of God and of the said Lord the King being, made an assault and affray; and the aforesaid R. C. with a certain gun [tormentum] *called a pistol, of the value of 5s. then and there charged with gunpowder, and one leaden bullet, which gun the said R. C. in his right hand then and there had and held, in and upon the aforesaid J. T. then and there feloniously, voluntarily, and of his malice forethought, did shoot off and discharge; and the aforesaid R. C. with the leaden bullet aforesaid, from the gun aforesaid then and there sent out, the aforesaid J. T. in and upon the left part of the breast of him the said J. T. then and there feloniously struck, giving to the said J. T. then and there with the leaden bullet as aforesaid, near the left pap of him the said J. T. one mortal wound of the breadth of half an inch, and depth of five inches, of which mortal wound the aforesaid J. T. at London aforesaid, in the parish and ward aforesaid, instantly died: And that J. I. feloniously and of his forethought malice then and there was present, aiding, assisting, abetting, comforting, and maintaining the aforesaid R. C. to do and commit the felony and murder aforesaid, in form aforesaid, and so the aforesaid R. C. and J. I. the aforesaid J. T. at London aforesaid, in the parish and ward aforesaid, in manner and form aforesaid, feloniously, voluntarily, and of their forethought malice killed and murdered, against the peace of the Lord the now King, his crown and dignity; and that one R. Creighton, late of the parish of St. Margaret, in the county of Westminster, esquire, not having God before his eyes, but being seduced by the instigation of the devil, before the felony and murder aforesaid, by the aforesaid R. C. and J. I. in manner and form aforesaid done and committed, that is to say, on the 10th day of May, in the 10th year of the reign of our Lord James, by the grace of God, of England, France, and Ireland King, defender of the faith, and of Scotland the forty-fifth, the aforesaid R. C. at the aforesaid parish of St. Margaret, in Westminster aforesaid, in the county of Middlesex aforesaid, to do and commit the felony and murder aforesaid, in manner and form aforesaid, maliciously, feloniously, voluntarily, and of his forethought malice did stir up, move, abet, counsel, and procure, against the peace of the said Lord the King that now is, his crown and dignity.*

No. (19.)

Indictment against an accessary before the fact, the principal being convicted.

—— *The jurors for our Lord the King upon their oath present, that heretofore, to wit, at the general sessions of the delivery of the gaol of, &c. &c.* [so continuing the caption of the indictment against the principal,] *it was presented that one A. B. late of, &c.* [continuing the indictment to the end, reciting it however in the past tense, as in the form (23) *infra*,] *upon which said indictment the said A. B. at the session of the gaol delivery aforesaid, was duly convicted of the felony and burglary* [according to the fact] *aforesaid; as by the record thereof more fully and at large appears. And the jurors aforesaid, upon their oath aforesaid, do further present, that C. D. late of the parish aforesaid, in the county aforesaid, labourer, before the said felony and burglary* [according to the fact] *was committed in form aforesaid, to wit, on, &c. with force and arms, at the parish aforesaid, in the county aforesaid, did feloniously and maliciously incite, move, procure, and counsel, hire, and command the said A. B. the said felony and burglary* [according to the fact], *in manner and form aforesaid, to do and commit: against the peace of our Lord the King his crown and dignity.*

No. (20.)

Indictment against an accessary before the fact as for a substantive felony.

—— *The jurors for our Lord the King upon their oath present, that one C. D. late, &c. labourer,* [or *that some person or persons to the jurors aforesaid unknown, ante,* 25,] *on, &c.* [stating a burglary, robbery, or larceny whatsoever, of the degree of grand larceny, or other felony, as usual, omitting the usual conclusion *against the peace, &c.*] *And the jurors aforesaid, upon their oath aforesaid, do further present, that E. F. late of, &c. aforesaid, labourer, before the said felony and burglary* [according to the fact] *was committed in form aforesaid, to wit, on, &c. at, &c. aforesaid, did unlawfully and maliciously counsel, hire, procure, and command the said C. D.* [or *the said person or persons to the jurors aforesaid unknown, as aforesaid,*] *the said felony and burglary,* [according to the fact], *in manner and form aforesaid, to do and commit;* [*against the form of the statute in such case made and provided, and*] *against the peace of our Lord the King his crown and dignity.*

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No. (21.)

Indictment against an accessary after the fact, with the principal.

—— *The jurors, &c.* [after framing the indictment against the principal in the usual terms until the usual conclusion, omitting such conclusion, proceed thus:] *And the jurors aforesaid, upon their oath aforesaid, do further present, that E. F. late of, &c. labourer, well knowing the said C. D. to have done and committed the said felony and burglary* [according to the fact] *in form aforesaid, afterwards, to wit, on the day and year aforesaid, with force and arms, at, &c. aforesaid, him the said C. D. did feloniously receive, harbour, and maintain; against the peace of our Lord the King his crown and dignity.*

No. (22.)

Indictment against an accessary after the fact, the principal being convicted.

As in the form (19), *supra*, against an accessary before the fact, the principal being convicted, to the *, and then thus:] *And the jurors aforesaid, upon their oath aforesaid, do further present, that E. F. late of, &c. aforesaid, labourer, well knowing the said C. D. to have done and committed the said felony and burglary* [according to the fact] *aforesaid, after the same was so committed as aforesaid, to wit, on, &c. aforesaid, with force and arms, &c. at, &c. aforesaid, him the said C. D. did feloniously receive, harbour, and maintain; against the peace of our Lord the King his crown and dignity.*

No. (23.)

Indictment against an accessary for receiving goods, knowing them to have been stolen, in one county, the principal having been indicted and convicted in another.

—— *The jurors for our Lord the King upon their oath present, that at the delivery of the gaol of our Lord the King of his county of Dorset, holden at Dorchester, in and for the said county of Dorset, on, &c. before Charles Lord Tenterden, Lord Chief Justice of our lord the King, assigned to hold pleas in the Court of our Lord the King, before the King himself, and Sir John Bayley, knight, one other of the Justices of our said Lord the King, assigned to hold pleas in the Court of our said Lord the King, before the King himself, then justices of our said Lord the King, assigned to deliver the said gaol of the prisoners therein being, X. Y. late of, &c. was convicted in due form of law, for that the said X. Y. on, &c. with force and arms, at, &c. aforesaid, (ten yards of broad cloth,) of the value of thirty shillings, of the goods and chattels of one M. N. then and there being found, feloniously did steal, take and carry away, against the peace of our said Lord the King, his crown and dignity, as by the record thereof remaining filed in the said court of gaol delivery may more fully and at large appear. And the jurors aforesaid, upon their oath aforesaid, do further present that A. O. late of, &c. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, the goods and chattels aforesaid, so as aforesaid feloniously stolen, taken and carried away, feloniously did receive and have (he the said A. O. then and there well knowing the aforesaid goods and chattels to have been feloniously stolen, taken and carried away,) against the form of the statute in such case made and provided, and against the peace of our Lord the King his crown and dignity.*

No. (24.)

Indictment against a receiver of stolen goods, as for a substantive felony.

—— *The jurors for our Lord the King upon their oath present, that C. D. late of, &c. labourer, on, &c. with force and arms, at, &c. in the county aforesaid, (one silver tea pot) of the value of ten pounds, of the goods and chattels of A. B. by one E. F.* [or *by a certain ill-disposed person to the jurors aforesaid unknown,*] *then lately before feloniously stolen, taken, and carried away by the said E. F.* [or *by the same ill-disposed person*] *feloniously did receive, he the said C. D. then and there well knowing the said goods and chattels to have been feloniously stolen, taken, and carried away as aforesaid, against the form of the statute in such case made and provided, and against the peace of our Lord the King his crown and dignity.*

No. (25.)

Indictment against a receiver, where the offence of the principal is a misdemeanor.

If the offence of the principal were a larceny not amounting to felony, the indictment will be in the same form as the last, merely substituting the word *unlawfully* for the word *feloniously*. But if the offence of the principal be not a larceny, then, besides substituting *unlawfully* for *feloniously*, make the necessary alteration in the above form, as to the description of the original offence; as for instance, where the

offence of the principal was the obtaining goods under false pretences, instead of saying, *then lately before feloniously stolen, taken, and carried away*, you say, *then lately before unlawfully obtained from the said A. B. by false pretences.* [See directions, Archb. Peel's Acts and Forms, 164.] FORMS.

Accomplice.—*See* Accessary.

As to the Evidence of, *see* **Evidence**, Vol. II. See also Index, title, **Accomplice.**

Acquittal.

ACQUITTAL, in its most general sense, is a deliverance and setting free of a person from the suspicion of guilt; as he that on trial is discharged of a felony is said to be *acquietatus de feloniâ;* and if he be drawn in question again for the same crime he may plead *autre fois acquit*, as his life shall not be twice put in danger for the same offence. 2 *Inst.* 385. What.

In a late case it was considered that quashing a conviction on a penal statute for mere matter of form at sessions is not an *acquittal* of the defendant, concluding the case against any further inquiry in the Court of King's Bench. *R.* v. *Ridgway*, 1 *D. & R. Mag. Cas.* 38; *R.* v. *Reason*, 6 *T. R.* 375.

If a defendant, against whom an information has been laid for a penalty, be acquitted by the justices, the Court of King's Bench cannot reverse the judgment. *R.* v. *Reason*, 6 *T. R.* 575; *post*, **Conviction**, Vol. I.

As to the effect of an acquittal in general on indictments, see **Autre fois acquit**, Vol. I. and **Evidence**, Vol II.; as to the acquittal of one defendant to enable him to be evidence for the defendant, see **Evidence**, Vol. II. p. 42; as to costs on, see **Costs**, *post.*

Forms.

No. (1.)

After the usual other entries, for which see *post*, **Judgment**, Vol. III. proceed thus:] *Upon their oath say, that the said D. O. is not guilty of the premises aforesaid, in the indictment aforesaid above specified, in manner and form as the said D. O. for himself above by his plea hath alleged, nor did he withdraw himself on that occasion. Upon which it is considered by the court here, that the said D. O. of the premises aforesaid, in the indictment aforesaid above specified, be discharged, and do go thereof without day.* Judgment of acquittal on verdict for defendant.

No. (2.)

Whereupon all and singular the premises being seen and fully understood by the court of our said Lord the King now here, it is considered and adjudged by the said court now here, that the said M. W. do depart hence without day in this behalf. Judgment of acquittal in K. B.

FORMS.

No. (3.)

Record of an acquittal on an information on a penal statute, before a justice of the peace out of sessions.*

Staffordshire, } *Be it remembered, that on the day of in the year of our Lord*
to wit. } *one thousand eight hundred and at the town of Stone, in the parish of Stone, in the said county of Stafford, A. I. of the said town of Stone, labourer, in his proper person, came before me J. P. esquire, one of his Majesty's justices of the peace in and for the said county, and gave me, the said justice, to understand and be informed, that on the day of in the year of our Lord one thousand eight hundred and at the parish of Stone, in the said county, one A. O. of in the county aforesaid, labourer,* [here state the offence verbatim as charged in the information,] *whereupon it was by the said A. I. alleged, that the said A. O. had for his said offence, forfeited the sum of pounds, one moiety thereof to the said A. I.* [as the case may be]. *And therefore the said A. I. prayed the judgment of me, the said justice, in the premises; whereupon afterwards, to wit, on this day of in the said year of our Lord one thousand eight hundred and at Stone aforesaid, in the said county, personally appeared before me, the said justice, as well the said A. I. to prosecute his said information in this behalf, as the said A. O.* [having been first duly summoned,] *to make defence thereto. And the said A. O. having heard the said information read, is asked by me, the said justice, if he can say any thing for himself why he should not be convicted of the offence therein charged against him; whereupon the said A. O. pleadeth and saith, that he is not guilty of the said offence* [or if he pleads any special matter, it must be correctly stated]. *Therefore I, the said justice, did proceed to examine into the truth of the said information and complaint, and upon due consideration had of the premises, and upon hearing the proofs and allegations as well of the said A. O. as of the said A. I. it is hereby considered and adjudged by me, the said justice, that the said A. O. be acquitted of the said charge and offence in the said information above contained, and that he do go thereof quit without day. And it is hereby also further ordered and adjudged by me, the said justice, that the said A. I. the informant, do forthwith pay to the said A. O. the defendant, the sum of which I do hereby settle and ascertain as and for the reasonable costs and charges which the said A. O. hath been put to in making defence to the said information. In witness whereof I have to this record of acquittal set my hand and seal, at Stone, in the said county, this day of in the said year of our Lord one thousand eight hundred and .*

18 Geo. 3, c. 19.

J. P. (L. S.)

* From *Wms. Prec.* 7, and *Y. C. P.* 53.

Act of State. *See* **Evidence**, Vol. II.

Acts of Parliament. As to the statement of and offences against, *see* **Indictment**, Vol. III.; as to the proof of, *see* **Evidence**, Vol. II.; as to the Construction of, &c. *see* **Statutes**, Vol. V.

Actions against Magistrates, &c. *See* **Constables**, Vol. I.; **Justices of the Peace**, Vol. III.

Action, Popular. *See* **Information**, Vol. III.

Addition, *Statement of, in Indictment.* *See* **Indictment**, Vol. III. p. 345; *in Convictions.* *See* **Conviction**, Vol. I. p. 819.

Adjournment *of Examination.* *See* **Examination**, Vol. II. p. 99; *of Hearing of Information.* *See* **Conviction**, Vol. I. p. 833; *of Hearing of Appeal.* *See* **Appeal**, Vol. I. p. 150; *of Giving Judgment.* *See* **Judgment**, Vol. III. p. 400; *of Sessions.* *See* **Sessions**, Vol. V. p. 482; *of Trials in General.* *See* **Trial**, Vol. V. p. 968.

Adjudication. *See* **Judgment—Order**, Vol. III.; *Statement of, in Conviction.* *See* **Conviction**, Vol. I. p. 834, 843.

Administering Drugs *to procure Abortion.* *See* **Abortion**, *ante; to Murder.* *See* **Homicide**, Vol. III. p. 711.

Administering Oaths. *See* **Oaths**, Vol. III. p. 922, 932.

Administration, Letters of, *Proof of.* *See* **Evidence**, Vol. II. p. 48.

Admiralty Court. (a)

I. *Its Jurisdiction*, 45.
II. *Trials in*, 47.
III. *Expenses of Prosecutions in*, 49.
IV. *Punishments for Offences in Jurisdiction of*, 49.
V. *Summary Jurisdiction of Justices, &c. over Offences in Jurisdiction of*, 49.
VI. *Forms as to*, 50.

I. Its Jurisdiction.

Jurisdiction of, at common law.

JURISDICTION of, at Common Law]—The jurisdiction of the Admiralty Court is at common law confined to offences and other matters committed on the main sea or coasts of the sea not being in any county, cinque

(a) As to the Criminal Jurisdiction of this court in general, see 2 *Hale*, 11 to 20; *Com. Dig. Admiralty*, E. 1; *Bac. Abr. Admiralty*, D.; 1 *Ch. C.L.* 151. As to forging hand of registrar in, see **Forgery**, Vol. II. As to the evidence of the proceedings of the Admiralty Court, see *post*, **Evidence**, Vol. II. p. 48.

JURISDICTION.

port, haven, or pier. See 3 *Rep.* 107; 4 *Inst.* 134. Therefore if a murder be upon the main sea it may be tried before the admiral. *Hale, P. C.* 54.

It is plain that the admiral can have no jurisdiction in any rivers, or arms or creeks of the sea, within the bodies of counties, though within the flux and reflux of the tide; except in the particular instances of mayhem and homicide, done in great rivers, beneath the bridges near the sea, which depend on stat. 15 Rich. II. c. 3, *(infra)*. In general it is said, that such parts of the rivers, arms, or creeks, are deemed to be within the bodies of counties, *where persons can see from one side to the other*. Lord *Hale*, in his treatise *De Jure Maris*, says, that arm or branch of the sea which lies within the *fauces terræ*, where a man may *reasonably discern* between shore and shore, is, or at least may be, within the body of a county. *Hawkins*, however, considers the line more accurately confined by other authorities to such parts of the sea, where a man standing on one side of the land *may see what is done on the other;* and the reason assigned by Lord *Coke* in the Admiralty case, 13 *Rep.* 52, in support of the county coroner's jurisdiction, where a man is killed in such places, *because that the county may well know it*, seems rather to support the more limited construction. But at least, where there is any doubt, the jurisdiction of the common law ought to have the preference. 2 *East's P. C.* c. 17, s. 10.

In a case at the admiralty sessions, of a murder committed in a ship in a part of Milford haven, never known to be dry except at the very lowest tide, and which was about three miles over, about seven or eight miles from the mouth of the river or open sea, and about sixteen miles below any bridges over the river, a question was made whether the place where the murder was committed was to be considered as within the limits to which commissions granted under stat. 28 Hen. VIII. c. 15, do by law extend. Upon reference to the judges they were unanimously of opinion that the trial was properly had; and it is said that during the discussion of the point, Lord *Hale's* construction of this act, in 2 *Hale, P. C.* 16, 17, 18, was much preferred to the doctrine of Lord *Coke* in 3 *Inst.* 111; 4 *Inst.* 134; and that most, if not all of the judges seem to think that the common law has a concurrent jurisdiction with the admiralty in this haven and in all other havens, creeks, and rivers in this realm of this nature, although in the body of a county. (*a*) *Bruce's case*, 2 *Leach, C.C.* 1093; 1 *East's P. C.* 368; *Russ. & R. C.C.* 243, S.C.

Between high and low water mark.

An alternate jurisdiction.

Upon the open sea shore the common law and admiralty have alternate jurisdiction over the space between *high* and *low water mark*, 3 *Inst.* 113; 2 *Hale's P.C.* 17; so that if a man stricken on the high sea die on the shore on the reflux of the tide, the case is out of the admiral's jurisdiction. *R.* v. *Lacie*, 2 *Hale's P.C.* 17, 20; 1 *East's P.C.* c. 5, s. 131. On the other hand, where A. standing on the shore of a harbour, fired a loaded musket at a revenue cutter, which had struck on a sand-bank in the sea, about 100 yards from the shore, by which firing a person was maliciously killed on board the vessel; this was held to be piracy, for the offence was committed where the death happened, and not at the place from whence the cause of death proceeded. 1 *Hawk.* c. 37, s. 17; *R.* v. *Coombe*, 1 *Leach*, 388; 1 *East's P.C.* c. 5, s. 131. If it appears that the goods were taken at sea and afterwards brought on shore, the offender cannot be indicted as for a larceny in that county into which they were carried; because the original felony was not a taking of which the common law takes cognizance. 2 *East's P.C.* c. 17, s. 12, p. 805; 3 *Inst.* 117.

Jurisdiction by statute, 15 Rich. 2, c. 3.

Jurisdiction by Statute]—The statute 15 Rich. II. c. 3, authorises the admiral "to inquire of *deaths* and *mayhems* done in ships being and hovering in the main streams of great rivers, only beneath the bridges of the same rivers nigh the sea" This jurisdiction is, however, concurrent with and does not supersede the common law jurisdiction. 2 *Hale*, 16, 54; 1 *East's P.C.* 168.

(*a*) The words "although in the body of a county," are to be found only in the latter report of Russ. & R. C.C. 243.

II. Trials in.

Trial of Offences in]—By stat. 28 Hen. VIII. c. 15, A.D. 1536, *treasons, felonies, robberies, murders, and confederacies*, committed in or *upon the sea*, or in any haven, river, creek or place where the *admiral* has or *pretends to have jurisdiction*, shall be tried according to the course of common law, and in such places and counties as shall be appointed by the King's commission, (*a*) in like manner and form as if the same had been committed upon land. Trial by jury of offences at sea, 28 Hen. 8, c. 15.

This statute is not repealed by the 35 Hen. VIII. c. 2, as regards treasons done at sea.

Previous to this statute offences being local, and by the common law triable only by a jury of the county in which they were committed, a person who had committed an offence on the high seas or in the admiralty jurisdiction, could only be prosecuted in the high court of admiralty, held before the lord high admiral or his deputy, according to the course of the civil law and not by a jury, and, therefore, according to the maxims of Roman jurisprudence, he could not be convicted or sentence of death given without proof by two witnesses or his confession. See 4 *Bla. Com.* 268; *Com. Dig. Admiralty*, E. 5. This statute, it will be observed, obviates this former evil.

This statute merely alters the *mode of trial* in the admiralty court, and it does not enlarge or narrow its jurisdiction as it stood before the passing of it; *Com. Dig. Admiralty*, E. 5; and it does not, neither does the 39 Geo. III. c. 37, *infra*, take away any jurisdiction as to the trial of offences which might before have been tried in a court of common law; and therefore an indictment for a conspiracy on the high seas is triable at common law, on proof of an overt act on shore, in the county where the venue is laid. 4 *East*, 164. And as to shooting from the land and killing at sea, and stealing goods at sea and bringing them on the land, see *ante*, 46; and see *ante*, 46, as to the concurrent jurisdiction with the common law.

The statute does not give the admiral jurisdiction in any river, creek or port *within* the body of a county; and the main question of jurisdiction arising on the statute is, whether the fact happened at any place within the body of a county? If it did, the trial must be had before the ordinary jurisdiction; for the admiral can have no jurisdiction there, unless by positive statute. 4 *Inst.* 137; 15 Rich. II. c. 3, *ante*, 46.

The 28 Hen. VIII. c. 15, extends the jurisdiction of the admiral to great rivers, where the sea flows and reflows below the first bridges, and also in creeks of the sea, at full water, where the sea flows and reflows, and upon high water upon the shore, though these possibly be within the body of the county; for there at least, by stat. 15 Rich. II. they have a jurisdiction, and thus, accordingly, it has been constantly used in all times, even when judges of the common law have been named and sat in their commission: but the words *pretend to have* must not be extended to such a pretence as is without any right at all, and, therefore, although the admiral pretends to have jurisdiction upon the shore when the water is reflowed, yet he hath no cognizance of a felony committed there; and therefore it was resolved in *Lacie's case*, that if a man be stricken upon the high sea, and die upon the shore after the reflux of the water, the admiral, by virtue of this commission, hath no cognizance of that felony. 2 *Hale, P. C.* 16, 17; *Bingham's case*, 2 *Rep.* f. 93; *Constable's case*, 5 *Rep.* 107.

The jurisdiction for the trial of offences under this statute of 28 Hen. VIII. c. 15, only extended to the offences therein named, viz. *treasons, felonies, robberies, murders and confederacies*, and did not give conusance of any felony not a felony at land, nor to any new created felony created by statute since the passing that act. See 2 *Hawk.* c. 25, s. 45.

To remedy this the stat. 39 Geo. III. c. 37, enacts, that *all* offences com- 39 Geo. 3, c. 37.

(*a*) See a form of the commission 4 Chit. C.L. 160.

TRIALS IN.

mitted on the high seas, out of the body of any county, *shall be offences of the same nature*, and liable to the same punishments, as if they had been committed on shore, and shall be inquired of, heard, tried, and adjudged, as offences under stat. 28 Hen. VIII. c. 15.

6 Geo. 1, c. 19.
4 Geo. 1, c. 11.
8 Geo. 1, c. 24.
2 Geo. 2, c. 28.
18 Geo. 2, c. 30.
2 & 3 Ann. c. 20.

By the 11 & 12 Wil. III. c. 7, made perpetual by 6 Geo. I. c. 19, piracies and felonies upon the sea, &c. may be inquired of in any place at sea or upon land in his Majesty's dominions, appointed by the King's commission. Also by the stats. 4 Geo. I. c. 11, 8 Geo. I. c. 24, and 2 Geo. II. c. 28, several piratical offences therein mentioned, and by stat. 18 Geo. II. c. 30, certain acts of hostility committed at sea in time of war, may be inquired of and tried in the admiral's court; and see 2 & 3 Anne, c. 20, s. 35.

For the acts against the wilful destruction of ships, see **Ships**, Vol. V.

The piratically stealing a ship's anchor is a capital offence by the marine laws, triable under the stat. 28 Hen. VIII., and the stat. 39 Geo. III. c. 37, does not extend to that case; and the stealing is equally an offence whether the master concur in it or not, and whether to defraud the underwriters or the owners. *R.* v. *Aveling*, *Russ. & R. C.C.* 123.

7 & 8 Geo. 4, c. 30, s. 43.

By the 43d section of the 7 & 8 Geo. IV. c. 30, relating to malicious injuries to property, it is enacted, "that where any felony or misdemeanor, punishable under this act, shall be committed within the jurisdiction of the admiralty of England, the same shall be dealt with, inquired of, tried, and determined in the same manner as any other felony or misdemeanor committed within that jurisdiction."

7 & 8 Geo. 4, c. 27, s. 77.

By the 77th section of the 7 & 8 Geo. IV. c. 27, relating to larceny and other offences connected therewith, it is enacted, "that where any felony or misdemeanor, punishable under this act, shall be committed within the jurisdiction of the admiralty of England, the same shall be dealt with, inquired of, tried, and determined, in the same manner as any other felony or misdemeanor committed within that jurisdiction."

9 Geo. 4, c. 31, s. 32.

By the 32d section of the 9 Geo IV. c. 31, relating to injuries to the person, it is enacted, "that all indictable offences mentioned in this act, which shall be committed within the jurisdiction of the admiralty of England, shall be deemed to be offences of the same nature, and liable to the same punishments, as if they had been committed upon the land in England, and may be dealt with, inquired of, tried, and determined in the same manner as any other offences committed within the jurisdiction of the admiralty of England." This provision is substituted for those contained in sect. 2 of the stat. 1 Geo. IV. c. 90, which made offences under Lord *Ellenborough's* act, if committed at sea, triable at the admiralty sessions; and that section is now repealed.

Accessaries.
28 Hen. 8, c. 15.

Upon the statute 28 Hen. VIII. c. 15, a doubt arose whether one who was accessary at land to a felony committed at sea, was triable by the admiral within the purview of it; *Yelv.* 134; 13 *Co.* 51; but by the stat. 11 & 12 Wil. III. c. 7, made perpetual by 6 Geo. I. c. 19, accessaries to piracy may be inquired of according to the stat. 28 Hen. VIII. c. 15. And by the stat. 7 Geo. IV. c. 64, s. 9 & 10, *ante*, 27, 28, all accessaries to felonies committed upon the high seas, whether the offence of becoming accessary shall have been committed within the body of a county of the realm or upon the high seas, may be tried by any court that may try the principal felon.

Mode of trial.
Judges.

With respect to the *mode of trial* in this court, all offences committed on the seas are tried before commissioners nominated by the Lord Chancellor, the indictment being first found by a grand jury of twelve men, and afterwards tried by another jury, as at common law; the course of proceedings being according to the law of the land. Among the commissioners are always the deputy of the admiral, or the judge of the admiralty, and two or more of the common law judges; see stat. 28 Hen. VIII. c. 15, s. 1, 2. 4 *Bla. Com.* 269.

The mode of trial in the admiralty court is regulated by the civil law *et per consuetudines marinas*, grounded on the law of nations, which may possibly give to that court a jurisdiction which our common law is not able to invest. Per *Mansfield*, C.J. *R.* v. *Depardo*, 1 *Taunt. R.* 29.

TRIALS IN.

The stat. 32 Geo. II. c. 25, s. 20, for the more speedy bringing of offenders to justice, &c. enacts, That a session of oyer and terminer and gaol delivery for the trial of offences committed on the high seas within the jurisdiction of the admiralty of England, shall be holden twice at least in every year, viz. in March and October, at the Old Bailey, (except when the sessions of oyer and terminer and gaol delivery for London and Middlesex shall be there holden,) or in such other places in England as the Lord High Admiral, &c. shall in writing under his hand, directed to the judge of the court of admiralty, appoint. *(Sed query if this provision be not expired.)*

Times for holding the court. 32 Geo. 2, c. 25.

The 7 & 8 Geo. IV. c. 65, extends the powers and jurisdiction of admiralty commissioners to the Lord High Admiral.

Lord High Admiral.

III. Expenses of Prosecutions, &c.

By the stat. 7 Geo. IV. c. 64, s. 27, for enabling the high court of admiralty to order the payment of the costs and expenses of prosecutors and witnesses, and compensation for their trouble and loss of time, in cases in which other courts have a like power under this act, it is enacted, "That it shall be lawful for the judge of the said court of admiralty, in every case of felony, and in every case of misdemeanor of the denominations hereinbefore enumerated,* committed upon the high seas, to order the assistant to the counsel for the affairs of the admiralty and navy to pay such costs, expenses and compensation to prosecutors and witnesses, in like manner as other courts may order the treasurer of the county to pay the same; and such assistant is hereby authorised and required, upon sight of every such order, forthwith to pay to the person named therein, or to any one duly authorised to receive the same on his or her behalf, the money in such order mentioned, and shall be allowed the same in his accounts."

Expenses.

In prosecutions in the admiralty court, the court may order expenses in all charges of felony or of misdemeanor, where they might be allowed by other Courts.

To be paid by the assistant to the counsel to the admiralty.

This enactment puts prosecutions in the high court of admiralty on the same footing as those in other criminal courts, in regard to the allowance of prosecutors' expenses. See *post*, **Costs**, Vol. I.

IV. Punishment of Offences in Jurisdiction of.

With respect to the punishment of offences committed in the jurisdiction of the admiralty, it is by the stat. 7 & 8 Geo. IV. c. 28, s. 12, enacted, "That all offences prosecuted in the high court of admiralty of England, shall, upon every first and subsequent conviction, *be subject to the same punishments*, whether of death or otherwise, as if such offences had been committed upon the land."

Punishment.

As to the punishment of offences against the person, &c. see the 9 Geo. IV. c. 31, s. 32, *ante*, 48.

V. Summary Jurisdiction of Justices, &c. over Offences in Jurisdiction of.

By the statute, 7 Geo. IV. c. 38, it is enacted, "That it shall and may be lawful to and for any one or more of the commissioners for the time being, named or to be named in the commission of oyer and terminer, for the trying of offences committed within the jurisdiction of the admiralty of England; and also to and for any one or more of the commissioners for the time being, named or to be named in any commission made or granted under or by virtue of the act of the 46 Geo. III. c. 54; and also to and for any one or more of his Majesty's justices of the peace for the time being for any county, riding, division, or place, in the United Kingdom, and they are hereby respectively

Commissioners for trying offences at sea, or justices may take examinations touching offences committed within the jurisdiction of the admiralty, and commit the persons charged. 7 Geo. 4, c. 38.

* See the 23d section of the act, *post*, tit. **Costs**, Vol. I.

JURISDICTION OF JUSTICES.

authorised, empowered, and required, from time to time, to take any information or informations of any witness or witnesses upon oath, which oath they and each of them are hereby respectively authorised to administer, touching any treason, piracy, felony, robbery, murder, conspiracy, or other offence, of what nature or kind soever, committed upon the sea, or in any haven, river, creek, or place where the admiral or admirals hath or have power, authority, or jurisdiction; and thereupon (if such commissioner or commissioners, justice or justices of the peace, shall see cause,) by any warrant or warrants under his or their hand and seal or hands and seals, to cause the person or persons charged in such information or informations to be apprehended and committed to safe custody, to remain in such custody until discharged in due course of law, or until bailed, in cases in which bail may by law be taken."

This enactment, authorising magistrates to commit or bail on charges of offences alleged to have been committed within the jurisdiction of the admiralty, is new and important.

As to the commitment of offenders in cases of murder or manslaughter on land out of the United Kingdom, see **Foreign Country**, Vol. II.

Excise and customs.

As to the jurisdiction of justices over offences committed on the high seas against the customs or excise laws, and their power of mitigating penalties, see *post*, tit. **Excise and Customs**, *Jurisdiction of Justices, Mitigation of Penalties*, Vol. II.

VI. Forms.*

Warrant of one of the commissioners under the Admiralty commission to apprehend a person for suspicion of murder on the high seas.

To all Constables and others his Majesty's officers of the peace for the county of [Middlesex and city and liberty of Westminster,] whom these may concern, and especially to A. B.

Admiralty of England, (to wit.) These are in his Majesty's name to command you and every of you, upon sight hereof, to take and bring before me one of the commissioners of oyer and terminer for the jurisdiction of the Admiralty of England, the body of C. D., late [seaman in his Majesty's frigate ,] of whom you shall have notice, to answer all such matters and things as on his Majesty's behalf are on oath objected against him by A. B., captain and others, on suspicion of having been guilty of [the wilful murder of E. H., a seaman on board the said frigate,] at , and on the high seas within the jurisdiction of the Admiralty of England, against the peace [and against the statute.] Hereof fail not at your peril. Given under my hand and seal this day of 1830. E. F. (L. S.)

The like for an assault, battery, and bruising on the high seas.

To all Constables and others his Majesty's officers of the peace whom these may concern.

Admiralty of England, (to wit.) These are in his Majesty's name to command you and every of you upon sight hereof to take and bring before me or some other of his Majesty's commissioners for the jurisdiction of the Admiralty of England, the body of C. D., of whom you shall have notice, to answer all such matters and things as in his Majesty's behalf are on oath objected against him by A. B. for [violently assaulting, beating, and bruising him on, &c., on board a certain ship called] on the high seas, within the jurisdiction of the Admiralty of England aforesaid, against the peace [and against the statute.] Hereof fail not at your peril. Given under my hand and seal this day of 1830. E. F. (L. S.)

Ad quod damnum, *Writ of. See* **Highways**, Vol. III. p. 37.

Adultery. *See* **Lewdness**, Vol. III.

* See form of Admiralty Commission, 4 Ch. C. L. 160.

Advertising *for Stolen Goods. See* **Larceny**, Vol. II.
Duty on Advertisements in Newspapers, &c., see **Newspapers**, Vol. III.

Affidavit. *See* **Oath**, Vol. III.
As to Proof and Effect of, *post*, **Evidence**, Vol. II.

Affirmation of Quakers. *See* **Oath**, Vol. III.; **Evidence**, Vol. II.

Affray.*

I. *What is an Affray*, 51.
[2 *Edw. III. c.* 3; 7 *Rich. II. c.* 13; 20 *Rich. II. c.* 1.]
II. *How far it may be suppressed by a Private Person*, 53.
III. *How far by a Constable*, 53.
IV. *How far by a Justice of the Peace*, 54.
V. *Punishment of an Affray*, 54.
VI. *Forms*, 54.

I. What is an Affray.

AN affray is a public offence to the terror of the King's subjects; so called (according to Lord Coke) because it affrighteth and maketh men afraid. 3 *Inst.* 158. What is an affray.

From whence it seemeth clearly to follow, that there may be an *assault* which will not amount to an *affray;* as where it happens in a private place, out of the hearing or seeing of any, except the parties concerned, in which case it cannot be said to be to the terror of the people. 1 *Hawk.* c. 63, s. 1.

Also it is said, that no quarrelsome or threatening words whatsoever shall amount to an affray; and that no one can justify laying his hands on those who shall barely quarrel with angry words without coming to blows; yet it seemeth, that the constable may, at the request of the party threatened, carry the person who threatens to beat him before a justice, in order to find sureties. 1 *Hawk.* c. 63, s. 2. Words do not amount to an affray.

Also it is certain, that it is a very high offence to challenge another either by word or letter to fight a duel, or to be the messenger of such a challenge; or even barely to endeavour to provoke another to send a challenge, or to fight, as by dispersing letters to that purpose full of reflections, and insinuating a desire to fight. 1 *Hawk.* c. 63, s. 3. Challenge to fight.

But although no bare words, in the judgment of law, carry in them so much terror as to amount to an affray, yet it seems certain, that in some cases there may be an affray where there is no actual violence; as where a man arms himself with dangerous and unusual weapons in such a manner Where no violence.

* As to Riots, see **Riots**, Vol. V.

as will naturally cause a terror to the people, which is said to have been always an offence at the common law, and is strictly prohibited by statute; for by statute 2 Edw. III. c. 3, it is enacted, that no man, of what condition soever, except the King's servants in his presence, and his ministers in executing their office, and such as be in their company assisting them, and also upon a cry made for arms to keep the peace, shall come before the King's justices or other of the King's ministers doing their office with force and arms, nor bring any force in affray of peace, nor go nor ride armed by night or day in fairs or markets, or in the presence of the King's justices or other ministers or elsewhere, upon pain to forfeit their armour to the King, and their bodies to prison, at the King's pleasure. And the King's justices in their presence, sheriffs and other ministers in their bailiwicks, lords of franchises and their bailiffs in the same, and mayors and bailiffs of cities and boroughs within the same, and borough-holders, constables, and wardens of the peace within their wards, shall have power to execute this act. And the judges of assize may punish such officers as have not done their duty herein. 1 *Hawk.* c. 63, s. 4.

Carrying arms. 2 Edw. 3, c. 3.

Upon a cry made for Arms to keep the Peace]—It is holden upon these words of exception, that no person is within the intention of this statute who arms himself to suppress dangerous rioters, rebels, or enemies, and endeavours to suppress or resist such disturbers of the peace and quiet of the realm. 1 *Hawk.* c. 63, s. 10.

In an Affray of Peace]—*En effrayer de la pees*, (Lord Coke has it *pais*) of the country or the people; and so, he observes, that the writ grounded upon this statute saith, *in quorandum de populo terrorem;* and, therefore, the printed book in affray of peace ought to be amended. 3 *Inst.* 158.

And it is holden upon these words, that no wearing of arms is within the meaning of this statute, unless it be accompanied with such circumstances as are apt to terrify the people; from whence it seems clearly to follow, that persons of quality are in no danger of offending against this statute by wearing common weapons, or having their usual number of attendants with them for their ornament or defence in such places and upon such occasions in which it is the common fashion to make use of them, without causing the least suspicion of an intention to commit any act of violence or disturbance of the peace. 1 *Hawk.* c. 63, s. 9.

Nor to go nor to ride Armed]—It is holden that a man cannot excuse the wearing such armour in public, by alleging that such a one threatened him, and that he wears it for the safety of his person from his assault: but it hath been resolved, that no one shall incur the penalty of the said statute for assembling his neighbours and friends in his own house against those who threaten to do him any violence therein, because a man's house is as his castle. 1 *Hawk.* c. 63, s. 8.

Their Bodies to Prison]—Stat. 20 Rich. II. c. 1, adds a fine likewise.

Wardens of the Peace]—It is holden that any justice of the peace, or other person who is empowered to execute this statute, may proceed thereon *ex officio;* and if he find any person in arms, contrary to the form of the statute, he may seize the arms and commit the offender to prison; and that he ought also to make a record of the whole proceeding, and certify the same into the exchequer. 1 *Hawk.* c. 63, s. 5.

In addition to the above statute of Edward, by 7 Rich. II. c. 13, no man shall ride in harness within the realm, nor with launcegays; and the 20 Rich. II. c. 1, is to the same effect.*

7 Rich. 2, c. 13. 20 Rich. 2, c. 1.

* The act of 20 Rich. II. c. 1, is as follows:—" first, Whereas in a statute made the seventh year of the reign of the King that now is, it is ordained and as-

II. How far it may be Suppressed by a Private Person.

Private person's power to suppress.

It seems agreed, that any one who sees others fighting may lawfully part them, and also stay them till the heat be over, and then deliver them to the constable, to be carried before a justice to find sureties for the peace. 1 *Hawk.* c. 63, s. 11.

And the law doth encourage him hereunto; for if he receive any harm by the affrayers, he shall have his remedy by law against them; and if the affrayers receive hurt by endeavouring only to part them, the standers-by may justify the same, and the affrayers have no remedy by law. 3 *Inst.* 158.

But if either of the parties be slain or wounded, or so stricken that he falleth down for dead, in that case the standers-by ought to apprehend the party so slaying, wounding, or striking, or to endeavour the same by hue and cry, or else for his escape they shall be fined and imprisoned. 3 *Inst.* 158.

As to arrests by private persons in general, see *post*, **Arrest**, Vol. I.

III. How far by a Constable.

Constable's power over affrays in his presence.

It seems agreed that a constable is not only empowered, as all private persons are, to part an affray which happens in his presence, but is also bound at his peril to use his best endeavours to this purpose; and not only to do his utmost himself, but also to demand the assistance of others, which if they refuse to give him, they are punishable by fine and imprisonment. 1 *Hawk.* c. 63, s. 13.

And it is said that if a constable see persons either actually engaged in an affray, as by striking or offering to strike, or drawing their weapons, or the like, or upon the very point of entering upon an affray, as where one shall threaten to kill, wound, or beat another, he may either carry the offender before a justice to find sureties for the peace, or he may imprison him of his own authority for a reasonable time till the heat shall be over, and also afterwards detain him till he find such surety by obligation: but it seems that he has no power to imprison such an offender in any other manner or for any other purpose; for he cannot justify the committing an affrayer to gaol till he shall be punished for his offence: and it is said that he ought not to lay hands on those who barely contend with hot words without any threats of personal hurt; and that all which he can do in such case is to command them under pain of imprisonment to avoid fighting. 1 *Hawk.* c. 63, s. 14.

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sented, 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 license. Our Lord the King considering the great clamour made to him in this present parliament, because that the said statute is not holden, hath ordained and established in the said parliament that the said statutes shall be fully holden and kept and duly executed, and that the said launcegays 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 or 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."

Constable's power over.

But he is so far entrusted with a power over all actual affrays, that though he himself is a sufferer by them, and, therefore, liable to be objected against as likely to be partial in his own cause, yet he may suppress them; and, therefore, if an assault be made upon him, he may not only defend himself, but also imprison the offender in the same manner as if he were no way a party. 1 *Hawk.* c. 63, s. 15.

But a person merely standing in the way with intent to hinder a constable from preventing a breach of the peace, will not justify the constable in giving him a blow, though he may take him into custody. —— v. ——, 1 *Carr. & P. C. N. P.* 40.

If an affray be in a house, the constable may break open the doors to preserve the peace; and if affrayers fly to a house and he follow with fresh suit, he may break open the doors to take them. 1 *Hawk.* c. 63, s. 16.

But it is said that a constable hath no power to arrest a man for an affray done out of his own view without a warrant from a justice, unless a felony were done or likely to be done; for it is the proper business of a constable to preserve the peace, and not to punish the breach of it. 1 *Hawk*, c. 63, s. 17; see title, **Constable**, Vol. I.; *post*, **Arrest**, Vol. I.

As to the duty of a constable in taking a party into custody for disturbance in a church, see *Williams* v. *Glennister*, 2 *B. & Cress.* 699; 4 *Dowl. & R.* 217, S. C.; *post*, **Church**, Vol. I.

IV. How far by a Justice of the Peace.

Justice's power over.

There is no doubt but that a justice of the peace may and must do all such things to the aforesaid purpose, which a private man or constable is either enabled or required by the law to do: but it is said that he cannot, without a warrant, authorise the arrest of any person for an affray out of his own view; yet it seems clear, that in such case he may make his warrant to bring the offender before him, in order to compel him to find sureties for the peace. 1 *Hawk.* c. 63, s. 18.

And a justice has a greater power over one who has dangerously wounded another in an affray than either a private person or a constable; for there does not seem to be any good authority that these have any power at all to take sureties of such an offender; but it seems certain, that a justice has a discretionary power either to commit him or to bail him till the year and day be past. But it is said that he ought to be very cautious how he takes bail if the wound be dangerous; for that if the party die, and the offender appear not, he is in danger of being severely fined if he shall appear upon the whole circumstances of the case to have been too favourable. 1 *Hawk.* c. 63, s. 19; see further, *post*, **Arrest**, Vol. I.

V. Punishment of an Affray.

Punishment of.

All affrays in general are punishable by fine or imprisonment, or both; 1 *Hawk.* c. 63, s. 20; and a very high fine will be imposed for an affray in a court of justice; 3 *Inst.* 141; 12 *Co.* 71; and as to an affray in a church, see **Church**, Vol. I.

Affrays are inquirable in the leet as common nuisances. 3 *Inst.* 158.

VI. Forms.

(No. 1.)

Warrant to apprehend affrayers.

Westmorcland. { *To the Constable of and all other Constables and others whom these may concern.*

Whereas A. I. of yeoman, hath this day made oath before me, J. P., Esquire,

FORMS.

one of his Majesty's justices of the peace for the said county, that on the day of in the year of the reign of , A. O. of yeoman, and B. O. of yeoman, at in the said county, [in a tumultuous manner made an affray, wherein the person of the said A. I. was beaten and abused by them the said A. O. and B. O. without any lawful or sufficient provocation given to them or either of them by him the said A. I.] [or see another form, *infra.*] *These are therefore to command you forthwith to apprehend the said A. O. and B. O., and bring them before me or some other of his Majesty's justices of the peace for the said county, to answer the premises and to find sureties as well for their personal appearance at the next general quarter sessions of the peace, to be holden for the said county, then and there to answer to an indictment to be preferred against them by the said A. I. for the said offence, as also for their keeping the peace in the meantime towards his said Majesty and all his liege people, and especially towards him the said A. I. Hereof fail not, as you will answer the contrary at your peril. Given under my hand and seal at in the said county, the day of* 1830.

(No. 2.)

Commitment for an affray.

[Commencement as usual, as *ante*, p. 8.] *that on, &c. C. D. of yeoman, at, &c. in a tumultuous manner made an affray, wherein the person of the said A. B. was beaten and abused by them the said C. D. and G. H. without any lawful or sufficient provocation given to them, or to any or either of them by him the said A. B.* [Conclude as usual, as *ante*, p. 8.]

(No. 3.)

The like in another form.

[Commencement as usual, as *ante*, p. 8.] *that on, &c. C. D. of labourer, E. F. of labourer, and G. H. of yeoman, did in a tumultuous manner and with force and arms make an affray to the terror of his Majesty's subjects then and there being, wherein the said A. B. was assaulted, beaten, and abused by the said* C. D., E. F., *and G. H., without any just or reasonable cause.* [Conclude as usual, as *ante*, p. 8.]

(No. 4.)

The like in another form.

[Commencement as usual, as *ante*, p. 8.] *that the said A. B. and C. D. on, &c. at in the said county, in a certain public street and highway there, unlawfully and to the great terror and disturbance of his Majesty's subjects there being, did make an affray.* [Conclude as usual, as *ante*, p. 8.]

(No. 5.)

Indictment for an affray.

——*The Jurors for our Lord the King upon their oath present, that A. O. late of, &c. and B. O. late of the same place, labourer, with force and arms on, &c. at, &c. aforesaid, in the county aforesaid, [being arrayed and unlawfully assembled together in a warlike manner did make an affray, to the terror and disturbance of divers of the subjects of our said Sovereign Lord the King then and there being,]* [or the form may be like those stated in the commitments, *supra,*] *and to the evil example of all others, and against the peace of our said Lord the King his crown and dignity.*

Agents. *See ante,* Accessaries.

An agent is indictable for taking too large a brokerage in negociating an annuity. See 17 Geo. III. c. 26, s. 7; 6 *T. R.* 265; *post,* **Annuity.**

As to embezzlement by, see *post,* **Larceny,** Vol. III.; when good witnesses, *post,* **Evidence,** Vol. II. and Index.

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I. What an Alehouse, &c.; who may keep it, &c. and where.

What an inn, &c.

AN *inn* or hostel may be defined to be a house in which travellers, passengers, wayfaring men, and other such like casual guests, are provided with

victuals and lodgings for themselves, luggage, and their horses. See *R.* v. *Luellin*, 12 *Mod.* 445. WHAT IS, WHO MAY KEEP, &c.

An *alehouse* is a house in which ale is sold by retail, to be drunk or consumed on the premises.

Every inn, therefore, is not an alehouse, nor every alehouse an inn; but if an inn uses common selling of ale, it is then also an alehouse; and if an alehouse lodges and entertains travellers, it is also an inn.

A *coffee-house* is a house where coffee is sold, and is not of itself an inn. *Doe* d. *Pitt* v. *Laiming*, 4 *Campb.* 77. But in the case of *Thompson* v. *Lacy*, 3 *Barn. & Ald.* 283, it was held, that a house of public entertainment in London, where beds, provisions, &c. are furnished for all persons paying for the same, but which was merely called a coffee-house and tavern, and was not frequented by stages and waggons from the country, and which had no stables, was to be considered as an inn. A house in which lodgers are received and provided with meat and drink under an agreement at a stipulated rate, is not an inn, although the master of the house provides stabling. *Salk.* 387; 12 *Mod.* 284; *post*, 102, 103.

An *hotel* is a place for the accommodation of occasional lodgers, who are supplied with apartments hired for the night or by the week—it is not unlike an inn. See last cited case, and *Jones* v. *Osborn*, 2 *Chit. Rep.* 484.

A *tavern* is a place where wine and liquors are sold and drinkers entertained.

A *victualling-house* is a house where persons are provided with victuals, but without lodging.

At common law, any person may erect or keep an inn to lodge travellers without any license or allowance; *Hutt.* 99; *Dalt.* c. 56; but we shall hereafter see, that where a license is necessary by statute, a restriction is imposed against some persons keeping an inn, *post*, 58, 59. Who may erect or keep.

It has indeed been laid down in prior editions of this work, citing 1 *Hawk.* c. 78, s. 1, that no man can set up a new inn in a place where there is no manner of need of one, to the hinderance of other ancient and well-governed inns, or keep it in a place in respect of its situation wholly unfit for such a purpose; this, however, seems an incorrect doctrine, for no place is entitled to this privilege, unless it be of the character of a franchise originating in a grant from the crown. See 2 *Roll. Ab.* 84, 85. Inn not a franchise.

At one time a doubt prevailed, whether an inn was not a franchise, but this was denied to be the case in 2 *Roll. Ab.* 84, 85.

There does not appear to be any common law restrictions peculiarly applicable to innkeepers; *Parker* v. *Flintt*, *Holt*, 366; *Stevens* v. *Watson*, *Salk.* 45; and though it has been said that the keeper of an inn may by the common law be indicted and fined as being guilty of a public nuisance, if he usually harbour thieves or persons of scandalous reputation, or suffer frequent disorders in his house; 1 *Hawk.* c. 78, s. 1; yet this doctrine would apply to any other person, see *post*, 75. No common law restrictions peculiarly applicable to inns.

It seems, however, an innkeeper might be indicted for taking exorbitant prices. 6 *T. R.* 7; see *post*, 75. There are also various other common law liabilities affecting innkeepers in a civil point of view, as will be seen, *post*, 81, *et seq.*

By the General Highway Act, 13 Geo. III. c. 78, s. 62, a person collecting tolls of a public bridge is prohibited from keeping an alehouse. See *post*, Highways, Vol. III. 62. Alehouses, &c. near bridges.

II. License for Selling Beer, Cyder and Perry by Retail.

Any person, it seems, (except he be one of those prohibited by the second section of 1 Will. IV. c. 64, *post*, 59,) may sell beer, ale and porter, or cyder and perry, by retail, in his house or premises, provided he obtain an excise license under the provisions of that act. Who may take out license.

But if he keep a *common inn*, *alehouse*, *or victualling-house*, then, in order to enable him legally to sell beer, ale and cyder, or any other exciseable liquor, (as to the meaning of which term, see *post*, 72,) by retail, to be drunk and consumed on the premises wherein he keeps such inn, &c. he must take out the several licenses required by the 9 Geo. IV. c. 61, *post*, 69, &c. He need not, for that purpose, *also* take out a license under the 1 Will. IV. c. 64. If an innkeeper

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1 Wil. 4, c. 64.

such person shall, before receiving such license, or at the time of receiving the same, enter into a bond to the commissioners of excise with one sufficient surety in the penalty of twenty pounds, or with two sufficient sureties in the penalty of ten pounds each, such surety or sureties being the person or persons named in the application of the party requiring the license, or some other person or persons approved of by the said commissioners or by the person authorised to grant such licenses; and such bond shall be executed by such person and his surety or sureties, conditioned for the payment by such person, or his surety or sureties, of any penalty or sum of money not exceeding the amount of such twenty pounds or ten pounds respectively, which shall be incurred for any offence against this act by the party to whom such license shall be granted, or for the payment of such sum of twenty pounds or ten pounds respectively, in case any penalty incurred by such party licensed shall exceed such twenty pounds or ten pounds respectively; and it shall be lawful for the said commissioners or the person so authorised by them, or for such collector or supervisor of excise respectively, to judge of and determine upon the sufficiency of any such surety or sureties: provided always, that such bond shall not be subject or liable to the payment of any stamp duty whatever; any thing in any act or acts to the contrary notwithstanding."

Stamp duty.

No person licensed to sell beer shall be competent to be a surety.

Who not a Sufficient Surety]—Sect. 5 provides and enacts, "that no person licensed to sell beer by retail under the provisions of this act, and that no person not being a householder assessed to and paying the poor rates within the parish in which the person licensed shall be resident, shall be deemed competent to be or shall be accepted as a surety in any such bond as aforesaid."

Persons licensed to retail beer shall put up descriptive boards.

Descriptive Boards to be put up on House, &c.]—Sect 6 enacts, "that every person who shall be licensed to sell beer, ale, and porter by retail under the provisions of this act shall cause to be painted, in letters three inches at least in length, in white upon a black ground, or in black upon a white ground, publicly visible and legible, upon a board to be placed over the door of the house or premises in which such person shall be licensed to sell beer by retail, the Christian and surname of the persons mentioned in such license, at full length, together with the words "licensed to sell beer by retail;" and every such person shall preserve and keep up such name and words so painted as aforesaid during all the time that such person shall continue so licensed, upon pain that every person in any respect making default herein shall forfeit and pay for every such offence the sum of ten pounds."

Penalty.

No person shall sell beer after expiration of his license.

Selling without License, Renewal of License]—Sect. 7 enacts, "that no person shall sell any beer by retail under the provisions of this act at any time after the expiration of any license granted under this act, nor in any house or place not specified in such license:

License may be renewed yearly.

Provided always, that it shall be lawful for any person so licensed to take out a fresh retail license for the selling beer by retail before the expiration of any former retail license, and so from year to year;

Penalty on selling without license, 20*l.*

And if any person, not being duly licensed to sell beer as the keeper of a common inn, alehouse, or victualling house, shall sell any beer by retail without having an excise retail license in force authorising such person so to do, or after the expiration of any such license, or without renewing such license in manner aforesaid, or in any house or place not specified in such license, or if any such person so licensed shall deal in or retail any wine or spirits, every such person so offending shall for every such offence forfeit and lose the sum of twenty pounds."

An indictment will not lie for selling ale without license; for where an act of parliament gives a particular penalty, the party shall not be punished by indictment. *Anon.* 6 *Mod.* 86; see also 1 *Saund.* 250 *e.* n. (3); and *post*, **Indictment**, Vol. III.

Such penalty may be recovered as other excise penalties.

Penalty for selling without License to be recovered as Excise Penalty]—Sect. 8 enacts, "that the said last-mentioned fine, penalty, or forfeiture of

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1 Wil. 4, c. 64.

twenty pounds, shall and may be sued for, recovered, levied, mitigated and distributed by such ways, means, and methods as any fine, penalty, or forfeiture may be sued for, recovered, levied, mitigated, or distributed by any law or laws of excise; and that one moiety of every such fine, penalty, or forfeiture shall be to his Majesty, his heirs and successors, and the other moiety to him or them who shall inform, discover, or sue for the same."

Powers of Excise, Act, 7 & 8 Geo: 4. c. 53, &c. extended to this Act.*

Powers of Excise Act extended to this]—Sect. 9 enacts, "that all the powers and authorities, directions, rules, regulations, methods, penalties, forfeitures, clauses, matters, and things, which in and by an act made in the eighth year of the reign of his late Majesty King George the Fourth, intituled 'An Act to consolidate and amend the Laws relating to the Collection and Management of the Revenue of Excise throughout Great Britain and Ireland,' or by any other law now in force relating to his Majesty's revenue of excise, are provided and established for enforcing, regulating, managing, raising, levying, collecting, paying, mitigating, recovering, adjudging, or distributing the penalties thereby imposed, and all matters and things therein relating to excise licenses, (except where otherwise provided by this act, or repugnant thereto,) shall and may be exercised, practised, applied, used, and put in execution in and for the enforcing, regulating, managing, raising, levying, collecting, paying, mitigating, recovering, adjudging, or distributing the said penalty of twenty pounds, and all matters and things relating to the said licenses hereby authorised and required to be granted as aforesaid, as fully and effectually to all intents and purposes as if all and every the said powers, authorities, directions, rules, regulations, methods, penalties, forfeitures, clauses, matters, and things were particularly repeated and re-enacted in this present act; any thing herein-after contained to the contrary thereof in anywise notwithstanding."

Proviso for partners.

License shall not extend to any other house.

Partnership]—Sect. 10 provides and enacts, "that persons trading in partnership, and in one house or premises only, shall not be obliged to take out more than one license in any one year, for selling any beer by retail under the provisions of this act: provided also, that no one license which shall be granted by virtue of this act shall authorise or empower any person or persons to sell any beer, ale, or porter, under the provisions of this act, in any house or place other than the house or place mentioned in such license for selling beer, ale, and porter by retail under the provisions of this act, and in respect whereof such license shall be granted."

Houses to be closed by order of justices in cases of riot, &c.†

Houses to be closed in Riots]—Sect. 11 enacts, "that it shall be lawful for any one justice acting for any county or place where any riot or tumult shall happen, or for any two or more justices where any riot or tumult may be expected to take place, to order or direct that every person licensed under this act, and keeping any house, situate within their respective jurisdictions, in or near the place where such riot or tumult shall happen or be expected to take place, shall close his house at any time which such justice or justices shall order or direct; and every such person who shall keep open his house at or after any hour at which such justices shall have so ordered or directed such house to be closed shall be taken and deemed to have not maintained good order and rule therein, and to be guilty of an offence against the tenor of the license granted to such person."

Standard measures to be used.‡

Standard Measures to be used]—Sect. 12 enacts, "that every person under this act licensed to sell beer by retail shall sell or otherwise dispose of all such beer by retail (except in quantities less than a half-pint) by the

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* See this act and law, *post*, Excise, Vol. II. In *R. v. Hanson*, 4 *B. & Ald.* 519, it was held, that no appeal would lie to the sessions from a conviction for selling ale without an excise license.

† See further, *post*, 77.

‡ See *post*, Weights and Measures, Vol. V.; and see further, *post*, s. VI.

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1 Wil. 4, c. 64.

such person shall, before receiving such license, or at the time of receiving the same, enter into a bond to the commissioners of excise with one sufficient surety in the penalty of twenty pounds, or with two sufficient sureties in the penalty of ten pounds each, such surety or sureties being the person or persons named in the application of the party requiring the license, or some other person or persons approved of by the said commissioners or by the person authorised to grant such licenses; and such bond shall be executed by such person and his surety or sureties, conditioned for the payment by such person, or his surety or sureties, of any penalty or sum of money not exceeding the amount of such twenty pounds or ten pounds respectively, which shall be incurred for any offence against this act by the party to whom such license shall be granted, or for the payment of such sum of twenty pounds or ten pounds respectively, in case any penalty incurred by such party licensed shall exceed such twenty pounds or ten pounds respectively; and it shall be lawful for the said commissioners or the person so authorised by them, or for such collector or supervisor of excise respectively, to judge of and determine upon the sufficiency of any such surety or sureties: provided always, that such bond shall not be subject or liable to the payment of any stamp duty whatever; any thing in any act or acts to the contrary notwithstanding."

Stamp duty.

No person licensed to sell beer shall be competent to be a surety.

Who not a Sufficient Surety]—Sect. 5 provides and enacts, "that no person licensed to sell beer by retail under the provisions of this act, and that no person not being a householder assessed to and paying the poor rates within the parish in which the person licensed shall be resident, shall be deemed competent to be or shall be accepted as a surety in any such bond as aforesaid."

Persons licensed to retail beer shall put up descriptive boards.

Descriptive Boards to be put up on House, &c.]—Sect 6 enacts, "that every person who shall be licensed to sell beer, ale, and porter by retail under the provisions of this act shall cause to be painted, in letters three inches at least in length, in white upon a black ground, or in black upon a white ground, publicly visible and legible, upon a board to be placed over the door of the house or premises in which such person shall be licensed to sell beer by retail, the Christian and surname of the persons mentioned in such license, at full length, together with the words "licensed to sell beer by retail;" and every such person shall preserve and keep up such name and words so painted as aforesaid during all the time that such person shall continue so licensed, upon pain that every person in any respect making default herein shall forfeit and pay for every such offence the sum of ten pounds."

Penalty.

No person shall sell beer after expiration of his license.

Selling without License, Renewal of License]—Sect. 7 enacts, "that no person shall sell any beer by retail under the provisions of this act at any time after the expiration of any license granted under this act, nor in any house or place not specified in such license:

License may be renewed yearly.

Provided always, that it shall be lawful for any person so licensed to take out a fresh retail license for the selling beer by retail before the expiration of any former retail license, and so from year to year;

Penalty on selling without license, 20*l*.

And if any person, not being duly licensed to sell beer as the keeper of a common inn, alehouse, or victualling house, shall sell any beer by retail without having an excise retail license in force authorising such person so to do, or after the expiration of any such license, or without renewing such license in manner aforesaid, or in any house or place not specified in such license, or if any such person so licensed shall deal in or retail any wine or spirits, every such person so offending shall for every such offence forfeit and lose the sum of twenty pounds."

An indictment will not lie for selling ale without license; for where an act of parliament gives a particular penalty, the party shall not be punished by indictment. *Anon.* 6 *Mod.* 86; see also 1 *Saund.* 250 *e.* n. (3); and *post*, **Indictment**, Vol. III.

Such penalty may be recovered as other excise penalties.

Penalty for selling without License to be recovered as Excise Penalty]—Sect. 8 enacts, "that the said last-mentioned fine, penalty, or forfeiture of

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twenty pounds, shall and may be sued for, recovered, levied, mitigated and distributed by such ways, means, and methods as any fine, penalty, or forfeiture may be sued for, recovered, levied, mitigated, or distributed by any law or laws of excise; and that one moiety of every such fine, penalty, or forfeiture shall be to his Majesty, his heirs and successors, and the other moiety to him or them who shall inform, discover, or sue for the same."

1 Wil. 4, c. 64.

Powers of Excise, Act, 7 & 8 Geo. 4. c. 53, &c. extended to this Act.*

Powers of Excise Act extended to this]—Sect. 9 enacts, "that all the powers and authorities, directions, rules, regulations, methods, penalties, forfeitures, clauses, matters, and things, which in and by an act made in the eighth year of the reign of his late Majesty King George the Fourth, intituled 'An Act to consolidate and amend the Laws relating to the Collection and Management of the Revenue of Excise throughout Great Britain and Ireland,' or by any other law now in force relating to his Majesty's revenue of excise, are provided and established for enforcing, regulating, managing, raising, levying, collecting, paying, mitigating, recovering, adjudging, or distributing the penalties thereby imposed, and all matters and things therein relating to excise licenses, (except where otherwise provided by this act, or repugnant thereto,) shall and may be exercised, practised, applied, used, and put in execution in and for the enforcing, regulating, managing, raising, levying, collecting, paying, mitigating, recovering, adjudging, or distributing the said penalty of twenty pounds, and all matters and things relating to the said licenses hereby authorised and required to be granted as aforesaid, as fully and effectually to all intents and purposes as if all and every the said powers, authorities, directions, rules, regulations, methods, penalties, forfeitures, clauses, matters, and things were particularly repeated and re-enacted in this present act; any thing herein-after contained to the contrary thereof in anywise notwithstanding."

Proviso for partners.

License shall not extend to any other house.

Partnership]—Sect. 10 provides and enacts, "that persons trading in partnership, and in one house or premises only, shall not be obliged to take out more than one license in any one year, for selling any beer by retail under the provisions of this act: provided also, that no one license which shall be granted by virtue of this act shall authorise or empower any person or persons to sell any beer, ale, or porter, under the provisions of this act, in any house or place other than the house or place mentioned in such license for selling beer, ale, and porter by retail under the provisions of this act, and in respect whereof such license shall be granted."

Houses to be closed by order of justices in cases of riot, &c.†

Houses to be closed in Riots]—Sect. 11 enacts, "that it shall be lawful for any one justice acting for any county or place where any riot or tumult shall happen, or for any two or more justices where any riot or tumult may be expected to take place, to order or direct that every person licensed under this act, and keeping any house, situate within their respective jurisdictions, in or near the place where such riot or tumult shall happen or be expected to take place, shall close his house at any time which such justice or justices shall order or direct; and every such person who shall keep open his house at or after any hour at which such justices shall have so ordered or directed such house to be closed shall be taken and deemed to have not maintained good order and rule therein, and to be guilty of an offence against the tenor of the license granted to such person."

Standard measures to be used.‡

Standard Measures to be used]—Sect. 12 enacts, "that every person under this act licensed to sell beer by retail shall sell or otherwise dispose of all such beer by retail (except in quantities less than a half-pint) by the

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* See this act and law, *post*, Excise, Vol. II. In *R.* v. *Hanson*, 4 *B. & Ald.* 519, it was held, that no appeal would lie to the sessions from a conviction for selling ale without an excise license.

† See further, *post*, 77.

‡ See *post*, Weights and Measures, Vol. V.; and see further, *post*, s. VI.

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gallon, quart, pint, or half-pint measure sized according to the standard, and shall also retail the same in a vessel sized according to such standard, and in default thereof he shall for every such offence forfeit the illegal measure, and pay a sum not exceeding forty shillings, together with the costs of the conviction, to be recovered within thirty days next after that on which such offence was committed before two justices; and such penalty shall be over and above all penalties to which the offender may be liable under any other act."

Forfeiture and penalty for not using them.

Penalty on retailers permitting drunkenness, &c. in their houses.

Offences of Drunkenness, Disorderly Conduct, Adulterating Beer, &c.]—Sect. 13 enacts, "that every seller of beer, ale, and porter by retail, having a license under the provisions of this act, who shall permit any person or persons to be guilty of drunkenness or disorderly conduct in the house or premises mentioned in such license, shall for every such offence forfeit the respective sums following; and every person who shall in any way transgress or neglect, or shall be a party in transgressing or neglecting, the conditions and provisions specified in such license, or shall allow such conditions or provisions to be in any way transgressed or neglected, in the house or premises so licensed, shall be deemed guilty of disorderly conduct;

First offence.

And every person so licensed who shall permit any such disorderly conduct shall for the *first* offence forfeit any such sum, not less than forty shillings nor more than five pounds, as the justices before whom such retailer shall be convicted of such offence shall adjudge;

Second offence.

And for the *second* such offence, any sum not less than five pounds nor more than ten pounds;

Third offence.

And for the *third* such offence, any sum not less than twenty pounds nor more than fifty pounds; and it shall be lawful for the justices before whom any such conviction for such third offence shall take place to adjudge, if they shall so think fit, that such offender shall be disqualified from selling beer by retail for the space of two years next ensuing such conviction, and also (if they shall so think fit) to adjudge that no beer shall be sold by retail by any person in the house or premises mentioned in the license of such offender;

Penalty on mixing drugs in beer, or adulterating beer.*

And if any person so licensed as aforesaid shall knowingly sell any beer, ale, or porter made otherwise than from malt and hops, or shall mix or cause to be mixed any drugs or other pernicious ingredients with any beer sold in his house or premises, or shall fraudulently dilute or in any way adulterate any

First offence.

such beer, such offender shall for the *first* offence forfeit any sum not less than ten pounds nor more than twenty pounds, as the justices before whom such offender shall be convicted of such offence shall adjudge;

Second offence.

And for the *second* such offence, such offender shall be adjudged to be disqualified from selling beer, ale, or porter by retail for the term of two years, or to forfeit any sum of money not less than twenty pounds nor more than fifty pounds, at the discretion of the justices before whom such offender shall be adjudged guilty of such second offence;

Penalty on selling after conviction of second offence.

And if any offender convicted of such offence as last aforesaid shall during such term of two years sell any beer, ale, or porter by retail, either in the house and premises mentioned in the license of such offender, or in any other place, he shall forfeit any sum not less than twenty-five pounds nor more than fifty pounds, and shall be subject to a like penalty at any and every house or place where he shall commit such offence; and if any person shall at any time, during any term in which it shall not be lawful for beer to be sold by retail on the premises of any offender, sell any beer by retail on such premises, knowing that it was not lawful to be sold, such offender shall forfeit any sum not less than ten pounds nor more than twenty pounds, as the convicting justices shall adjudge."

Retailers' houses shall not be open before four in the morning nor after ten in the evening;

Hours and Times for selling Beer, &c.]—Sect. 14 enacts, "that no person licensed to sell beer by retail under this act shall have or keep his house open for the sale of beer, nor shall sell or retail beer, nor shall suffer any beer to be drank or consumed, in or at such house, at any time before the hour of

* And see further as to this offence and other provisions, *post*, s. V.

four of the clock in the morning nor after ten of the clock in the evening of day in the week; BEER AND CYDER LICENSE.

Nor at any time between the hours of ten of the clock in the forenoon and one of the clock in the afternoon, nor at any time between the hours of three and five of the clock in the afternoon, on any Sunday, Good Friday, Christmas-day, or any day appointed for a public fast or thanksgiving;* nor on Sundays between ten and one, or three and five, in the day.

And if any such person shall keep his house open for selling beer, or shall sell or retail beer, at any time after the hour of ten of the clock in the evening or before the hour of four of the clock in the morning of any day, or between the hours of ten of the clock in the forenoon and one of the clock in the afternoon, or between the hours of three and five of the clock in the afternoon, on any Sunday, Good Friday, Christmas-day, or any day appointed for a public fast or thanksgiving, such person shall forfeit the sum of forty shillings for every offence; and every separate sale shall be deemed a separate offence." Penalty.

Penalties, amount of, before whom, and in what time recoverable]—Sect. 15 enacts, "that all penalties under this act, save and except the penalty hereinbefore mentioned for selling beer by any person not duly licensed, shall and may be recovered upon the information of any person whomsoever before two justices acting in petty sessions; and that every such penalty shall be prosecuted and proceeded for within three calendar months next after the commission of the offence in respect of which such penalty shall be incurred; and every person licensed under this act who shall be convicted, before two justices so acting in and for the division or place in which shall be situate the house kept or theretofore kept by such person, of any offence against the tenor of the license to him granted under this act, or of any offence for which any penalty is imposed by this act, shall, unless proof be adduced to the satisfaction of such justices that such person had been theretofore convicted before two justices within the space of twelve calendar months next preceding of some offence against the tenor of his license or against this act, be adjudged by such justices to be guilty of a first offence against the provisions of this act, and to forfeit and pay any penalty by this act imposed for such offence, or if no specific penalty be imposed for such offence, then any sum not exceeding five pounds, together with the costs of the conviction; and if proof shall be adduced to the satisfaction of such justices that such person had been previously convicted before two justices within the space of twelve calendar months next preceding of one such offence only, such person shall be adjudged by such justices to be guilty of a second offence against the provisions of this act, and to forfeit and pay any penalty by this act imposed for such offence, or if no specific penalty be so imposed, then any sum not exceeding ten pounds, together with the costs of the conviction; and if proof shall be adduced to the satisfaction of such justices that such person had been previously convicted before two justices within the space of the eighteen calendar months next preceding of two such separate offences, and if proof shall be adduced to the satisfaction of the justices that such person so charged is guilty of the offence charged against him, such person shall be adjudged to be guilty of a third offence against the provisions of this act, and to forfeit and pay any penalty imposed by this act in respect of such offence, or if no such specific penalty shall be imposed, then to forfeit and pay the sum of fifty pounds, together with the costs of the conviction."

Penalties recoverable before two justices in petty sessions, within three months after offence committed.

Penalty where no specific penalty named.

The like for a second offence.

The like for a third offence.

Appeal]—Sect. 16 provides and enacts, "that it shall and may be lawful for the party convicted of any such *third* offence to appeal to the general sessions or quarter sessions of the peace then next ensuing, unless such sessions shall be held within twelve days next after such conviction, and in that case to the then next subsequent sessions;

Appeal to the quarter sessions on a third offence

And in such case the party so convicted shall before such justices so convicting forthwith enter into a recognizance, with two sufficient sureties, Recognisance.

* See further, *post*, s. XIV.

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1 Wil. 4, c. 64.

personally to appear at the said general session or quarter session, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; which recognizances such justices are hereby authorised to require and take; or, in failure of the party convicted entering into such recognizance, such conviction shall remain good and valid to all intents and purposes;

Recognizance to appear, &c.

And the said justices who shall take such recognizance from the party convicted are also hereby required to bind the person who shall make such charge in a recognizance to appear at such general or quarter sessions as aforesaid, then and there to give evidence against the person so charged, and in like manner to bind any other person who shall have any knowledge of the circumstances of such offence;

Judgment of sessions.

And it shall be lawful for the said court of general session or quarter session to adjudge such person to be guilty of any such third offence against the provisions of this act, as the case may be, and such adjudication shall be final to all intents and purposes; and it shall be lawful for such court of general session or quarter session to punish such offender by fine not exceeding the sum of one hundred pounds, together with the costs of such appeal, or to adjudge the license granted to and held by or on behalf of such offender to be forfeited and void, or to adjudge that no beer shall be sold by retail in the house or premises mentioned in the license of such offender for the term of two years from the date of such adjudication, or to punish such offender by such fine as aforesaid, and to adjudge such premises to be disqualified for the sale of beer as aforesaid, and such license to be forfeited and void; and if such license shall be adjudged to be forfeited and void, it shall thenceforth be void accordingly; and whenever in such case or in any other case the license of such offender shall be adjudged to be void, such offender shall from and after such adjudication be deemed and taken to be incapable of selling beer, ale, or porter by retail, in any house kept by him, for the space of two years, to be computed from the time of such adjudication; and any license granted to such person during such term shall be void to all intents and purposes." See *post*, **Appeal**, Vol. I.

Court to adjudge costs of appeal in certain cases.

Costs of Appeal]—Sect. 17 enacts, "that whenever it shall happen that any appeal respecting which any recognizance shall be entered into in pursuance of this Act shall be dismissed, or that the conviction appealed against shall be affirmed, or that such appeal shall be abandoned, it shall be lawful for the court to whom such appeal shall have been made or intended to be made, and such court is hereby required to adjudge and order that the party so having appealed or having entered into such recognizance shall pay to the justices before whom such recognizance shall have been entered into, or to whomsoever they shall appoint, such sum by way of costs as shall in the opinion of such court be sufficient to indemnify such justices from all costs and charges whatsoever to which such justices may have been put in consequence of the intention or declared intention of such party to appeal; and if such party shall refuse or neglect to pay forthwith such sum, it shall be lawful for the said court to adjudge and order that the party so refusing or neglecting shall be committed to the common gaol or house of correction, there to remain until such sum be paid, or for any time not exceeding six calendar months, unless such sum be sooner paid;

Commitment in case of nonpayment.

Costs where judgment reversed.

And in every case in which the conviction so appealed against shall be reversed, it shall be lawful for such court (if it shall think fit) to adjudge and order that the treasurer of the county or place in and for which such justices whose judgment shall have been so reversed shall have acted on the occasion when they shall have given such judgment, shall pay to such justices, or whomsoever they shall appoint, such sum as shall in the opinion of such court be sufficient to indemnify such justices from all costs and charges whatsoever to which such justices may have been so put; and the said treasurer is hereby authorised to pay the same, which shall be allowed to him in his accounts."

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Proceedings to be carried on by Petty Constable]—Sect. 18 enacts, "that in every case in which any appeal shall be made by any person convicted of any offence under the provisions of this Act, to the general session or quarter session, it shall be lawful for the convicting justices, if no other fit and proper person shall appear to prosecute such charge and to carry on such proceedings as may be necessary to obtain at such session an adjudication thereon, to order that the constable or other peace officer of the parish or place in which shall be situate the house kept by the person charged shall carry on all proceedings necessary to obtain such adjudication as aforesaid, and to bind such constable or other peace officer in a sufficient recognizance so to do;

1 Will. 4, c. 64. Proceedings at the session in certain cases to be carried on by the petty constable.* Sect. 18.

And it shall be lawful for the justices before whom such offender shall have been convicted to order the treasurer of the county or place in and for which such justices shall then act to pay to such constable or other peace officer, and to the witness or witnesses on his behalf, such sum or sums of money as to the court shall appear to be sufficient to reimburse such constable or other peace officer, and such witness or witnesses respectively, the expenses that he or they shall have been severally put to in and about such prosecution, which order the clerk of the peace is hereby directed and required forthwith to make out and to deliver to such constable or other peace officer, or to such witness or witnesses; and the said treasurer is hereby authorised and required, upon sight of such order, forthwith to pay to such constable or other peace officer, or other person authorised to receive the same, such money as aforesaid, and the said treasurer shall be allowed the same in his accounts."

Expenses of prosecution to be charged on county rates.

Sureties, Proceedings against, on Default of Payment]—Sect. 19 enacts, "that in case any person licensed under this Act shall be convicted of any offence against this Act, and shall not pay the penalty incurred by such conviction, it shall be lawful for the justices convicting such offender, after the expiration of one calendar month next after such conviction, to summon any surety or sureties named in the bond entered into and executed by such person and his surety or sureties at the time of obtaining his license, to appear before the said justices, and show cause why the penalty mentioned in such bond should not be paid by such surety or sureties, or so much thereof as shall be sufficient to pay any penalty incurred by the party licensed, or to satisfy so much of such penalty so incurred as shall remain unpaid; and in case any such surety shall not show any sufficient cause to the contrary, it shall be lawful for such justices to adjudge that such penalty, if not paid, or so much thereof as aforesaid, shall be paid by such surety within fourteen days; and in case such penalty, or so much thereof as aforesaid, shall not be paid within fourteen days, it shall be lawful for such justices, if they shall think fit, to issue their warrant, and to levy the amount of such penalty, or so much thereof as aforesaid, by distress and sale of the goods and chattels of such surety, together with the costs of such distress and sale; and the certificate of the commissioners of excise, or their officer, or other persons by this Act authorised to grant any license, of the date of such bond, and the names and descriptions of the surety or sureties in such bond, shall be sufficient evidence of such bond, and of the contents and execution thereof, against any surety or sureties in any proceedings under this Act.

In default of payment of penalties, proceedings may be had against the sureties. Sect. 19.

Witnesses not attending, Penalty for]—Sect. 20 enacts, "that any person summoned as a witness to give evidence before any justices or sessions touching any of the matters aforesaid, either on the part of the complainant or of the person accused, who shall neglect or refuse to appear at the time and place for that purpose appointed, and who shall not make such reasonable excuse for such neglect or refusal as shall be admitted and allowed by such justices or sessions, or who appearing shall refuse to be examined on

Penalty on witnesses not attending. Sect. 20.

* By 7 & 8 Geo. IV. c. 38, constables are not required to make presentments respecting unlicensed alehouses.

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oath or affirmation and give evidence, shall on conviction* before such justices forfeit and pay for every such offence any sum not exceeding ten pounds."

1 Will. 4, c. 64.

Penalty.

Penalties may be levied by distress. Sect. 21.

Penalties may be levied by Distress, &c.]—Sect. 21 enacts, "that in every case in which under the authority of this Act any justices shall adjudge that any offender shall pay or cause to be paid any penalty, and such offender shall refuse or neglect, within seven days after his conviction, to pay such penalty, and any costs which shall have been duly assessed and ascertained by such justices, it shall be lawful for such justices, if they shall think fit, to issue their warrant,† and to levy the amount of such penalty and costs by distress and sale of the goods and chattels of such offender, together with the costs of such distress and sale; and in every such case such offender, if in custody at the time that such warrant shall be so issued, shall be forthwith discharged;

If offender has not sufficient goods whereon to levy, justices may commit him.

But if it shall appear to such justices that the goods and chattels of such offender are not sufficient whereon to levy such distress, together with the costs of such distress and sale, it shall be lawful for such justices to commit‡ the offender to the common gaol or to the house of correction of the county or place for which such justices shall be then acting, for any term not exceeding one calendar month if the penalty shall not be above five pounds, for any term not exceeding three calendar months if the penalty shall be above five pounds and shall not be more than ten pounds, and for any term not exceeding six calendar months if the penalty shall be above ten pounds:

Proviso for offenders paying penalties, &c. to gaoler.

"Provided nevertheless, that whenever such offender shall have been committed to the common gaol or house of correction in consequence of his not having duly paid such penalty and costs, if such offender shall pay or cause to be paid to the gaoler or keeper of the house of correction, or to whomsoever such justices shall have appointed, the penalty imposed, and costs, together with all the costs of the apprehension of him and of the conveyance of him to the said gaol or house of correction, at any time previous to the expiration of the time for which such offender shall so have been committed, such offender shall be forthwith discharged." See *post*, **Distress**, Vol. I.

Application of penalties. Sect 22.

Application of Penalties]—Sect. 22 enacts, "that any justices before whom any penalty shall be recovered under the provisions of this Act shall award, if they shall think fit, any portion of the same, not in any case exceeding one moiety thereof, to the use of the prosecutor; and the remainder, or in case no part of such penalty shall be awarded to the prosecutor, then the whole of such penalty shall be awarded to be paid and shall be paid to the treasurer of the county within which such offence shall be committed, to be applied by the said treasurer towards defraying the expenses of such county, and in aid of the county rates of such county."

If justices of liberties, &c. do not attend at sessions, the county justices may act. Sect. 23.

Justices of Liberties, &c. not attending Sessions, Justices of Counties may act]—Sect. 23 enacts, "that whenever at any session for any liberty, county of a city, county of a town, city or town corporate, there shall not be present at least two justices acting in and for any such liberty, county of a city, county of a town, city or town corporate, it shall be lawful for the justices acting in and for the county or counties adjoining to such liberty, county of a city, county of a town, city or town corporate, to act within such liberty or place, and with the justice or justices thereof who shall be present at any such sessions as aforesaid, for the purpose of hearing complaints as to offences against this act; any law, custom, or usage to the contrary notwithstanding."

Powers hereby given to justices of counties not to extend to the cinque ports. Sect. 24.

Powers of Justices of Counties not to extend to Cinque Ports]—Sect. 24 provides and enacts, "that nothing herein contained shall extend to give the justices of the county or any division thereof any power or authority for the putting of the provisions of this Act in execution within any of the cinque

* See the form, (No. 20), *post*.

† See the form, (No. 24), *post*.

‡ See the form, (No. 25), *post*.

ports or either of the two ancient towns, or any of the corporate or other members or liberties of the cinque ports or two ancient towns; but that it shall be lawful for the justices of and for each of the principal cinque ports and two ancient towns, and the liberties thereof, and for the justices of and for the liberties thereof, and the corporate members, to act within the same respectively as they have been accustomed, and for them or any of them to act within each of the corporate members immediately belonging or subordinate to such principal cinque port or ancient town, with the justice or justices of each such corporate member, for the purpose of hearing complaints as to offences against this Act in all such cases in which the justices of the county are hereinbefore empowered or authorised to act with the justice or justices of any liberty, county of a city, county of a town, city or town corporate."

1 Will. 4, c. 64.

Form of Conviction]—Sect. 25 is as follows: "And in order to prevent frivolous and vexatious appeals be it further enacted, that a conviction in the form or to the effect following, *mutatis mutandis*, as the case may be, shall be good and effectual to all intents and purposes whatsoever, without stating the case or the facts or evidence in any more particular manner; (that is to say,)

Form of conviction. Sect. 25.

"} *Be it remembered, that on this day of in the year ,* *to wit.* } *A. B. of , was duly convicted before us, C. D. and E. F. two of his Majesty's justices of the peace in petty sessions for the of , for that* [here state the offence, and the time and place when committed,] *whereby the said A. B. has forfeited the sum of , this being adjudged to be the first* [or *second*, or *third*] *offence* [as the case shall happen to be] *against the provisions of an act to permit the general sale of beer and cyder by retail in England, besides the costs of this conviction, which we the said justices do hereby assess at the sum of , pursuant to the statute in such case made and provided. Given under our hands and seals, the day and year above written.*"

Convictions to be returned to Sessions and filed]—Sect. 26 enacts, "that the justices before whom any such conviction shall have been made shall return the same, or cause the same to be returned, to the next general session or quarter session of the peace, holden for the county or place wherein the offence shall have been committed, and such conviction shall be then and there delivered to the clerk of the peace or other person acting as such, to be by him filed or enrolled amongst the records of the said court; and the certificate of the clerk of the peace of such conviction, which he is hereby required to grant, on demand, upon payment of one shilling, shall be legal evidence of every such conviction."

Convictions to be returned to the quarter sessions, and filed of record. Sect. 26.

Certiorari]—Sect. 27 enacts, "that no conviction under this Act, nor any adjudication made upon appeal therefrom, shall be quashed for want of form, nor shall be removed by writ of certiorari or otherwise into any of his Majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and that there be a good and valid conviction to sustain the same." See *post*, **Certiorari, Conviction**, Vol. I.

Certiorari not to be allowed. Want of form, &c. Sect. 27.

Actions against Justices, &c.]—Sect. 28 enacts, "that every action against any justice, constable, or other person, for or on account of any matter or thing whatsoever done or commanded by him in the execution of his duty or office under this Act, shall be commenced within three calendar months after the cause of action or complaint shall have arisen, and not afterwards; and if any person shall be sued for any matter or thing which he shall have done in the execution of this Act, he may plead the general issue and give the special matter in evidence."

Actions against Justices, &c. Sect. 28.

Limitation of.

General issue.

As to the law relative to enactments of this nature, see *post*, **Justices**, Vol. III.

University Rights, Sales at Fairs, &c.]—Sect. 29 provides and enacts, "that nothing in this Act contained shall extend to alter or in any manner

Act not to affect the two Universi-

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1 Will. 4, c. 64.

to affect any of the rights or privileges of the Universities of Oxford or Cambridge, or any of the powers and authorities vested by charter or otherwise in the chancellors, masters, and scholars of the said Universities, and their successors, or in the master, wardens, freemen, and commonalty of the Vintners of the city of London, but not to extend to those freemen of the said Company of Vintners who have obtained the same by redemption only;

ties, nor the Vintners' Company in London;

Nor in any way to affect any license to the keeper of any inn, alehouse, or victualling house, unless in so far as relates to the sale of beer by retail;

nor to prohibit the sale of beer at fairs as heretofore.

Nor to prohibit any person from selling beer in booths or other places at the time and within the limits of the ground or place in or upon which is holden any lawful fair, in like manner as such person was authorised to do before the passing of this Act."

Licenses to retail cyder may be granted under the regulations of this act, on payment of 1*l.* 1*s.* duty. Sect. 30.

Retail, &c. of Cyder]—Sect. 30 is as follows: "And whereas it is expedient that the sale of cyder and perry by retail should be licensed in like manner and should be subject to the like regulations as the sale of beer;" be it therefore enacted, "that from and after the tenth day of October, one thousand eight hundred and thirty, it shall be lawful for any person desirous of selling cyder and perry by retail to apply for and to obtain an excise license for that purpose, under the same regulations in all respects (except as hereinafter is otherwise provided) as are in this Act prescribed and contained with respect to persons desirous of selling beer, ale, and porter by retail, and of being licensed for that purpose;

Provisions and penalties of this act with respect to the sale of beer to apply to the sale of cyder.

And that all the clauses, regulations, and provisions in this Act contained relating to the sale of beer by retail, and to the licenses for selling the same, and to the sureties for the parties licensed, and to the conduct of the parties licensed, and to all other matters whatever respecting the selling of beer by retail, and the retailers thereof, and the licenses for the same, and the houses where the same are sold, and the penalties against the parties licensed, shall be taken and deemed to be applicable to the sale of cyder and perry by retail, and to licenses for the same, and to the sellers of cyder and perry by retail, as if cyder and perry, and the retailers thereof, were expressly mentioned and specified in and throughout this Act: Provided always, that the person receiving a license for selling cyder or perry by retail shall pay for such license a duty of one pound one shilling and no more, instead of the duty of two pounds two shillings hereinbefore mentioned, and which said duty of one pound one shilling shall be applied in like manner as the said duty of two pounds two shillings is hereinbefore directed to be applied; and every such license shall be according to the form in the schedule annexed to this act: provided also, that any person licensed under this act to sell beer by retail may sell also cyder and perry by retail without receiving a separate license for that purpose; but that no person licensed to sell cyder and perry by retail, and paying for such license, as herein provided, the sum of one pound and one shilling, shall be at liberty to sell beer by retail."

Persons licensed to retail beer may also retail cyder; but not *vice versa*.

Covenants against houses, &c. being used as public houses to extend to persons licensed under this act. Sect. 31.

Covenants in Leases, &c. not affected]—Sect. 31 provides and enacts, "that any and every covenant or clause of restriction contained in any lease or contract between any landlord and tenant, whereby the trade or business of a victualler or publican is prohibited from being carried on in any house, building, or place mentioned or comprised in such lease or contract, or whereby any such house, building, or place is prohibited from being used as a public house or alehouse, shall apply and extend, and shall be construed to apply and extend, to every person who shall be licensed to sell beer, ale, or porter, or cyder or perry, under the provisions of this act, and to any and every house specified and mentioned in the license granted to such persons."

Rules for the interpretation of this act. Sect. 32.

Rules of Interpretation of Act]—Sect. 32 is as follows: "And in order to remove doubts as to the meaning of certain words in this act, be it enacted, that the word 'justice' shall be deemed to mean justice of the peace; and that the word 'person,' and the word 'party,' shall be deemed to include any number of persons and parties; and that the word 'license,' and the

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word 'day,' and the word 'time,' and the word 'house,' and the word 'place,' shall each be deemed to include any number of licenses, days, times, houses, or places; and that the word 'beer,' shall in all cases be deemed to include beer, ale, and porter; and that the word 'cyder,' shall in all cases be deemed to include cyder and perry; and that the word 'county,' and the words 'county or place,' shall be deemed severally to include any county, riding, division of the county of Lincoln, hundred, division of a county, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and the words 'division or place,' shall be deemed to include any division of a county or riding, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and that the words 'parish or place,' shall be deemed to include any township, hamlet, tithing, vill, extra-parochial place, or any place maintaining its own poor; and that the word 'penalty,' shall be deemed to include any fine, penalty, or forfeiture of a pecuniary nature; and that the meaning of the several words in this act shall not be restricted, although the same may be subsequently referred to in the singular number or masculine gender only."

1 Will. 4, c. 64, s. 32.

6 Geo. 4, c. 81, s. 22. Persons disabled by conviction from keeping a common inn, &c. not allowed to retail beer under any excise license.

The 6 Geo. IV. c. 81, s. 22, precludes persons disabled by conviction from keeping a common inn, &c. from retailing beer, &c. under any excise license. The enactment is as follows—"that all and every person or persons who shall be disabled by any conviction from holding or having a license to keep or from keeping a common inn, alehouse, or victualling-house, shall also by such conviction be disabled from taking out and from having any excise license to sell and from selling beer, cyder or perry by retail, in any manner whatsoever, under any excise license or licenses obtained for such purpose; and if any such person shall, after such conviction as aforesaid, take out or have any excise license or licenses for any such purpose as aforesaid, the same shall and is hereby declared to be absolutely null and void to all intents and purposes; and every person who shall, after such conviction as aforesaid, sell any beer, cyder or perry by retail in any manner whatsoever, shall incur the penalty for so doing without license; and in all such cases in the prosecution for the recovery of such penalty, a certificate from the clerk of the peace, or person acting as such, of any such conviction as aforesaid, shall, on the trial in such prosecution, be legal evidence thereof, which certificate such clerk of the peace, or other person acting as such, is hereby authorised and required, within one week after any such conviction shall have been returned to his office, to deliver to the collector of excise, or other person or persons authorised to grant excise licenses within the district or place in which such conviction shall have taken place, setting forth a copy of such conviction signed by himself, for which he shall demand no fee or reward whatsoever, and if any such clerk of the peace, or other person acting as such as aforesaid, shall neglect or omit to deliver such certificate as aforesaid, he shall for every such offence forfeit the sum of ten pounds." See the 23d section, *post*, 78.

Clerk of the peace neglecting to deliver copy of conviction or a certificate.

Penalty.

III. License to sell Wine and Spirits, &c. in Public Houses.

To enable a person to keep a public house, and sell therein wine and spirits, beer, cyder or perry, or other exciseable liquors, two licenses are necessary; first, a *magistrates'* license; and, secondly, an *excise* license. Neither is operative alone, both together they become so. *R.* v. *Drake*, 1 *Burn's J.* 24th edit. 56; *R.* v. *Downes*, 3 *T. R.* 560.

We shall in this place notice only the laws and regulations as to the *magistrates'* license; as to the license to be obtained from the excise, see *post*, Excise, Vol. II.*

9 Geo. IV. c. 61. Recital of act.

The only act now in force regulating the licensing of alehouses by magistrates, for the selling therein of wine, spirits, beer, cyder, perry, or other

* The statute regulating alehouses in Scotland is the 9 Geo. IV. c. 58.

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exciseable liquors, is the 9 Geo. IV. c. 61, entitled, "*An Act to regulate the granting of Licenses to Keepers of Inns, Alehouses, and Victualling Houses in England,*" which commences by reciting the expediency of reducing into one act the laws relating to the licensing, by justices of the peace, of persons keeping or about to keep inns, alehouses and victualling-houses, to sell exciseable liquors by retail, to be drunk or consumed on the premises, in that part of the United Kingdom called England.

The act came into operation on the 10th of October, 1828. Sect. 35.

Division of the subject.

We will consider this statute of 9 Geo. IV. c. 61, and the various laws and regulations relative to the magistrates' license for selling wine, spirits, beer, cyder or perry, or other exciseable liquors, in the following order:—

1*st.* *The Repeal of Statutes prior to the 9 Geo. IV. c.* 61, 70.
2*d.* *The Places, &c. exempted from the Provisions of that Act,* 71.
3*d.* *The Rules for Interpretation of that Act,* 71.
4*th.* *The Places which require the License,* 72.
5*th.* *Who are disqualified from having it,* 73.
6*th.* *Licensing Meetings, when and where held,* 73.
7*th.* *Proceedings by Party before applying for License,* 74.
8*th.* *Proceedings at the Meeting to obtain License—*
What Justices may act or not, 75.
The Presence of the Applicant, 77.
The Grant or Refusal of the License, 77.
The Adjournment of the Meeting, 77.
9*th.* *The License, its Form, Duration and Effect,* 78.
10*th.* *The Transfer of the License, and Grant of a fresh License in Case of removal, Death, Bankruptcy, or other Contingency,* 78.
11*th.* *Fees for granting the License,* 80.
12*th.* *Penalty for selling Wine or Spirits, &c. without Justices' License,* 81.
13*th.* *Measures for Sale of Wine or Spirits, &c.* 82.
14*th.* *Closing Public Houses in Riots,* 82.
15*th.* *Offences against the Tenor of License,* 82.
16*th.* *Conviction under Act, Form and Filing of, &c.* 84.
17*th.* *Penalties, how to be recovered and applied,* 85.
18*th.* *Appeals, &c.* 87.
19*th.* *Limitation of Actions against Justices, &c. Plea, &c.* 89.
20*th.* *Remedies on Refusal to grant or transfer License, by Appeal, Mandamus, Action, Indictment, Criminal Information, &c.* 89.
21*st.* *Remedy for improperly granting a License,* 92.

(1.) Repeal of Statutes prior to 9 Geo. IV. c. 61.

Repeal of acts.

By 9 Geo. IV. c. 61, s. 35, the act is to commence on the 10th of October next ensuing the passing thereof, and the section then repeals the statute 5 & 6 Edw. VI. c. 25; the 1 Jac. I. c. 9; the 4 Jac. I. c. 4 & 5; the 7 Jac. I. c. 10; and so much of the 21 Jac. I. c. 7, s. 4, as provides that any person, being an alehouse keeper, and who shall be convicted of any offence against the said act, shall be disabled from keeping an alehouse for three years; and the 1 Car. I. c. 4; the 3 Car. I. c. 3; and so much of the 9 Geo. II. c. 23, s. 14, 15, 20, as relates to the licensing of retailers of spirituous liquors, and to the conviction of persons selling liquors by retail without a license, and to the summoning of excise officers for the more easy discovery of such offenders; and so much of the 24 Geo. II. c. 40, s. 24, as relates to the fees of justices' clerks; and so much of the 26 Geo. II. c. 13, s. 12, as prevents justices of the peace in

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certain cases from granting licenses; and the whole of the 26 Geo. II. c. 31; and so much of the 28 Geo. II. c. 19, s. 2, as explains a clause in the last-mentioned act; and so much of the 29 Geo. II. c. 12, s. 23, 24, as relates to continuing and renewing licenses; and so much of the 30 Geo. II. c. 24, s. 14, as imposes a penalty on the keepers of public houses for suffering gaming; and so much of the 5 Geo. III. c. 46, s. 20, 21, 22, as requires retailers of excisable liquors to exhibit their licenses, and clerks of the peace to deliver lists of persons licensed, and altering the punishment of such retailers selling without a license; and the whole of the 32 Geo. III. c. 59; and so much of the 38 Geo. III c. 54, s. 13, as exempts from the foregoing penalty persons selling beer or ale above certain quantities; and the whole of the 39 Geo. III. c. 86; and so much of the 48 Geo. III. c. 143, s. 7, 10, as relates to the form of justices' licenses, and to justices' clerks' fees; and so much of the 4 Geo. IV. c. 125, s. 1—6, as alters the time for holding such meetings, and for giving notices of applying for licenses for houses not before licensed, "except only such parts of any of the said acts as repeal any former acts or parts of acts, and except also, that all licenses granted and recognizances entered into under the said acts hereby repealed, or any of them, or under the 3 Geo. IV. c. 77,* shall remain in full force and virtue until the end of the terms for which such licenses and recognizances respectively have been or shall be granted or entered into; and all offences against the tenor of the said licenses, or in breach of the conditions of such recognizances, and all offences committed against the said recited acts, or any of them, before the commencement of this act, shall and may be prosecuted, heard, determined, and punished, as if this act had not been made; and all such offences committed after the commencement of this act shall be prosecuted, heard, determined and punished under the provisions of this act."

9 Geo. 4, c. 61.

Except such parts of acts as repeal former acts, and except as to subsisting licenses and recognizances.

(2.) The Places, &c. exempted from 9 Geo. IV. c. 61.

By the 36th section it is provided and enacted, "that nothing in this act contained shall extend to alter or in any manner to affect any of the rights or privileges of the Universities of Oxford or Cambridge, or the powers of the chancellors or vice-chancellors of the same, as by law possessed under the respective charters of the said Universities or otherwise; or the master, wardens, freemen, and commonalty of the Vintners of the city of London, but not to extend to those freemen of the said Company of Vintners who have obtained the same by redemption only; nor to alter the time† of granting licenses for keeping inns in the city of London: provided also, that nothing in this act contained shall alter any law relating to the revenue of excise, except so far as the same is hereby expressly altered and otherwise provided for; nor to prohibit any person from selling beer in booths or other places at the time and within the limits of the ground or place in or upon which is holden any lawful fair, in like manner as such person was authorised to do before the passing of this act."

9 Geo. 4, c. 61, not to affect the two Universities, nor to alter time of licensing in London;

nor any law of excise; nor to prohibit the sale of beer at fairs in certain cases.

(3.) Rules for Interpretation of 9 Geo. IV. c. 61.

In order to remove doubts as to the meaning of certain words in this act, the 37th section of the act, after reciting to that effect, enacts, "that the word 'justice' shall be deemed to mean justice of the peace; and that the words 'treasurer of the county or place,' shall be deemed to include any officer acting in such capacity, or charged with the receipt and expenditure of monies from and out of which the cost of public prosecutions have been

Rules for the interpretation of 9 Geo. 4, c. 61.

* Now expired.

† The magistrates of London must pursue the other regulations of this act relating to the manner and place of holding the meeting. See *R.* v. *Downs*, 3 *Term Rep.* 560; *R.* v. *Justices of Surrey*, 2 *D. & R. Mag. Cas.* 435.

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usually defrayed; that the words 'peace officer' shall be deemed to include any petty constable, tithing-man, headborough, beadle, or bailiff; that the words 'parish officer' shall be deemed to include any churchwarden, or chapel-wardens, or overseer of the poor; and that the said words 'justice,' 'treasurer of the county or place,' 'peace officer,' 'parish officer,' and the words 'high constable,' and the words 'petty constable,' and the words 'overseer of the poor,' and the words 'clerk of justices,' shall each be deemed to include any person acting as such, and any number of justices, treasurers, peace officers, parish officers, high constables, petty constables, overseers of the poor, and clerks of justices; and that the word 'person,' and the word 'party,' shall be deemed to include any number of persons and parties; and that the meaning of the aforesaid several words shall not be restricted, although the same may be subsequently referred to in the singular number and masculine gender only; and that the word 'notice,' and the word 'license,' and the word 'adjournment,' and the word 'day,' and the word 'time,' and the word 'house,' and the word 'place,' shall each be deemed to include any number of notices, licenses, adjournments, days, times, houses, or places; and that the word 'county,' and the words 'county or place,' shall be deemed severally to include any county, riding, division of the county of Lincoln, hundred, division of a county, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and the words 'division or place,' shall be deemed to include any division of a county or riding, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and that the words 'parish or place' shall be deemed to include any township, hamlet, tithing, vill, extra-parochial place, or any place maintaining its own poor; and that the word 'inn' shall be deemed to include any inn, alehouse, or victualling-house;' and that the words 'inn, alehouse, or victualling-house, shall be deemed to include all houses in which shall be sold by retail any exciseable liquor, to be drunk or consumed on the premises; and that the words 'exciseable liquor' shall be deemed to include any ale, beer, or other fermented malt liquor, sweets, cyder, perry, wine, or other spirituous liquor which now is or hereafter may be charged with duty either by customs or excise; and that the word 'penalty' shall be deemed to include any fine, penalty, or forfeiture of a pecuniary nature; and that the meaning of the said several words shall not be restricted, although the same may be subsequently referred to in the singular number only."

9 Geo. 4, c. 61, s. 37.

(4.) Places which require the License.

Places which require a license.

It does not appear that a magistrates' license under this act is required for the keeping of a house of any particular denomination, the necessity for such license depending on the sale or disposal for consideration of exciseable liquors by retail, to be consumed in the house. If such liquors are so sold or disposed of by retail, to be drunk or consumed on the premises, such house is an inn, alehouse, or victualling-house, within the meaning of the 9 Geo. IV. c. 61, and requires a license. See 1 *Hawk.* c. 78, s. 4; *Hale, P. C.* 146.

It seems, indeed, that a house in which persons board and pay a sum certain in respect of their entertainment, whether by the day or week, or any longer period, without relation to any quantity of any exciseable liquor with which they may be supplied, does not require a license; and it has accordingly been determined on prior statutes, that houses at Epsom, where they take in lodgers and boarders, coming to drink the waters there during the season, and dress victuals, and sell them ale and beer,* and entertain their horses at 8*d.* a day, but sell to no other persons, are not inns nor alehouses requiring a magistrates' license. *Parker* v. *Flint*, 12 *Mod.* 254; *Salk.* 287; *Carth.* 417; 1 *Ld. Raym.* 479, S. C.

* As to selling ale and beer, see the 1 Will. IV. c. 64, *ante*, p. 58.

We have already seen, *ante*, 71, the 9 Geo. IV. c. 61, s. 36, does not affect the two Universities.

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Universities.

Canteens]—By the annual Mutiny Act (10 Geo. IV. c. 6, s. 70, 71,) it is enacted, "that when any persons shall hold any canteens under proper authority of the Board of Ordnance, it shall be proper for any two justices within their respective jurisdictions to grant or transfer any beer, wine, or spirit license to such persons without regard to the time of year or to the notices or certificates required by an act in respect of such licenses; and the commissioners of excise, or their proper officers, within their respective districts, shall also grant such licenses as aforesaid, and such persons so holding canteens and having such licenses may sell therein victuals and exciseable liquors as empowered by such excise license, without being subject to any penalty or forfeiture."

Canteens. 10 Geo. 4, c. 6.

(5.) Who are Disqualified from having the License.

At common law any person may keep an inn or alehouse, and a license for selling wines and spirits, &c. may be granted to any one whom the magistrates may in their discretion think fit.

Who disqualified from having license.

However, by the 16th section of the 9 Geo. IV. c. 61, it is enacted, "that no sheriff's officer, or officer executing the legal process of any court of justice in any county or place, shall be capable of receiving or using any license under this act; and that every license granted or transferred to any person exercising any such office shall be void to all intents and purposes."

9 Geo. IV. c. 61, s. 16.

And section 21 of the same act provides, as a punishment for offences against the tenor of licenses, that "if the license of such offender shall be so (as therein mentioned) adjudged void, such offender shall, from and after such last-mentioned adjudication, be deemed and taken to be incapable of selling exciseable liquors by retail in any inn kept by him for the space of three years, to be computed from the time of such adjudication, and any license granted to such person during such term shall be void to all intents and purposes." See the section in full, *post*, p. 82.

s. 21.

Section 17 of the same act enacts, "that no license for the sale of any exciseable liquors by retail, to be drunk or consumed on the premises of the person licensed, shall be granted by the commissioners of excise, or by any officer of excise, to any person whatsoever, unless such person shall have previously obtained from the justices a license under this act, and which said license of such justices shall be retained by such person after being produced to the commissioners or officers of excise; and every license granted by the commissioners of excise, or by any officer of excise, contrary to this provision, shall be null and void to all intents and purposes."

No excise license to be granted, except to a person licensed under 9 Geo. 4, c. 61, s. 17.

(6.) Licensing Meetings when and where held.

It will be expedient to inquire as to the time when and place where a party is to apply for a license, before proceeding to point out the steps he is to take to obtain that license.

Licensing meetings when and where to be held.

General Licensing Meeting]—By the 1st section of the 9 Geo. IV. c. 61, it is enacted, "that in every division of every county and riding, and of every division of the county of Lincoln, and in every hundred of every county, not being within any such division, and in every liberty, division of every liberty, county of a city, county of a town, city, and town corporate, in that part of the United Kingdom called England, there shall be annually holden a special session of the justices of the peace (to be called the General Annual Licensing Meeting), for the purpose of granting licenses to persons keeping or being about to keep inns, alehouses, and victualling houses, to sell exciseable liquors by retail, to be drunk or consumed on the premises therein specified;

A general licensing meeting to be held annually. 9 Geo. 4, c. 61, s. 1.

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and that such meetings shall be holden in the counties of Middlesex and Surrey within the first ten days of the month of March, and in every other county on some day between the twentieth day of August and the fourteenth day of September inclusive; and that it shall be lawful for the justices acting in and for such county or place, assembled at such meeting, or at any adjournment thereof, and not as hereinafter disqualified from acting, to grant licenses, for the purposes aforesaid, to such persons as they the said justices shall, in the execution of the powers herein contained, and in the exercise of their discretion, deem fit and proper.*

Time of holding in Middlesex and Surrey.

In other counties.

Licenses to be granted at such meeting.

Mode of convening the meeting; Sect. 2.

Mode of Convening Meeting]—By the 2d section of the same act it is enacted, "that in every such division or place as aforesaid there shall be holden, twenty-one days at the least before each such general annual licensing meeting, a petty session of the justices acting for such county or place,† the majority of whom then present shall, by a precept‡ under their hands, appoint the day, hour, and place, upon and in which such general annual licensing meeting for such division or place shall be holden; and shall direct such precept to the high constable of the division or place for which such meeting is to be holden, requiring him, within five days next ensuing that on which he shall have received such precept, to order§ the several petty constables or other peace officers within his constablewick to affix or cause to be affixed on the door of the church or chapel, and where there shall be no church or chapel, on some other public and conspicuous place within their respective districts, a notice‖ of the day, hour, and place at which such meeting is appointed to be holden, and to give to or to leave at the dwelling-house of each and every justice acting for such division or place, and of each and every person keeping an inn, or who shall have given notice of his intention to keep an inn, and to apply for a license to sell exciseable liquors by retail, to be drunk or consumed on the premises, within their respective districts, a copy of such notice."

a petty session to appoint it.

Notice of meeting.

As to the adjournment of meetings, see *post*, 77.

As to the manner and place of holding a petty session and the notices requisite to convene it, see *post*, **Sessions**, Vol. V.

The meeting must be public.

Lord Kenyon, in *R.* v. *Downes*, 3 *Term Rep.* 569, observed, that it was of importance to the public, that licenses of this sort should be granted openly and not by stealth, in order that they may have an opportunity of objecting to the granting of these licenses to particular persons on the ground of unfitness. And the license in that case having been granted by two magistrates at a *private meeting*, and which was also holden after the general meeting had passed; it was held illegal, and would not protect the party from the penalty for selling beer, &c. without a justices' license.

(7.) Proceedings by Party before applying for the License.

9 Geo. 4, c. 61, s. 10. Notice to be given by applicant to keep an inn, not before kept as one.

By the 10th section of the 9 Geo. IV. c. 61, it is enacted, "that every person intending to apply for a license to sell exciseable liquor by retail, to

* By the 26 Geo. II. c. 31, s. 4, (now repealed by above act,) no ale license should be granted but on the 1st September yearly, or within twenty days after; and by section 16, alehouses in cities and towns corporate were excepted; but by 3 Geo. IV. c. 77, s. 7, (now expired,) all general annual meetings for granting licenses as well in cities and towns corporate as in all other places in England, should be held in the month of September, yearly, it was held in *R.* v. *Justices of Surrey*, 2 *D. & R. Mag. Ca.* 435, that the effect of this clause was not to repeal the general provisions of the former statute but to extend its operation to cities and towns corporate only.

† Under the prior acts it was considered that any justice of a county going to the meeting in the division was for the purposes of the act, (26 Geo. II. c. 31, s. 4,) a justice of division. *R.* v. *Price*, *Cald.* 305, *per Ashton*, *J.* See Rules for interpretation of Act, *ante*, 71.

‡ See the form, (No. 30), *post*.

§ See the form, (No. 26), *post*.

‖ See the form, (No. 27), *post*.

be drunk or consumed in any house *not theretofore kept as an inn*,* shall affix or cause to be affixed a notice on the door of such house, and on the door of the church or chapel of the parish or place in which such house shall be situate, and where there shall be no church or chapel, on some other public and conspicuous place within such parish or place, on three several Sundays between the first day of January and the last day of February in the counties of Middlesex and Surrey, and elsewhere between the first day of June and the last day of July, at some time between the hours of ten in the forenoon and of four in the afternoon, and shall serve a copy of such notice upon one of the overseers of the poor, and upon one of the constables or other peace officers of the said parish or place, within the month of February in the counties of Middlesex and Surrey, and elsewhere within the month of July, prior to the general annual licensing meeting; and every such notice, and the copies thereof, shall be written in a fair and legible hand, or printed, and shall be according to the form in the schedule hereunto annexed, marked A.† and shall be signed by the party intending to make such application, or by his agent thereunto authorised, and shall set forth the situation of the house in a true and particular manner, and the christian and surname of the party applying, together with the place of his residence, and his trade or calling, during the six months previous to the time of serving such notice, and his intention to apply for a license to sell exciseable liquor by retail, to be drunk or consumed in such house or premises."

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9 Geo. 4, c. 61, s. 10.

Form of notice.

The former enactments (26 Geo. II. c. 31, s. 2,) and law relative to the obtaining of certificates from the parson, &c. is no longer in force, being repealed by the 9 Geo. IV. c. 61. The 3 Geo. IV. c. 77, is expired. See *R.* v. *Young*, 1 *Burr.* 556.

Certificates.

(8.) Proceedings at the Meeting to obtain the License.

We shall consider this branch of the subject in the following order; *viz.* as to what justices may act, or not, the presence of the applicant, the grant or refusal of the license, and the adjournment of the meeting.

What Justices may act]—We have already seen that the first section of the 9 Geo. IV. c. 61, enacts, that the justices acting in and for the county or place wherein the meeting is held, not being disqualified from acting, may grant the required license as they in the execution of the act and in their discretion shall think fit, *ante*, 73, 74.

What justices may act.

What Justices may not act‡]—All justices who are interested or who may be reasonably supposed to be so, are prohibited from acting in or being present at the meeting by the 6th section of the 9 Geo. IV. c. 61, by which it is enacted, "that no justice who shall be a common brewer, distiller, maker of malt for sale, or retailer of malt or of any exciseable liquor, or who shall be concerned in partnership with any common brewer, distiller, maker of malt for sale, or retailer of malt or of any exciseable liquor, shall act in or be present at any general annual licensing meeting, or at any adjournment thereof, or at any special session for granting or transferring licenses under this act, or shall take part in the discussion or adjudication of the justices upon any application for a license, or upon any appeal therefrom; and no justice shall act upon any of the aforesaid occasions, in the case of any house licensed or about to be licensed under this act, of which such justice shall be the owner, or for the owner of which he shall be manager or agent, or of any house

What justices may not act.

9 Geo. 4, c. 61, s. 6.

* Taking these words literally such notice does not seem necessary where the house has been before kept as an inn. This appears somewhat singular.

† See the form, (No. 28), *post*.

‡ As to the consequences of a magistrate's want of jurisdiction as regards the penalty for selling ale without a license, see *post*, p. 81, 82.

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being in whole or in part the property of any common brewer, distiller, maker of malt for sale, or retailer of malt or of any exciseable liquor, to whom such justice shall be, either by blood or by marriage, the father, son, or brother, or of whom such justice shall be the partner in any other trade or calling; and that every justice who, being hereby disqualified, shall knowingly or wilfully so offend, shall for every such offence forfeit and pay the sum of one hundred pounds: provided always, that nothing herein contained shall extend to disqualify any justice (not otherwise disqualified, and having no beneficial interest in the house licensed or about to be licensed under this act,) from acting on any of the occasions aforesaid, by reason of the legal estate in such house being vested in him as trustee for any person or persons, or for any charitable or public use or purpose whatsoever."

9 Geo. 4, c. 61.

Penalty for acting.

Proviso for trustees, &c.

County justices empowered to act in corporate jurisdictions where there are not two qualified justices. Sect. 7.

County Justices acting in Corporate Jurisdictions]—The county justices are by the 7th section of the act empowered to attend and act at the meeting where holden for a corporate or inferior jurisdiction, where there are not two justices present who are legally competent to act. The section enacts as follows: "that whenever at any of the meetings to be holden as aforesaid for any liberty, county of a city, county of a town, city, or town corporate, there shall not be present at least two justices acting in and for any such liberty, county of a city, county of a town, city, or town corporate, who are not disqualified, it shall be lawful for the justices acting in and for the county or counties adjoining to such liberty, county of a city, county of a town, city, or town corporate, and not disqualified from acting, to act within such liberty or place, and with the justice or justices thereof, not as hereinbefore disqualified, who shall be present at any such meeting as aforesaid, for the purpose of granting or transferring licenses under, or of hearing complaints as to offences against this act; any law, custom, or usage to the contrary notwithstanding."

But cinque ports exempted from this provision. Sect. 8.

Cinque Ports]—But by the 8th section the *cinque ports* are exempted from this last provision. The section enacts, "that nothing herein contained shall extend to give the justices of the county, or any division thereof, any power or authority for the putting of the provisions of this act in execution within any of the cinque ports or either of the two ancient towns, or any of the corporate or other members or liberties of the cinque ports or two ancient towns; but that it shall be lawful for the justices of and for each of the principal cinque ports and two ancient towns, and not as hereinbefore disqualified from acting, and none other, to act within and for the same, and the liberties thereof, not corporate, respectively, as they have been accustomed, and for them or any of them (not so as last aforesaid disqualified,) to act within each of the corporate members immediately belonging or subordinate to such principal cinque port or ancient town, with the justice or justices of each such corporate member, (not so as last aforesaid disqualified,) for the purpose of granting or transferring licenses under, or of hearing complaints as to offences against this act, in all such cases in which the justices of the county are hereinbefore empowered or authorised to act with the justice or justices of any liberty, county of a city, county of a town, city, or town corporate."

Where a concurrent jurisdiction.

Concurrent Jurisdiction]—When the county justices and justices of another jurisdiction have concurrent authority over the same place, whichever set first appoints a meeting for granting ale licenses for such place has so far assumed jurisdiction over that subject, that although it seems that the other set may join in that assembly, and act with them, they cannot appoint a subsequent separate meeting. If they do, and there grant licenses, not only are their proceedings illegal and void, but they are liable to be indicted, or a criminal information may sometimes be obtained against them. *R.* v. *Sainsbury*, 4 *Term Rep.* 451, *post*, p. 93.

Publicity of meeting.

Publicity of the Meeting]—We have already seen the meeting must be public, and not in private, *ante*, p. 74. *R.* v. *Downs*, 3 *T. R.* 569.

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Presence of the Applicant]—Regularly the applicant should appear before the justices in person. The following provision, however, is to be found in 12th section of the 9 Geo. IV. c. 61, dispensing with such presence in certain cases, viz. "that if any person intending to apply at the general annual licensing meeting, or at any adjournment thereof, or at any special session, for any license to be granted under the authority of this act, or for the transfer of any such license, shall be hindered by sickness or infirmity, or by any other reasonable cause, from attending in person at any such meeting, it shall be lawful for the justices there assembled to grant or transfer such license to such person so hindered from attending, and to deliver the same to any person then present, who shall be duly authorised by the person so hindered from attending to receive the same, proof being adduced to the satisfaction of such justices, who are hereby empowered to examine upon oath into the matter of such allegation, that such person is hindered from attending by good and sufficient cause."

9 Geo. 4, c. 61.
Presence of applicant.
When prevented by illness, &c. another person may attend for him.
Sect. 12.

The Grant or Refusal of License]—The 9th section of the 9 Geo. IV. c. 61, enacts, "that when, (at any of the meetings aforesaid,) any question touching the granting, withholding, or transferring any license, or the fitness of the person applying for such license, or of the house intended to be kept by such person, shall arise, such question shall be determined by the majority of justices, not disqualified, who shall be present when such question shall arise; and every license granted under the authority of this act shall be signed by the majority of the justices not disqualified, who shall be present when such license shall be granted."

The grant or refusal of license. Questions are to be decided and licenses to be signed by the majority of justices. Sect 9.

We shall hereafter see what discretion the magistrates may adopt in the grant or refusal of a license, and the remedies on an improper *refusal*, *post*, p. 89; or for an improper *grant*, *post*, p. 92. No condition should be annexed to the grant, *post*, p. 91.

The Adjournment of the Meeting]—The 3d section of the 9 Geo. IV. c. 61, gives a power of adjourning the general annual licensing meeting as follows: "that it shall be lawful for the justices acting at the general annual licensing meeting, and they are hereby required, to continue such meeting by adjournment, to such day or days, and to such place or places within the division or place for which such meeting shall be holden, as such justices may deem most convenient and sufficient for enabling persons keeping inns within such division or place to apply for such license: Provided nevertheless, that the adjourned meeting to be holden next after such general annual licensing meeting shall not be so holden in or upon any of the five days next ensuing that on which such general annual licensing meeting shall have been holden as aforesaid; and that every adjournment of the said general annual licensing meeting shall be holden within the month of March in the counties of Middlesex and Surrey, and of August or September in every other county."

Adjournment of annual meeting. Sect. 3.

Where to be held.

A notice of the adjournment must be given, the 5th section of the act enacting, "that whenever the justices shall have ordered any such adjournment of the general annual licensing meeting, or shall have appointed such special sessions as aforesaid, the day, hour, and place for holding every such adjourned meeting, and every such special session, shall be appointed by precept of the majority of the said justices, directed to the high constable, requiring notices,* similar in form to those given at the general annual licensing meeting, to be affixed on the door of the church or chapel, or on some other public and conspicuous place, and to be served upon the same parties."

Notice of adjournment. Sect. 5.

* See the forms, *post*, (No. 26, 27).

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(9.) The License, (Form, Effect and Duration of.)

Form and duration of license. 9 Geo. 4. c. 61, s. 13.

The form and duration of the license are pointed out by the 13th section of the 9 Geo. IV. c. 61, which enacts, "that every license which shall be granted under the authority of this act shall be according to the form in the schedule hereunto annexed (marked C.*) and shall be in force in the counties of Middlesex and Surrey from the fifth day of April, and elsewhere from the tenth day of October, after the granting thereof, for one whole year thence respectively next ensuing, and no longer; and every license for the purposes aforesaid, which shall be granted at any other time or place, or in any other form than that hereby directed, except as herein-after excepted, shall not entitle any person to obtain an excise license for selling exciseable liquors by retail, to be drunk or consumed on the premises of the person licensed, and shall be utterly void to all intents and purposes."

No other license to entitle a party to an excise license to retail exciseable liquors.

Where the retail beer license has become void by conviction as aforesaid, the retail spirit license to become void also. 6 Geo. 4, c. 81, s. 23.

By the 6 Geo. IV. c. 81, s. 23, it is enacted, that where the retail beer license has become void by conviction, as mentioned in s. 22, *ante*, p. 69, the retail spirit license shall become void also. The enactment is, "that where the license for the sale of beer, cyder, or perry by retail, to be drunk or consumed upon the house or premises of the person or persons to whom the same is granted, shall become void and the person or persons thereupon disabled in such manner as before-mentioned by this act; the license for the sale of any spirits, or foreign wine or sweets, or made wines or mead, or metheglin, by retail, to be drunk or consumed upon the house or premises, thereupon granted, shall become null and void also to all intents and purposes; and in such case if the person or persons to whom the same respectively were granted shall sell any spirits, or any foreign wine, or any sweets, or made wines, or any mead or metheglin respectively, by retail, to be drunk or consumed upon the house or premises after such conviction as aforesaid shall have taken place in manner before mentioned in this act, and every such license as aforesaid has thereby become void, such person or persons shall incur the penalty for selling spirits or foreign wines, or sweets or made wines, or mead or metheglin, to be consumed upon the premises, by retail, without license; and in all such cases, in the prosecution for the recovery of such penalty as aforesaid, such conviction shall be proved in such and the like manner as before specified by this act in a prosecution under similar circumstances for the sale of beer, cyder, or perry, by retail, to be drunk or consumed on the house or premises without license."

Selling spirits, &c. after such conviction.

Penalty.

The 24th section of the same act points out in what cases, upon the expiration of a magistrates' license to keep a public house within the year, the proportional parts of duties on excise licenses are to be returned. See Excise, Vol. II.

(10.) The Transfer of the License and Grant of a fresh License in case of Removal, Death, or other Contingency.

Appointment of sessions for granting transfers of licenses. 9 Geo. 4, c. 61, s. 4.

Sessions for]—In order to facilitate the *transfer* of licenses at any time of the year, it is enacted, by the 4th section of the 9 Geo. IV. c. 61, "that the justices assembled at the general or quarter session which shall be holden at Michaelmas next after the passing of this act, and at the general annual licensing meeting in every subsequent year, shall appoint not less than four nor more than eight special sessions, to be holden in the division or place for which each such meeting shall be holden, in the year next ensuing such general annual licensing meeting, at periods as near as may be equally distant; at which special session it shall be lawful for the justices then and there assembled, in the cases and in the manner and for the time herein-after directed, to license such persons intending to keep inns theretofore kept by

Time and place of holding.

* See form, (No. 30), post.

other persons being about to remove from such inns, as they the said justices shall, in the execution of the powers herein contained, and in the exercise of their discretion, deem fit and proper persons, under the provisions hereinafter enacted, to be licensed to sell exciseable liquors by retail, to be drunk or consumed on the premises."

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9 Geo. 4, c. 61.

Notice of Application to Transfer]—By the 11th section of the 9 Geo. IV. c. 61, it is enacted, "that every person holding a license under the authority of this act, or his heirs, executors, administrators, or assigns, being desirous to transfer such license to some other person, and intending to apply at the special session then next ensuing for permission so to do, shall, five days at the least prior to such special session, serve a notice of such his intention upon one of the overseers of the poor, and upon one of the constables or other peace officers of the parish or place in which the house kept by the person so holding such license is situate; and every such notice shall be written in a fair and legible hand, or printed, and shall be according to the form in the schedule hereunto annexed, marked B.,* and shall be signed by the party intending to make such application, or by his agent thereunto authorised, and shall set forth the christian and surname of the person to whom it is intended that such license shall be transferred, together with the place of his residence, and his trade or calling, during the six months previous to the time of serving such notice."

Notice of application to transfer. Sect. 11.

Other Proceedings]—As to what justices may act or not in the transfer of licenses, see *ante*, 73. 75; as to the presence of the applicant and when dispensed with, see, *ante*, 77; as to the grant or refusal of the transfer, see, *ante*, 77.

Other proceedings.

Grant of fresh Licenses in case of Death, Bankruptcy, &c.]—In cases where there is a compulsory change of tenancy, as by death, bankruptcy, &c. or where the tenant about to quit has neglected to renew his license, the 14th section of the 9 Geo. IV. c. 61, provides for the granting of fresh licenses *during the year*. It is thereby enacted, "that if any person duly licensed *under this act* shall (before the expiration of such license) die, or shall be, by sickness or other infirmity, rendered incapable of keeping an inn, or shall become bankrupt, or shall take the benefit of any act for the relief of insolvent debtors; or if any person so licensed, or the heirs, executors, administrators, or assigns of any person so licensed, shall remove from or yield up the possession of the house specified in such license; or if the occupier of any such house, being about to quit the same, shall have wilfully omitted, or shall have neglected to apply, at the general annual licensing meeting, or at any adjournment thereof, for a license to continue to sell exciseable liquors by retail, to be drunk or consumed in such house; or if any house, being kept as an inn by any person duly licensed as aforesaid, shall be or be about to be pulled down or occupied under the provisions of any act for the improvement of the highways, or for any other public purpose; or shall be, by fire, tempest, or other unforeseen and unavoidable calamity, rendered unfit for the reception of travellers, and for the other legal purposes of an inn; it shall be lawful for the justices assembled as aforesaid at a special session, holden under the authority of this act, for the division or place in which the house so kept or having been kept shall be situate, in any one of the above-mentioned cases, and in such cases only, to grant to the heirs, executors, or administrators of the person so dying, or to the assigns of such person becoming incapable of keeping an inn, or to the assignee or assignees of such bankrupt or insolvent, or to any new tenant or occupier of any house having so become unoccupied, or to any person to whom such heirs, executors, administrators, or assigns shall by sale or otherwise have *bonâ fide* conveyed or otherwise made over his or their interest in the occupation and keeping of such house, a license to sell exciseable liquors by retail, to be drunk or consumed in such

Provision for granting of fresh licenses on a compulsory change of tenancy by death, bankruptcy, &c. Sect. 14.

Neglect by outgoing tenant to renew.

Fire, &c.

New license to be granted, to whom.

* See the form, (No. 29), *post*.

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house, or the premises thereunto belonging; or to grant to the person whose house shall as aforesaid have been or shall be about to be pulled down or occupied for the improvement of the highways, or for any other public purpose, or have become unfit for the reception of travellers, or for the other legal purposes of an inn, and who shall open and keep as an inn some other fit and convenient house, a license to sell exciseable liquors by retail, to be drunk or consumed therein: provided always, that every such license shall continue in force only from the day on which it shall be granted until the fifth day of April or the tenth day of October then next ensuing, as the case may be: provided also, that every person intending to apply, in any of the above-mentioned cases, at any such special session for a license to sell exciseable liquors by retail, to be drunk or consumed in a house or premises thereunto belonging, in which exciseable liquors shall not have been sold by retail, to be drunk or consumed on the premises, by virtue of a license granted at the general annual licensing meeting next before such special session, shall, on some one Sunday within the six weeks next before such special session, at some time between the hours of ten in the forenoon and of four in the afternoon, affix or cause to be affixed on the door of such house, and on the door of the church or chapel of the parish or place in which some house shall be situate, and where there shall be no church or chapel, on such other public and conspicuous place within such parish or place, such and the like notice* as is herein-before directed to be affixed by every person intending to apply at the general annual licensing meeting for a license to sell exciseable liquors by retail, to be drunk or consumed in a house not heretofore kept as an inn, and shall in like manner serve copies of the said notice on one of the overseers of the poor, and on one of the constables or other peace officers of such parish or place."

9 Geo. 4, c. 61, s. 14.

Duration of such license.

Notices required.

(11.) Fees for Granting the License.

By the 15th section of the 9 Geo. IV. c. 61, it is enacted, "that it shall be lawful for the clerk of the justices, as well at the general annual licensing meeting as also at any special session to be holden under this act, to demand and receive from every person to whom a license shall be granted under this act, for the trouble of such clerk, and for all expenses connected therewith, the sums following, and no more: *videlicet*, for the petty constable or other peace officer, for serving notices, and for all other services hereby required of such petty constable or other peace officer, the sum of one shilling; for the clerk of the justices, for the license, the sum of five shillings; and for preparing the precepts to be directed to the high constable, and notices to be delivered by the petty constable, as required by this act, the sum of one shilling and sixpence; and every such clerk, who shall demand or receive from any person for such respective fees in this behalf any greater sum or any thing of greater value than the sums herein-before specified, being in the whole the sum of seven shillings and sixpence, shall for every such offence, on conviction before one justice, forfeit and pay the sum of five pounds." See *post*, 85, as to the recovery, &c. of the penalty.

Fees to be paid for licenses. Sect. 15.

Penalty for extortion.

Where the mayor of an ancient borough, in which he was also a justice of the peace, took a fee of 4*s.* from a publican resident within the borough, for renewing his annual license; and though it appeared that for fifty-seven years a similar fee had been uniformly received by the mayor, for the time being, from every publican residing within the borough, applying to have his license; it was held, that such fee was illegal, and might be recovered back in *assumpsit* for money had and received, without notice of action. *Morgan* v. *Palmer*, 2 *Dowl. & R. Mag. Ca.* 232; 2 *B. & Cress.* 729; 4 *D. & R.* 283, S. C.

Action to recover back fee improperly paid.

* See the form, (No. 28), *post*.

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(12.) Penalty for selling Wine and Spirits, &c. without a Magistrates' License.

9 Geo. 4, c. 61, s. 18.

By the 18th section of the 9 Geo. IV. c. 61, a penalty is imposed on a party selling any exciseable liquor to be consumed on his premises, not being duly licensed. The following is the enactment, viz. "that every person who shall sell, barter, exchange, or for valuable consideration otherwise dispose of, any exciseable liquor by retail, to be drunk or consumed in his house or premises, or shall permit or suffer any exciseable liquor to be sold, bartered, exchanged, or otherwise disposed of for valuable consideration, by retail, to be drunk or consumed in his house or premises, without being duly licensed so to do; and that every person, being duly licensed, who shall sell, barter, exchange, or for valuable consideration otherwise dispose of, or shall permit or suffer to be sold, bartered, exchanged, or otherwise disposed of for valuable consideration, any exciseable liquor by retail, to be drunk or consumed in his house or premises, not being the house or premises specified in such license; shall respectively for every such offence, on conviction* before one justice, forfeit and pay any sum not exceeding twenty nor less than five pounds, together with the costs of the conviction: provided always, that no penalty for such sale, barter, exchange, or other disposal of any such liquor by retail without license, shall be incurred by the heirs, executors, administrators, or assigns of any person licensed under this act, who shall die, become bankrupt, or take the benefit of any act for the relief of insolvent debtors, before the expiration of his license, so as such sale, barter, exchange, or other disposal of such liquor, be made in the house or premises specified in such license, and take place prior to the special session then next ensuing, unless such special session shall be holden within fourteen days next after the death, bankruptcy, or insolvency of the said person, and in any such case to the special session which shall be holden next after such special session aforesaid."

Penalty for selling ale, &c. without a Justices' license.

Proviso in case of death.

Penalty under 35 Geo. 3, c. 113.

The 35 Geo. III. c. 113, appears to be still in force, and comprehends a greater punishment than the above provision. It is not an excise law, and provides a penalty of £20 for selling exciseable liquors without a magistrates' license. See *R.* v. *Hanson*, 4 *Barn. & A.* 519. The enactment is as follows:—Sect. 1. "If any person shall sell ale or beer, or any other exciseable liquors by retail, or shall permit or suffer any ale or beer or any other exciseable liquors to be sold by retail in his, her, or their house, out-house, or yard, garden, orchard, or other place in that part of Great Britain called England, the dominion of Wales and town of Berwick-upon-Tweed, without being duly licensed so to do, and shall thereof be duly convicted, every such person so offending shall for every such offence forfeit and pay the sum of £20, and also the costs and expenses attending the conviction, to be levied and recovered as herein is directed;† and on and after a second conviction for the like offence, shall also be rendered incapable of being thereafter licensed to keep an alehouse, or to sell ale or beer or other exciseable liquors by retail."

Penalty of £20.

Party disabled from keeping alehouse.

Fairs.

The 17th section of this act contains a proviso similar to the one, *ante*, 71, as to selling beer, &c. in fairs.

Mitigation of penalty under 35 Geo. 3.

Sect. 14 provides, that where it shall be proved to the satisfaction of such justice that such offender hath not been before convicted of any offence against this act, such justice may mitigate the penalty hereby imposed, (in case of such first offence, but not otherwise,) to not less than £10.

Inhabitant a witness under.

Sect. 15. And any inhabitant of any parish, township or place in which any such offence shall be committed, shall be deemed a competent witness.

Limitation of prosecution.

Sect. 16. Provided that all penalties within this act shall be sued for and determined within six months after the offence is committed.‡

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* See form, (No. 34), *post*.

† See *post*, 85.

‡ A question has been raised without being decided, whether the penalty of

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As to the recovery and application of the penalties, see *post*, 85, and as to appeal, see *post*, 87.

Recovery and application of penalties.

In *R.* v. *Downes*, 3 *Term Rep.* 560, it was held, that a person who sold spirituous liquors without a license from two justices, was liable to the penalties of the 5 Geo. III. c. 46, though he had a license from the excise to retail spirituous liquors.

Presentment by constable.

By 7 & 8 Geo. IV. c. 38, constables are not to be required to make presentments respecting unlicensed alehouses.

(13.) Measures for Sale of Liquors.

Licensed persons to use standard measures. Sect. 19.

By the 9 Geo. IV. c. 61, s. 19, it is enacted, "that every person hereby licensed to sell exciseable liquors by retail, to be drunk or consumed in his house or premises, shall, if required, sell or otherwise dispose of all such liquors by retail therein, (except in quantities less than a half pint,) by the gallon, quart, pint, or half pint measure, sized according to the standard, and shall also, if required by any guest or customer purchasing such liquor, retail the same in a vessel sized according to such standard; and in default thereof he shall for every such offence forfeit the illegal measure, and pay a sum not exceeding forty shillings, together with the costs of the conviction, to be recovered within thirty days next after that on which such offence was committed, before any one justice; and such penalty shall be over and above all penalties to which the offender may be liable under any other act." See 1 Will. IV. c. 64, s. 12, *ante*, 61.

(14.) Closing Public Houses in Riots.

Justices may order licensed houses to be closed during riots. Sect. 20.

The 20th section of the 9 Geo. IV. c. 61, enacts, "that it shall be lawful for any two justices acting for any county or place where any riot or tumult shall happen or be expected to take place, to order or direct that every person licensed under this act, and keeping any house situate within their respective jurisdictions in or near the place where such riot or tumult shall happen or be expected to take place, shall close his house at any time which the said justices shall order or direct; and every such person who shall keep open his house at or after any hour at which such justices shall have so ordered or directed such house to be closed, shall be taken and deemed to have not maintained good order and rule therein." See 1 Will. IV. c. 64, s. 11, *ante*, 61.

(15.) Offences against Tenor of License.

Proceedings against publicans for offences against tenor of license. Sect. 21. Penalty for first offence to be determined by two justices.

The 21st section of the 9 Geo. IV. c. 61, enacts different degrees of punishment against publicans for offences against the tenor of their license. The enactment is as follows:—"that every person licensed under this act who shall be convicted before two justices acting in and for the division or place in which shall be situate the house kept or theretofore kept by such person, of any offence against the tenor of the license to him granted, shall, unless proof be adduced to the satisfaction of such justices, that such person had been theretofore convicted before two justices, within the space of the three years next preceding, of some offence against the tenor of the license subsisting at the time when such last-mentioned offence was committed, be ad-

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keeping an alehouse without license be incurred by a person acting under a license which is void from an irregularity in the jurisdiction of the magistrates who granted it. The prevailing opinion seems to be in the affirmative of such question; but owing to a difference of opinion existing in the court, the point was not determined in the case in which it arose. *Cald.* 305, 306, n. 10; *R.* v. *Bryan*, *Andr.* 81; *Paley on Con. by Dowling*, 52.

judged* by such justices to be guilty of a first offence against the provisions of this act relative to the maintenance of good order and rule,† and to forfeit and pay any sum not exceeding five pounds, together with the costs of the conviction; but if proof shall be adduced to the satisfaction of such justices that such person had been previously convicted before two justices, within the space of the three years next preceding, of one offence only against the tenor of the license subsisting at the time when such last-mentioned offence was committed, such person shall be adjudged‡ by such justices to be guilty of a second offence against the provisions of this act as aforesaid, and to forfeit and pay any sum not exceeding ten pounds, together with the costs of the conviction; but if proof shall be adduced to the satisfaction of such justices that such person had been previously convicted before two justices within the space of the three years next preceding, of two separate offences against the tenor of the licenses subsisting at the times when such last-mentioned offences were committed, it shall be lawful for the said justices, and they are hereby required, to adjourn the further consideration of the charge, so made against such person as aforesaid, to the special session to be then next holden under this act for the division or place in which shall be situate the house kept by such person, or to the general annual licensing meeting for the said division or place, if such meeting shall take place before any such special session shall be holden; and such justices shall issue their summons to the person so charged, to appear at such special session or at such general annual licensing meeting, then and there to answer to the matter of such charge; and shall bind the person who shall make such charge, and any other person who shall have any knowledge of the circumstances thereof, in a sufficient recognizance to appear at such special session or at such general annual licensing meeting, then and there to prosecute and to give evidence upon such charge; and if proof shall be adduced to the satisfaction of the justices assembled at such special session or at such general annual licensing meeting, that such person so charged is guilty of the offence with which he is so charged, such person shall be adjudged to be guilty of a third offence against the provisions of this act as aforesaid, and to forfeit and pay any sum not exceeding fifty pounds, together with the costs of the conviction: provided always, that if at any time before the hearing of any such last-mentioned charge, the justices assembled as aforesaid shall in their discretion think fit to direct that the hearing of such charge shall be adjourned to the general or quarter session of the peace then next ensuing, there to be inquired of by a jury, or if the person so charged shall in writing under his hand request the said justices to direct that the hearing of such charge shall be so adjourned as aforesaid, the said justices are hereby required to direct that the hearing of such charge shall be so adjourned, provided that the person who shall have made such request shall, before such justices so assembled, forthwith enter into a recognizance with two sufficient sureties personally to appear at the said general or quarter session, and to try such charge, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and the said justices are hereby required to bind in a recognizance to appear at such general or quarter sessions as aforesaid, then and there to give evidence against the person so charged, the person who shall make such charge, and any other person who shall have any knowledge of the circumstances thereof; and it shall be lawful for the said court of general or quarter session to direct a jury then and there duly impannelled to be sworn to inquire of the offence so charged to have been committed, and upon their verdict of 'guilty,' to adjudge such person to be guilty of a third offence against the provisions of this act as aforesaid, and such verdict and adjudication shall be final to all intents and purposes; and to punish such offender by fine, not exceeding the sum of one hundred

Penalty for second offence within three years to be determined by two justices.

Penalty for third offence, consideration to be adjourned to next special sessions or to general meeting.

Summons to party charged.

Recognizance by complainant and witnesses.

Adjudication in case of a third offence.

Hearing of the case may be adjourned to the quarter session.

Recognisance by party accused and sureties to appear at session.

Trial of third offence by a Jury.

Penalty or punishment on verdict of 'guilty.'

* See form of conviction, *post*, (No. 37).

† See the 20th section, *ante*, 82, as to a magistrates' order to close the house in case of riot or tumult, the section enacting, that a disobedience of such order shall be deemed as a breach of good order and rule in the house.

‡ See form of conviction, *post*, (No. 37).

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9 Geo. 4, c. 61, s. 21.

pounds, or to adjudge the license granted to and held by or on behalf of such offender to be forfeited and void, or to punish such offender by such fine as aforesaid, and to adjudge such license to be forfeited and void, and if such license shall be adjudged to be forfeited and void, it shall thenceforth be void accordingly; and every excise license for selling any exciseable liquors by retail, then held by or on behalf of such offender, shall also be void; and if the license of such offender shall be so adjudged to be void, such offender shall from and after such last-mentioned adjudication be deemed and taken to be incapable of selling exciseable liquors by retail in any inn kept by him for the space of three years, to be computed from the time of such adjudication; and any license granted to such person during such term shall be void to all intents and purposes: provided also, that the court may, upon sufficient cause shown, adjourn the hearing of such charge to the then next general or quarter session of the peace, when the same shall be finally determined."

Quarter sessions may adjourn the hearing.

Proceedings at the sessions on adjournment for a third offence to be carried on by a petty constable. Id. Sect. 22.

On an adjournment to the session on a charge of a third offence, the justices may order the constable or peace officer of the district to prosecute and to allow him expenses of the prosecution. The 22d section of the 9 Geo. IV. c. 61, enacts, "that in every case in which the justices assembled at any special session or at any general annual licensing meeting shall direct that the charge against any person licensed under this act shall be adjourned to the general or quarter session, it shall be lawful for such justices, if no other fit and proper person shall appear to prosecute such charge, and to carry on such proceedings as may be necessary to obtain at such session an adjudication thereon, to order that the constable or other peace officer of the parish or place, in which shall be situate the house kept by the person so charged, shall carry on all proceedings necessary to obtain such adjudication as aforesaid, and to bind such constable or other peace officer in a sufficient recognizance so to do; and it shall be lawful for the justices, before whom such charge shall have been heard, to order the treasurer of the county or place in and for which such justices shall then act, to pay to such constable or other peace officer, and to the witness or witnesses on his behalf, such sum or sums of money as to the court shall appear to be sufficient to reimburse such constable or other peace officer, and such witness or witnesses respectively, the expenses that he or they shall have been severally put to in and about such prosecution; which order the clerk of the peace is hereby directed and required forthwith to make out and deliver to such constable or other peace officer, or to such witness or witnesses; and the said treasurer is hereby authorised and required, upon sight of such order, forthwith to pay to such constable or other peace officer, or other person authorised to receive the same, such money as aforesaid; and the said treasurer shall be allowed the same in his accounts."

Expenses of such prosecution to be charged on county rates.

Penalty on witnesses not attending. Id. Sect. 23.

The 23d section of the same act enacts, "that if any person shall be summoned as a witness to give evidence before any justice touching any of the matters aforesaid, either on the part of the complainant or of the person accused, and shall neglect or refuse to appear at the time and place for that purpose appointed, and who shall not make such reasonable excuse for such neglect or refusal as shall be admitted and allowed by such justice, or who appearing shall refuse to be examined on oath or affirmation and give evidence, every such person shall, on conviction before such justice, forfeit and pay for every such offence any sum not exceeding ten pounds." See the 35 Geo. III. c. 113, s. 10, *post*, 87.

(16.) Conviction for Offences under the Act.

Conviction must be on oath. Id. Sect. 31.

To be on Oath]—By the 31st section of the 9 Geo. IV. c. 61, it is enacted, "that every conviction under this act shall be on the oath or oaths of one or more credible witness or witnesses; and that any justice, not as herein-before disqualified, and acting in and for the county or place in which the offence

complained of shall have been committed, is hereby authorised to administer the same."

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Form of]—The 32d section of the same act, after reciting "in order to prevent frivolous and vexatious appeals," enacts, "that a conviction in the form or to the effect following, *mutatis mutandis*, as the case may be, shall be good and effectual to all intents and purposes whatsoever, without stating the case, or the facts or evidence, in any more particular manner; that is to say,

9 Geo. 4, c. 61, s. 32. Form of conviction.

"} *Be it remembered, that on this day of in the year A. B.* *to wit,* } *of was duly convicted before of his Majesty's justices of the peace for the of for that* [here state the offence, and the time and place when committed], *whereby the said A. B. has forfeited the sum of this being adjudged to be the first* [or *second*, or *third*] *offence* [as the case shall happen to be,] *against the provisions of an act to regulate the granting of licenses to keepers of inns, alehouses, and victualling houses in England, besides the costs of this conviction, which the said justices do hereby assess at the sum of pursuant to the statute in such case made and provided. Given under hand and seal the day and year above written.*" And see the 35 Geo. III. c. 113, s. 13, to the same effect.

Filing of Record, &c.]—The 33d section enacts, "that every justice before whom any such conviction shall have been made shall return the same, or cause it to be returned, to the next general or quarter session of the peace holden for the county or place wherein the offence shall have been committed; and it shall be then and there delivered to the clerk of the peace, or other person acting as such, to be by him filed or enrolled amongst the records of the said court; and the certificate of the clerk of the peace of such conviction, which he is hereby required to grant on demand upon payment of a fee of one shilling, shall be legal evidence of every such conviction."

Conviction to be returned to quarter sessions and filed of record. Id. Sect. 33.

Certiorari, Want of Form, &c.]—The 34th section enacts, "that no conviction under this act, nor any adjudication made on appeal therefrom, shall be quashed for want of form, or be removed, by writ of certiorari or otherwise, into any of his Majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and that there be a good and valid conviction to sustain the same."

Conviction not to be quashed for want of form or removed into superior courts. Id. Sect. 34.

(17.) Penalties, how to be recovered and applied.

Penalties on Justices]—The 24th section enacts, "that every penalty and forfeiture imposed by this act upon any justice may be sued for and recovered by action of debt in any of his Majesty's courts of record at Westminster; and one moiety of every such penalty or forfeiture shall be paid to the use of his Majesty, his heirs and successors, and the other moiety to him who shall sue for the same."

Penalties on justices how to be recovered and applied. Id. Sect. 24.

Other Penalties, how recoverable]—The 25th section enacts, "that in every case in which, under the authority of this act, any justice shall adjudge that any offender shall pay or cause to be paid any penalty, and such offender shall refuse or neglect forthwith, or within such period as such justice shall appoint, to pay such penalty and any costs which shall have been duly assessed and ascertained by such justice, it shall be lawful for such justice, if he shall think fit, to issue his warrant, and to levy the amount of such penalty and costs by distress and sale of the goods and chattels of such offender, together with the costs of such distress and sale; and in every such case such offender, if in custody at the time that such warrant shall be so issued, shall

Other penalties how to be recovered. Id. Sect. 25.

Distress.

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be forthwith discharged; but if it shall appear to such justice that the goods and chattels of such offender are not sufficient whereon to levy such distress, together with the costs of such distress and sale, it shall be lawful for such justice to commit the offender to the common gaol or to the house of correction of the county or place for which such justice shall be then acting, for any term not exceeding one calendar month, if the penalty shall not be above five pounds; for any term not exceeding three calendar months, if the penalty shall be above five pounds, and shall not be more than ten pounds; and for any term not exceeding six calendar months, if the penalty shall be above ten pounds: provided nevertheless, that whenever such offender shall have been committed to the common gaol or house of correction, in consequence of his not having duly paid such penalty and costs, such offender shall, if he pay or cause to be paid to the gaoler or keeper of the house of correction, or to whomsoever such justice shall have appointed, the penalty imposed, and costs, together with all the costs of the apprehension of him, and of the conveyance of him to the said gaol or house of correction, at any time previous to the expiration of the time for which such offender shall so have been committed, be forthwith discharged."

9 Geo. 4, c. 61.

Imprisonment.

Discharge on payment of penalty.

How penalties are to be applied. Id. sect. 26.

How applied]—The 26th section enacts, "that it shall be lawful for any justice, before whom any penalty shall be recovered under the provisions of this act, to award, if he shall think fit, any portion of the same, not in any case exceeding one moiety thereof, to the use of the prosecutor, and the remainder to the treasurer of the county or place for which such justice shall then act; and the said treasurer shall place the same to the credit of such county or place, and shall duly account for the same."

Penalties under 35 Geo. 3, c. 113, how to be recovered.

Penalties under 35 *Geo. III. c.* 113]—By stat. 35 Geo. III. c. 113, s. 2, 5, which we have seen, *ante*, 81, is still in force, one justice may hear and determine the same in a summary way, and upon information exhibited, or complaint made to him, shall summon the party accused, and also the witnesses on either side; and upon appearance, or contempt by not appearing, shall proceed to hear the matter, and examine the witnesses on oath, and give judgment therein; and upon proof of the offence either by confession, or oath of one witness, may convict the party accused; and if he, being then present, shall not at the time, or if absent, within three days after notice, either personally served upon him, or left for him at the place where the offence was committed, pay the said penalty, together with the costs and expenses, to be ascertained by such justice, the same shall be levied by distress of the goods and chattels of such offender wheresoever found within the jurisdiction of such justice, or in any entered place of such offender, in the like manner as directed by 27 Geo. II. c. 20, and 38 Geo. III. c. 55,* as far as the same relates to the execution of warrants of distress, as fully as if the powers of the said acts had been repeated herein; and shall be applied half to the informer and half to the poor of the parish, township, or place in which, &c. in such manner as such justice shall direct; and if a return shall be made that sufficient distress cannot be found whereon to levy the penalty and costs as aforesaid, it shall and may be lawful for any justice of any county or place within whose jurisdiction the party offending shall be found, upon producing to him such warrant and return, (and if such justice shall be of any other county or place, then upon oath made of the handwriting of the justice granting such warrant, and of the truth of such return,) to commit such offender to the common gaol, or other prison within his jurisdiction, for any term not exceeding six nor less than three calendar months, unless such penalty and the costs of all proceedings upon the conviction and warrant be sooner paid.

How to be applied.

Sale of distress. Id. s. 3.

Section 3. Provided, that on the request of the owner, such distress may be sold within the four days allowed by the said act of 27 Geo. II. c. 20, s. 3.

Allowance to per-

Section 4. And there shall be allowed to the officer executing such warrant

* See *post*, Constable, Vol. I.

of distress, for the safe keeping of the goods distrained, such sum not exceeding 5s. per day, and for any assistant any sum not exceeding 2s. per day for each, as the convicting justice shall direct, on proof on oath that sufficient cause existed for calling in the aid and assistance of such person or persons.

25 Geo. 3, c. 113.

Section 6. And after reciting that many persons carry on the trade of ale-house-keeper and victualler, and retailer of beer and ale, without license, and make entry of places for keeping the same by assumed or feigned names, and such beer and ale is frequently retailed in houses and places detached from their places of residence, whereby the law hath been evaded, it is enacted, that in case any summons shall be issued by any justice for any person to appear and answer to any information or complaint for selling by retail any beer, ale, or other exciseable liquors, without license, the directing such summons to such person by the name in which he made such entry, or is usually known, whether the same be his real or assumed or feigned name, and leaving such summons at such house or place where such offence is stated in the information to have been committed, and affixing a copy thereof on the door or other conspicuous part on the outside thereof, (such service being proved on oath of the person who shall have so served and affixed up such summons and copy,) shall be deemed a sufficient notice or summons to all intents and purposes.

sons executing warrants, &c. Id. s. 4.

What a legal notice to persons summoned. Id. s. 6.

Section 10. And if any person shall be summoned as a witness, and shall neglect or refuse to appear at the time and place appointed, without a reasonable excuse, (to be allowed by such justice,) or appearing shall refuse to be examined on oath and give evidence, he shall forfeit 10*l*., to be levied by warrant of distress, [to be applied to the poor where such offence was committed, in such manner as such justice shall direct]; and for want of sufficient distress, such offender shall be committed by the said justice to the common gaol or other prison, for (not exceeding) six calendar months, unless such penalty shall be sooner paid. See the provision of 9 Geo. IV. c. 61, s. 23, as to penalty for witnesses not attending under that act, *ante*, 84.

Witnesses not appearing forfeit 10*l*. Id. s. 10.

Section 11. And if any person, after service of any summons to appear to any charge of selling ale or beer or other exciseable liquors, without license, shall convey away any goods or chattels hereinbefore made liable to distress from the house or place wherein such offence shall have been committed, or belonging thereto, or occupied therewith, or which hath been entered as aforesaid, it shall be lawful for the officer to whom such warrant is directed, or other person acting in his aid or assistance, within thirty days after such conveying away, to seize the same wherever they may be found, and dispose of them in such manner as if they had been distrained on the premises. And if carried out of the jurisdiction of the justice, who originally issued the warrant, any justice of the county, city, liberty or place into which the same shall be conveyed, is required, on proof on oath of the handwriting of such justice originally signing such warrant, to indorse his name on the back thereof, which shall be sufficient authority to any person bringing such warrant, and to all other persons to whom the same was originally directed, to execute the same, and to proceed as if such goods had been seized within the jurisdiction of the justice who signed the original warrant.

Goods conveyed away may be distrained within 30 days wherever found. Id. s. 11.

Warrants may be indorsed.

(18.) Appeal.

How, when, and where to be made]—On this subject the 27th section of the statute 9 Geo. IV. c. 61, enacts, "that any person who shall think himself aggrieved by any act* of any justice, done in or concerning the execution of this act, may appeal against such act to the next general or quarter sessions of the peace holden for the county or place wherein the cause of such complaint shall have arisen, unless such session shall be holden within twelve days next after such act shall have been done, and in that

Appeal may be made to the quarter sessions. 9 Geo. 4, c. 61, s. 27.

* This seems to extend to a refusal to grant or transfer a license, which is an important alteration of the law in this respect to what it previously stood.

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case to the next subsequent session holden as aforesaid, and not afterwards, provided that such person shall give to such justice *notice in writing* of his intention to appeal, and of the cause and matter thereof, within five days next after such act shall have been done, and seven days at the least before such session, and shall within such five days enter into a *recognizance*, with two sufficient sureties, before a justice acting in and for such county or place as aforesaid, conditioned to appear at the said session, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognizance being entered into, the justice before whom the same shall be entered into shall liberate such person if in custody for any offence in reference to which the act intended to be appealed against shall have been done; and the court at such session shall hear and determine the matter of such appeal, and shall make such order therein, with or without costs, as to the said court shall seem meet; and in case the act appealed against shall be the *refusal to grant or to transfer any license*, and the judgment under which such act was done be reversed, it shall be lawful for the said court to grant or to transfer such license, in the same manner as if such license had been granted at the general annual licensing meeting, or had been transferred at a special session; and the judgment of the said court shall be final and conclusive to all intents and purposes; and in case of the dismissal of such appeal, or of the affirmance of the judgment on which such act was done, and which was appealed against, the said court shall adjudge and order the said judgment to be carried into execution, and costs awarded to be paid, and shall if necessary issue process for enforcing such order; provided that no justice shall act in the hearing or determination of any appeal to the general or quarter sessions as aforesaid from any act done by him in or concerning the execution of this act: Provided also, that when any cause of complaint shall have arisen within any liberty, county of a city, county of a town, city, or town corporate, it shall be lawful for the person who shall think himself so as aforesaid aggrieved to appeal against any such act as aforesaid, if he shall think fit, to the quarter sessions of the county within or adjoining to which such liberty or place shall be situate, subject to all the provisions herein-before contained."

9 Geo. 4, c. 61. Recognizance.

Provision as to appeal against refusal to grant or transfer a license.

Judgment of quarter sessions to be final.

No justice to act on appeal who was a party to act complained of.

Appeal in a limited jurisdiction may be to county sessions.

Recognizance to give Evidence on]—The 28th section enacts, "that when any person shall have given notice of his intention to appeal as aforesaid, and shall have entered into recognizance as herein-before directed, it shall be lawful for the justice, before whom such recognizance shall have been entered into, to summon any person whose evidence shall appear to him to be material, and to require such person to be bound in recognizance to appear at the said general or quarter sessions, and to give evidence in such appeal; and in case any such person as aforesaid shall neglect or refuse to obey such summons, or shall refuse to enter into such recognizance, it shall be lawful for such justice as aforesaid to issue his warrant to apprehend such person so neglecting or refusing to obey such summons, and to bring him before such justice, and if such person shall continue to refuse to enter into such recognizance, to commit him to the common gaol or house of correction of the county or place for which such justice shall be then acting, there to remain until he shall enter into such recognizance, or shall be otherwise discharged by due course of law."

Justices to bind parties to appear to give evidence on appeal at quarter sessions. Id. s. 28.

Consequences of refusal to obey summons or enter into a recognizance.

Costs]—The 29th section enacts, "that in every case where notice of appeal against the judgment of any justice in or concerning the execution of this act shall have been given, and such appeal shall have been dismissed, or the judgment so appealed against shall have been affirmed, or such appeal shall have been abandoned, it shall be lawful for the court to whom such appeal shall have been made or intended to be made, and such court is hereby required, to adjudge and order that the party so having appealed, or given notice of his intention to appeal, shall pay to the justice to whom such notice shall have been given, or to whomsoever he shall appoint, such

Court to adjudge costs in certain cases. Id. Sect. 29.

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sum, by way of costs, as shall in the opinion of such court be sufficient to indemnify such justice from all cost and charge whatsoever, to which such justice may have been put in consequence of his having had served upon him notice of the intention of such party to appeal; and if such party shall refuse or neglect forthwith to pay such sum, it shall be lawful for the said court to adjudge and order that the party so refusing or neglecting shall be committed to the common gaol or house of correction, there to remain until such sum be paid; and that in every case in which the judgment so appealed against shall be reversed, it shall be lawful for such court, if it shall think fit, to adjudge and order that the treasurer of the county or place in and for which such justice, whose judgment shall have been so reversed, shall have acted on the occasion when he shall have given such judgment, shall pay to such justice, or to whomsoever he shall appoint, such sum as shall, in the opinion of such court, be sufficient to indemnify such justice from all costs and charges whatsoever to which such justice may have been so put; and the said treasurer is hereby authorised to pay the same, which shall be allowed to him in his accounts."

9 Geo. 4, c. 61.

On default of payment appellant may be committed.

If judgment reversed, justices may be indemnified against costs, and how.

Under 35 *Geo. III. c.* 113]—The 12th section of that act enacts, that if any person shall think himself aggrieved by the judgment of such justice, he may appeal against any such conviction to the next general quarter sessions of the peace, (and such justice shall make known to such person at the time of such conviction the right to appeal,) unless such sessions be holden within six days next after such conviction, and in such case to the next subsequent sessions, and not afterwards; such person at the time of such conviction giving to such justice notice in writing of his intention to appeal, and also giving security, to the satisfaction of such justice, for the payment of the penalty and costs in case such judgment be confirmed on appeal; and also further entering into a recognizance at the time of such notice, with sufficient sureties, to try the appeal, abide the judgment, and pay such costs as shall be awarded at such sessions. And the judgment of such sessions shall be final and conclusive; and if the justices at such sessions shall adjudge such appeal to be frivolous or vexatious, they may give costs to the party aggrieved by such appeal, not exceeding 5*l.* in the whole.

Appeal under 35 Geo. 3, c. 113, to the quarter sessions.

Notice of intention to appeal. Recognizance to be entered into.

Judgment of sessions to be final.

Power to give costs.

Conviction.

But no appeal lies to the sessions from a conviction for selling liquors without an excise license. *R.* v. *Hanson*, 4 *B. & A.* 519; *ante*, p. 81; *post*, Excise, Vol. II.

(19.) Limitation of Actions against Justices, &c. and Plea by.

The 30th section of the 9 Geo. IV. c. 61, enacts, "that every action against any justice, constable, or other person, for or on account of any matter or thing whatsoever done or commanded by him in the execution of his duty or office under this act, shall be commenced within three calendar months after the cause of action or complaint shall have arisen, and not afterwards; and if any person shall be sued for any matter or thing which he shall have done in the execution of this act, he may plead the general issue, and give the special matter in evidence." See *post*, Justices, Vol. III. p. 491 to 499.

Limitation of actions against justices, &c. 9 Geo. 4, c. 61, s. 30.

Plea.

(20.) Remedies on Refusal to Grant License.

By Appeal]—We have already noticed, *ante*, pp. 87, 88, the remedy which a party has by appeal in case of a refusal to grant or transfer license.

By appeal.

By Mandamus]—It is discretionary in the justices whom they will license, and a *mandamus* will not lie to compel the justices to license any person; and on a conviction for selling exciseable liquors without license, the want of such license could only come in question, and not the reason why it was denied. *Giles's case*, 2 *Str.* 881. Therefore, even where affidavits were offered to be

By *mandamus*.

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produced, of the justices declaring that they would grant no licenses to any of the inhabitants who signed a petition to the parliament for erecting a workhouse there; and that the person, on whose behalf the motion was made, had been a victualler in the town for above thirty-five years; the motion was refused. 1 *Barnard.* 402; *R.* v. *Young*, 1 *Burr.* 556.

Remedies for not granting.

And in a late case a *mandamus* was refused to command justices to hear an application for an ale license, which they had refused, though it was suggested that their refusal proceeded from a mistaken view of their jurisdiction; *et per curiam*, "It being conceded that the magistrates have heard and determined upon this application for a license, which is a matter peculiarly for their consideration, we cannot grant a *mandamus* to them to re-hear what they have already determined." *R.* v. *Licensing Justices of Ward of Farringdon Without*, 2 *D. & R. Mag. Ca.* 365; and see a still later case, *R.* v. *Justices of Surrey*, *id.* 435.

By action.

By Action]—An action is not maintainable against justices for refusing to grant a license for the same reason that a *mandamus* will not be awarded; that is, because the legislature had left the granting or refusing such license to the discretion of the justices, who are not responsible for errors in judgment; *Bassett* v. *Godscall*, 3 *Wilson*, 121, 124; and even if they acted maliciously or corruptly, no action would lie. See 1 *Salk.* 306; *Vaughan*, 138; 5 *T. R.* 86.

A party may indeed sue a magistrate in an action for money had and received, to recover back a fee improperly taken by the magistrate for granting a license, though such fee had uniformly been taken for fifty-seven years before, and no notice of action is necessary. *Morgan* v. *Palmer*, 2 *B. & Cres.* 782; 4 *D. & R.* 483, S. C.; *post*, **Justices**, Vol. III. p. 491.

By indictment or information.

By Indictment or Information]—Where a magistrate acts in his office with a partial, malicious, or corrupt motive, he is guilty of a misdemeanor, and may be proceeded against by indictment or criminal information in the King's Bench, which exercises a general supervision over all justices of the peace. And either of these modes of proceeding may be adopted where a magistrate partially, maliciously, or corruptly refuses to grant or transfer a publican's license, provided such improper refusal can be distinctly proved or plainly inferred from the circumstances under which the magistrate acted.

It is most usual to proceed in such a case by criminal information in preference to an indictment; but sometimes where there has been delay in the application, or a jury may be more fit to apply to than the court, then an indictment should be the form of remedy. The general rules as to when an indictment or criminal information will lie against a justice of the peace, as also the mode of proceeding therein against him, and the consequences, will be found, *post*, **Justices**, Vol. III. p. 481 to 486.

In *R.* v. *Young and Pitts*, 1 *Burr.* 556, a motion was made for an information against the defendants, for arbitrarily, obstinately, and unreasonably refusing to grant a license to one *Henry Day* to keep an inn at Eversley, Wilts.; Lord *Mansfield*, C. J. said, "It is certain that this court has no power or claim to review the reasons of justices of the peace, upon which they form their judgments in granting licenses, by way of appeal from their judgments, or over-ruling the discretion intrusted to them. But if it clearly appears that the justices have been partially, maliciously, or corruptly influenced in the exercise of this discretion, and have (consequently) abused the trust reposed in them, they are liable to prosecution by indictment or information; or even possibly by action, if the malice be very gross and injurious. If their *judgment* be wrong, yet their *heart* and *intention* pure, God forbid that they should be punished." And he declared that he should always lean towards favouring them; unless partiality, corruption, or malice clearly appeared. And having gone through all the particulars, both of the charge and of the defence, he concluded with declaring it as his opinion that there was not sufficient ground for a criminal charge against these

Justices not to be punished for mere error in judgment.

justices. And by the court unanimously the rule was discharged with costs.

WINE AND SPIRIT LICENSE.

In *R.* v. *Athay*, 2 *Burr.* 653, on showing cause why a rule should not be made absolute, for an information against a justice for a misdemeanor in refusing to grant a license to one *Francis Simes* (who had been licensed for several preceding years) to sell ale as usual, and afterwards convicting him without any previous summons for having sold it without a license; it appeared amongst other grounds upon which this rule had been obtained, that the only reason why the license was refused him was his declining to pay a sum of money (viz. 5*l.*) which was claimed of him upon a distinct and collateral account, and which he denied to be due from him; the payment of which sum of money was (as he alleged) insisted upon by the justice, as a condition precedent to his granting the man a license. The court were unanimously of opinion that the allegation appeared to be false in fact; but, at the same time, they declared explicitly that the justices have no sort of authority to annex any such conditions to the grant of these licenses. The rule was discharged.

Remedies for not granting.

Justice not to annex condition to license.

In *R.* v. *Williams and Davis*, 3 *Burr.* 1317, an information was granted against the defendants, justices of the peace for the borough of Penryn, for refusing to grant licenses to those alehouse keepers who voted against their recommendation of candidates for members of parliament for that borough. It appeared that they had acted very grossly in this matter; having previously threatened to ruin these people, by not granting them licenses, in case they should vote against those candidates whose interest these justices themselves espoused, and having afterwards actually refused them licenses upon this account only. And Lord *Mansfield* declared that the court granted this information against the justices, not for the mere refusal to grant the licenses, (which they had a discretion to grant or refuse, as they should see to be right and proper,) but for the corrupt motive of such refusal, for their oppressive and unjust refusing to grant them, because the persons applying for them would not give their votes for members of parliament as the justices would have had them.

An information against the justices of the town of Nottingham, by Lord *Hardwicke*, for refusing to grant licenses for twenty public houses, to the occupiers of which licenses had been granted for several preceding years. It appearing that the persons who kept these houses had voted at the last election for the town for the candidates opposed to those whose interests the justices had espoused, his Lordship said, "The abuse of such a discretionary power ought to be more severely punished than the abuse of a power which is not discretionary. It appears in this case to have been very grossly abused, for it is not probable that the occupiers of twenty houses should have all so misconducted themselves at the same time, as to render it improper to grant them licenses." *Sayer's Rep.* 216, 217.

In *R.* v. *Temple*, 1 *Keb.* 727, an information was granted against a justice of the peace for extortion and compounding to give new licenses to unlawful alehouses, and taking away good ones, and for discharging recognizances for appearance at sessions.

In *R.* v. *Cornelius*, 2 *Stra.* 1210, an information was granted against *Cornelius* and another justice of the peace of a borough, for a misdemeanor in taking money for granting licenses to alehouse keepers.

In *R.* v. *Hann and Price, Justices of the Peace for the Borough of Corfe Castle*, 3 *Burr.* 1716, on showing cause against an information which had been prayed for against these justices, for a misdemeanor in the execution of their office, in refusing to grant a license to sell ale to one *Ingram*, an innkeeper in that borough, merely from a motive of resentment against him, for having espoused an opposite interest in the election for members of that borough; the defence was, that they did not act from any resentment or corrupt motive, but solely because *Ingram* was an improper person, and had kept a disorderly house, and continued to keep it after full notice to the contrary, and in particular that he encouraged gaming and cockfighting at his house. By Lord *Mansfield*, C. J. "The court should never interpose

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against magistrates, unless they have acted from bad motives and *malâ fide*, especially in such a case as this, where they are intrusted with an absolute discretion: but for that very reason, this is the strongest case for the interposition of the court, *if* it appear that they *have* acted upon corrupt motives. If it did appear clearly that this man kept a disorderly house, it would be a reason against the court's interposing against the justices. But this does not clearly appear." And he declared it to be of very dangerous consequence to permit the due discretion of the justices to be influenced by considerations of this kind. The court made the rule absolute.

Defendants must appear personally to receive judgment.

Afterwards, these justices confessing themselves guilty of the information, it was moved for a rule to dispense with their personal appearance, on the undertaking of their clerk in court to answer for their fines. But the court upon full debate were unanimous in refusing the motion. The general doctrine laid down by the court was, that although such a motion was subject to the discretion of the court, either to grant or refuse it, where it was clear and certain that the punishment would not be corporal; yet it ought to be denied in every case where it was either probable or possible that the punishment would be corporal; and this for the example sake; as the notoriety of their being called up might deter others from the like offences. And finally, upon their appearance in court, the sentence was, that they should be committed for a month, fined 50*l.* each, and further imprisoned till the fine be paid. 3 *Burr.* 1716, 1786.

Time of making application for information, &c.

We shall hereafter, *post*, **Justices**, Vol. III. p. 485, consider as to the time when the application for a criminal information should be made, and the other proceedings relative to such application.

(21.) Remedy for Improperly Granting a License.

Improperly granting license.

A criminal information will be awarded against justices for granting an alehouse license under the influence of corrupt motives, as well as for refusing it; for in the former case it may be productive of mischief to the whole community, in the latter, the grievance is only felt by the individual. See *R.* v. *Temple*, 1 *Keb.* 727; *R.* v. *Cornelius*, 2 *Stra.* 1210.

Information for.

In *R.* v. *Holland and Forster*, 1 *T. R.* 692, an information had been moved for against the defendants, who were justices for the county of Middlesex, for improperly granting an ale license to one *Harrison*, who had been refused one by the justices at their last general meeting, on account of misbehaviour. It appeared that the defendant *Forster* had been present at that general meeting at the time when the license was refused; but he had afterwards told the other defendant *Holland*, who was not present at the general meeting, that the only reason why a license had not been granted then was, that they might have an opportunity of inquiring into the character of *Harrison*, and had accordingly prevailed upon *Holland*, at a private meeting held by those two only, to join in granting a license. The court were clearly of opinion that an information should be granted against a justice as well for *granting* a license improperly, as for *refusing* one in the same manner: that it had already been done in the case of *R.* v. *Filewood and another*, E. T. 26 Geo. III. *B. R.* and indeed the mischief of granting a license improperly was infinitely greater than that of refusing one; for in the former case it might be productive of injury to the whole community, while in the latter the grievance was felt only by the individual. That the only ground of these applications was the improper conduct of the magistrates. But as it appeared in this case that *Holland*, though not altogether blameless, had been deceived by *Forster*, they discharged the rule as to the former, upon his paying the costs of the application as against himself; and as to *Forster*, they granted the information.

In *R.* v. *Bingham, Clerk*, 1 *Burn's J.* 24th ed. 48, reported also by Mr. Gurney, the defendant was convicted at Winchester Sum. Ass. 1813, of a conspiracy to defraud the revenue of certain stamp duties. It appeared in evidence at the trial that he was a justice of the peace, and one of those who attended on the general licensing day, when he obtained, through an improper

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influence, a license in order to enhance the value of some premises which were his own property. In pronouncing judgment, King's Bench, Nov. 26, 1813, *Le Blanc*, J. said, "The court does not go out of its way to cast reflections upon the conduct of those who are not before the court; but it would not discharge its duty if it did not declare, that it is not a proper exercise of the functions of any magistrates so to grant a license, when they know that no house exists to which that license is to be applied. The legislature has taken particular care that no person concerned in public houses or victualling houses, under the description of brewers or dealers in spirits, shall themselves take part in the granting of licenses, in order to guard against any improper influence in the granting of them, and it is subject to the same mischief and the same inconvenience that any person in the situation of a magistrate, being the owner of a house, which afterwards may be converted into a public house, should know and should consent to a license being kept on foot, which may ultimately tend to increase the value of his property, whenever that house may be conveyed to a person to whom the license may attach." The defendant was sentenced to be imprisoned in Winchester gaol for six calendar months, and Lord *Ellenborough*, C. J. directed the proceedings to be laid before the lord chancellor.

Indictment will lie.

If there be two sets of magistrates, as for a county and a borough, and having a co-ordinate jurisdiction in that borough, and one of the two sets appoint a meeting for granting alehouse licenses, and when the day arrives refuse a license to an applicant for one; and then the other set of magistrates, having subsequently to the prior appointment, but before the first licensing day, appointed a future day for the same purpose, license on that day the person to whom on a former day a license had been refused, it is an indictable offence. R. v. *Sainsbury*, 4 *T. R.* 451. Et per *Ashhurst*, J., S. C., "There being no words of exclusion in the city charters, it follows as a consequence that the justices of the county have a concurrent jurisdiction in the borough of Southwark; if so, it also follows that the jurisdiction of holding the meeting directed by the 26 Geo. II. attached in those magistrates, who first gave notice of the meeting; and it was a breach of the law in the other magistrates to attempt to wrest this jurisdiction out of their hands; for what the law says shall not be done, it becomes illegal to do, and is therefore the subject-matter of an indictment, without the addition of any corrupt motives. And though the want of corruption may be an answer to an application for an information, which is made to the extraordinary jurisdiction of the court, yet it is no answer to an indictment, where the judges are bound by the strict rule of law."

IV. Making and Selling Unwholesome Victuals.

Indictment for selling unwholesome victuals.

A publican selling unwholesome wine or victuals may, it is said, be indicted for a misdemeanor at common law; and any person to whom the same has been sold may maintain an action against him for the injury done. *Rol. Ab.* 95; and see 2 *East's P. C.* 822; 4 *Bla. Com.* 162; 6 *East*, 133.

Innkeepers' charges. Horse-bread. 21 Jac. 1, c. 21.

By stat. 21 Jac. I. c. 21, s. 2, (which repeals former statutes in this matter,) hostlers and innholders are prohibited from making any horse-bread, but bakers shall make it, and the assize shall be kept, and the weight be reasonable, after the price of the corn or grain in the markets adjoining.

Hay, oats, &c. to be sold for reasonable gain.

And they shall sell their horse-bread, and also their hay, oats, beans, pease, provender, and also all kinds of victual, both for man and beast, for reasonable gain, having respect to the prices for which they shall be sold in the markets adjoining, without taking any thing for litter.

Section 3 enables them to make horse-bread when no baker dwells in the same town.

Power of justices herein.

By section 4, if the horse-bread which any of the said hostlers or innholders make be not of due assize, or if any of them shall offend in any thing contrary to this act, the justices, sheriffs, and stewards in their leets, may hear and determine, &c.; and for the first offence the hostler or innholder shall be fined; for the second offence be imprisoned for one month; and for the third

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BAD BEER, &c.

offence shall stand upon the pillory;(*a*) and for the fourth shall be forejudged for keeping any inn again.

Power of justices by the commission. 21 Jac. 1, c. 21.

By the commission of the peace, two justices, one of them being of the quorum, may inquire of innholders, and of all and singular other persons, who shall offend in the abuse of weights and measures, or in the sale of victuals, against the form of the ordinances in that behalf made. *Post*, Sessions, Vol. V. p. 469, 473.

V. Brewing, Selling, &c. Unwholesome Beer.

Using sugar, honey, &c. in brewing, prohibited. 1 W. 3, ss. 1, c. 24.

By stat. 1 Will. III. ss. 1, c. 24, s. 17, no common brewer or retailer of beer or ale shall use any molasses, coarse sugar, honey, or composition or extract of sugar, in the brewing or working of any beer or ale, upon the penalty of forfeiting the liquor, and also a penalty of 100*l.*, half to the King, and half to him that shall sue in six months.

10 & 11 W. 3, c. 21.

And by stat. 10 & 11 Will. III. c. 21, s. 34, if any common brewer or retailer of beer or ale shall use any molasses, coarse sugar, honey, or composition or extract of sugar, in the brewing, making, or working of any ale or beer; or if any common brewer shall receive into his custody any quantity of any of the said materials exceeding 10 lb., he shall forfeit 100*l.*, to be recovered and mitigated as by the laws of excise.

And by s. 20, the servant or other assisting therein shall forfeit 20*l.* in like manner, and in default of payment shall be imprisoned three months.

Using wormwood, &c. in brewing. 9 Anne, c. 12.

And by stat. 9 Anne, c. 12, s. 24, 26, no common brewer, innkeeper, or victualler, shall use any broom, wormwood, or any bitter ingredient, (to serve instead of hops,) in brewing or making any beer or ale for sale, (except infusing broom or wormwood, after it is brewed and tunned, to make broom or wormwood ale or beer,) on pain of 20*l.*, half to the King, and half to the prosecutor, to be levied as by the laws of excise.

Using unwholesome ingredients. 12 Anne, st. 1, c. 2.

And by 12 Anne, stat. 1, c. 2, s. 32, no common brewer or retailer of beer or ale shall use any sugar, honey, foreign grains, guinea pepper, essentia bine, coculus Indiæ, or any unwholesome ingredients in the brewing of beer or ale, or mix any of them therewith, on pain of 20*l.*, to be recovered and mitigated as by the laws of excise, half to the King, and half to him that shall sue.

56 Geo. 3, c. 58, s. 2.

And by 56 Geo. III. c. 58, s. 2, any dealer in or brewer or retailer of beer receiving or having in his custody or possession, or making, using or mixing with, or putting into any worts or beer, any liquor, extract, calx, or other material or preparation to darken the colour, or which has been or shall be used for that purpose, other than brown malt, ground or unground, as commonly used in brewing, or receiving or having in his custody or possession, or using or mixing with or putting into any worts or beer any molasses, honey, liquorice, vitriol, quassia, coculus Indiæ, grains of paradise, Guinea pepper, or opium, or extract or preparation thereof, or any article or preparation whatever, for or as a substitute for malt or hops, shall forfeit all such liquor, extract, calx, molasses, honey, vitriol, quassia, coculus Indiæ, grains of paradise, Guinea pepper, opium, extract, article and preparation; and also the worts and beer, together with the casks and other packages containing the same, (which shall be seized by the officer of excise,) and also for each and every such offence 200*l.*

Mixing beer and adulterating. 2 G. 3, c. 14, s. 2.

Any common or other brewer, innkeeper, victualler, or retailer of beer or ale, mixing or causing or suffering to be mixed in any vessel, tub, measure, or otherwise, any strong beer, ale or strong worts with any small beer or small worts, or with water, after the gauge of such strong beer, ale or strong worts by the officer of excise, shall for every offence forfeit 50*l.* 2 Geo. III. c. 14, s. 2, and vide 42 Geo. III. c. 38, s. 12.

1 W. 4, c. 64, s. 13.

And the 1st Will. IV. c. 64, s. 13, as we have seen, *ante*, 62, imposes a

(*a*) The punishment of the pillory is abolished by 56 Geo. III. c. 138, except in cases of perjury and subornation of perjury.

penalty and forfeiture upon any person licensed under that act mixing drugs in beer or adulterating it. ALE MEASURES, &c.

The beer and cyder license contains a clause of forfeiture for selling beer made otherwise than from malt and hops, or for mixing drugs or pernicious ingredients in beer, or cyder or perry, or for diluting or adulterating any beer, cyder, or perry, or selling the same knowing them to have been fraudulently diluted, deteriorated, or adulterated. See form of license, *post*, (No. 3). Forfeiture of license.

The wine and spirit license also contains a clause of forfeiture for fraudulently diluting or adulterating any exciseable liquor, or selling the same knowing them to have been fraudulently diluted or adulterated. See the form of license.

Under a contract by the innkeeper that he should take all his beer from his landlord, a brewer, or pay an advanced rate, it seems, that if the landlord supplies the innkeeper with beer not of a fair merchantable quality, such as ought to be to the satisfaction of the customers, the innkeeper may deal with other brewers. *Holcomb* v. *Hewson*, 2 *Camp. N. P.* 391, 2; and see *Thornton* v. *Sherratt*, 8 *Taunton Rep.* 529. In the latter case it was considered that contracts, by which brewers bind publicans to deal with them, are not to be favoured, as tending to prejudice the health of the subject. Contracts with brewers.

VI. Ale Measures.

By the 9 Geo. IV. c. 61, s. 19, *ante*, p. 82, we have already seen that persons licensed under that act are to use standard measures in the sale of exciseable liquors. 9 Geo. IV. c. 61.

Also by the 1 Will. IV. c. 64, s. 21, *ante*, p. 61, we have seen that persons licensed under that act are to use standard measures in the sale of beer, cyder, or perry. 1 Will. IV. c. 64.

The wine and spirit license has a clause implying a forfeiture of it in case of selling by any measures not of the legal standard. See *form of license*, *post*, (No. 30). Forfeiture of license.

The retail beer and cyder license also has a clause implying a forfeiture in case of selling beer, cyder, or perry, by any measures which are not of the legal standard. See form of license, *post*, (No. 3).

By stat. 8 Eliz. c. 9, the justices in Easter sessions yearly (and mayors in corporations) shall rate the price of all barrels, kilderkins, firkins, and other vessels to be sold for ale or beer to be uttered therein: and if any cooper shall not sell the same according to such rate, he shall forfeit 3*s.* 4*d.*, half to the King, and half to him that shall sue. Justices to rate the price of vessels. 8 Eliz. c. 9.

As to what is the standard measure and the law relating to ale measures in general, see, *post*, **Weights and Measures**, Vol. V. The principal act now in force is the 5 Geo. IV. c. 74, which repeals the 43 Geo. III. c. 69, and 10 & 11 Will. III. c. 15, relating to ale, &c. measures. The measure itself.

An indictment will lie for selling ale in pots unsealed, although the statute appoints another method of proceeding; because measures are by the common law, and the statutes only direct the manner of ascertaining them. 2 *Blackerby*, 14. Indictment.

But in such case the indictment must not be upon the statute, but at common law; and the offence ought to be laid, not for selling in pots unsealed, that being no offence at common law, but in pots wanting measure.

VII. Enhancing the Price of Victuals, Ale, &c.

By stat. 2 & 3 Edw. VI. c. 15, if any brewers, butchers, bakers, poulterers, cooks, costermongers, or fruiterers, shall conspire to sell their victuals but at certain prices, they shall, on conviction in the sessions, or lect, by witness, confession, or otherwise, forfeit 10*l.* to the King for the first offence, and if not paid in six days, they shall be imprisoned twenty days; for the second Enhancing by conspiracy. 2 & 3 Ed. 6, c. 15.

DISORDERLY HOUSES, &c.

offence 20*l.* in like manner; for the third offence 40*l.* in like manner, loss of an ear, and they become infamous.

2 Geo. 3, c. 14.

But by stat. 2 Geo. III, c. 14, no brewer, innkeeper, victualler, or other retailer of strong beer or ale, shall be sued or molested by indictment, information, popular action, or otherwise, for advancing the price of strong beer or ale in a reasonable degree.

As to the innkeepers' remuneration and their liability for selling spirits in small quantities, see *post*, p. 97, 98, &c.

VIII. Keeping Disorderly House, Harbouring Thieves, &c., Offenders against Revenue Laws, &c.

Disorderly inns indictable.

All *disorderly* inns or alehouses or other houses are public nuisances, and may at common law upon indictment be suppressed and the keepers of them fined. 4 *Bla. Com.* 167.

Penalty. 9 Geo. 4, c. 61. 1 Will. 4, c. 64, s. 13.

The 9 Geo. IV. c. 61, s. 21, *ante*, p. 82, 83, imposes penalties for offences against the tenor of the license; and the 1 Will. IV. c. 64, s. 13, as we have seen *ante*, p. 62, imposes a penalty and forfeiture against a person licensed under that act for suffering drunkenness or disorderly conduct in his house.

Forfeiture of license.

The wine and spirit license contains clauses of forfeiture in case of knowingly permitting or suffering persons of notoriously bad character to assemble or meet together in the house, or permitting drunkenness or other disorderly conduct in the house or premises. See form of license, (No. 30), *post*.

The beer and cyder license also contains a clause of forfeiture in case of wilfully or knowingly permitting drunkenness or quarrelsome or disorderly conduct in the house, or any gaming therein, or knowingly permitting or suffering persons of notoriously bad character to assemble or meet together in the house. See form of license, (No. 3), *post*.

Harbouring thieves, &c. indictable.

Harbouring Thieves, &c.] The innkeeper who harbours or permits the resort of thieves or persons of scandalous reputation, or suffers frequent disorders in his house, is guilty of a misdemeanor at common law, for which he may be fined or imprisoned. 1 *Hawk.* c. 78; *Hale's P. C.* 146.

Apprehending vagrants, &c. 5 Geo. 4, c. 83, s. 13.

By the 5 Geo. IV. c. 83, s. 13, any justice, on information on oath that any idle or disorderly person, or rogue, or vagabond, or incorrigible rogue, is reasonably suspected to be harboured or concealed in any house kept or purporting to be kept for the reception, lodging, or entertainment of travellers, may, by warrant under his hand and seal, authorise any constable or other person or persons to enter at any time into such house and apprehend and bring before him or any other justice every such idle and disorderly person, rogue and vagabond, and incorrigible rogue, as shall be found therein. See *post*, Vagrant, Vol. V.

Breaking open doors to suppress disorder.

It seems also at common law, if there be disorderly drinking or noise at an unseasonable time of night, especially in inns, taverns, or alehouses, the constable or his watch, demanding entrance and being refused, may break open the doors to see and suppress the disorder. 2 *Hale's P. C.* 95.

Presentment by constable.

By 7 & 8 Geo. IV. c. 38, constables are not to be required to make presentments respecting unlicensed or disorderly alehouses.

For more concerning disorderly houses see, *post*, Bawdy House, Disorderly House, Vol. I.; Gaming, Vol. II.; Riot, Vol. V.

Harbouring offenders against revenue laws.

Harbouring Offenders against Revenue Laws]—By 9 Geo. II. c. 35, ss. 30, 31, it was enacted, that any alehouse keeper knowingly receiving or harbouring an absconded person, against whom a process of arrest had issued, and the sheriff had returned *non est inventus*, for having beat, abused, or obstructed any customs or excise officer in the execution of his office, or for any offence against the laws of excise or customs, or knowingly harbouring, &c. any person who, having been in prison for any such offence, had escaped, or who had been convicted for the same and should fly from justice, after six days' notice of such absconding in two successive Gazettes, and by

writing fixed on the door of the parish church where he last dwelt, should forfeit 100*l.* and have no license for the future. But this act is repealed by 5 Geo. IV. c. 105. The new provision applicable to an offence of this kind is the 7 & 8 Geo. IV. c. 53, s. 29, *post*, Excise, Vol. II. SEDITIOUS MEETINGS, &c.

By the 10 Geo. IV. c. 44, s. 6, (the Metropolitan Police Act,) publicans harbouring police officers during their hours of duty are subjected to a penalty of not more than 5*l.* to be recovered before two justices. See *post*, Police, Vol. V. Harbouring police officer. 10 Geo. 4, c. 44.

IX. Holding Seditious Meetings.

By stat. 57 Geo. III. c. 19, for the more effectually preventing seditious meetings, it is enacted, s. 29, "that it shall be lawful for any two or more justices of the peace, acting for any county, stewartry, riding, division, city, town, or place, upon evidence on oath that any meeting of any society or club hereby declared to be an unlawful combination and confederacy," (*i. e.* societies or clubs calling themselves Spenceans or Spencean Philanthropists, and all other societies or clubs by whatever name called or known, who hold and profess the same objects and doctrines, 57 Geo. III. c. 19,) "or any meeting for any seditious purpose, hath been held, after the passing of this act, at any house, room, or place, licensed for the sale of ale, beer, wine, or spirituous liquors, with the knowledge and consent of the person keeping such house, room, or place, to adjudge and declare the license or licenses for selling ale, beer, wine, or spirituous liquors, granted to the person or persons keeping such house, room, or place, to be forfeited; and the person or persons so keeping such house, room, or place, shall, from and after the day of the date of such adjudication and declaration, and notice thereof given to him, her, or them, be subject and liable to all and every the penalties and forfeitures for any act done after that day, which such person or persons would be subject and liable to if such license or licenses had expired or otherwise determined on that day." Licenses of public houses where unlawful clubs are held to be forfeited. 57 Geo. 3, c. 19.

By the 39th Geo. III. c. 79, s. 31, every place licensed for the sale of ale, &c. shall be deemed a place licensed for the reading of books, pamphlets, and other publications under this act, but any two justices of the jurisdiction upon evidence on oath that books, pamphlets, and other publications of a seditious or immoral nature are usually distributed to be read at such place, may adjudge and declare the ale and spirit licenses forfeited, and the persons keeping such place shall afterwards be subject to all the penalties as though such licenses had expired or been otherwise determined." See the act, *post*, Riot, Vol. V. Seditious pamphlets. 39 Geo. 3, c. 79, s. 31. Forfeiture of license.

See further as to Seditious Meetings, *post*, Riot, Vol. V.; Treason, Vol. V.

X. Closing Doors in Riots.

We have already seen the 9 Geo. IV. c. 61, s. 20, empowers two justices to order the closing of doors of houses licensed under that act to be closed during riots, &c. *ante*, 82. Closing doors of inns during riots.

We have also seen the 1 Wil. IV. c. 64, s. 11, empowers one or more justices to order the closing of houses licensed under that act to be closed during riots, &c. *ante*, 61.

By the terms of the license for retailing beer and cyder, the not maintaining good order and rule in the house creates a forfeiture of such license. And there is also a similar clause in the wine and spirit license. Forfeiture of license.

The 9 Geo. IV. c. 61, s. 21, and the 1 Wil. IV. c. 64, s. 15, *ante*, p. 63, impose penalties for offences against the tenor of such licenses. Penalty.

See further, *post*, Riot, Vol. V.

GAMING, MUSIC, &c.

XI. Permitting Gaming, Music, Dancing, &c. in Inn.

Gaming.

Gaming]—The law relative to gaming-houses will here apply, see *post*, **Gaming**, Vol. II. It may be as well to notice, however, that if the guests at an inn or tavern call for dice or tables, and for their recreation play with them, or if any neighbours play at bowls for their recreation or the like, these are not within the statute 33 Hen. VIII. c. 9, s. 11, if the house be not kept for gaming, nor the gaming be for lucre or gain. *Dalt.* c. 46.

Forfeiture of license.

There is a clause of forfeiture in the wine and spirit license, and also in the beer and cyder license, for permitting any unlawful games, or any gaming whatsoever in the house or premises. See forms (No. 3), (No. 30), *post*.

Penalty.

The 9 Geo. IV. c. 61, s. 21, *ante*, p. 82, and the 1 Wil. IV. c. 64, s. 21. *ante*, p. 63, impose penalties for offences against the tenor of such licenses.

Music and dancing, &c. in London or Westminster, or 20 miles of it.

25 Geo. 2, c. 36.

Music, Dancing, &c.]—For the law relative to keeping houses for performance of music, dancing, and other entertainments in general, see *post*, **Disorderly House**, Vol. I. It may be as well, however, here to notice, that by stat. 25 Geo. II. c. 36, s. 2, "any house, room, or garden, or other place kept for public dancing, music, or other public entertainment of the like kind in London and Westminster, or within twenty miles thereof, without license from the last preceding Michaelmas quarter sessions, under the hands and seals of four or more justices there assembled, (except the theatres of Drury Lane, Covent Garden, and Haymarket, and other entertainments exercised by letters-patent or license of the Crown or of the Lord Chamberlain, s. 4,) shall be deemed a disorderly house or place, and the keeper thereof shall forfeit £100, with full costs to him who shall sue (in six months) in any of the courts of Westminster, and be otherwises punishable as in case of disorderly houses; and the person who shall appear to act as master, or as having the management of such gaming-house or other disorderly house, shall be deemed a keeper thereof and liable as such; and it shall be lawful for any constable or other person, being authorised by warrant under the hand and seal of one justice, to enter such house or place, and to seize every person found therein, that they may be dealt with according to law."

A house deemed a disorderly one.

Penalty.

Apprehending offender.

What an offence within the act.

It is observed by Mr. *Willcock*, in his work on alehouses, inns, &c. p. 143, that if the company at an inn, tavern, coffee-house, &c. request for their amusement that certain music may be introduced, and the innkeeper acquiesce, he is not within the penalties imposed by this act, although the performers are paid either by the guests or by the innkeper under their directions, for his acquiescence in the request of a party is not keeping a house, room, &c. for public musical entertainment. So if a number of persons hold occasional assemblies at an inn, &c. and either themselves constitute a concert, or engage others to entertain them with music, or to join in their musical performances, the innkeeper, &c. does not keep a place for musical entertainments, for the party hold the room under a special agreement for their use, and are at liberty to entertain themselves according to their inclination. Mr. *Willcock* adds, that the rule for ascertaining whether the place is within the prohibition, is to consider whether the music or entertainment is instituted for the advantage of the person who occupies the house, and the inducement for persons to go to it; or whether it is at the desire and under the direction of a particular party, who have sought there the ordinary entertainments of an inn or tavern. *Sed query.*

A room kept by a dancing-master, where persons meet for the purpose of dancing, but to which no persons were admitted but subscribers or persons introduced by them, or by the defendant as their and his friends, and to which persons were not indiscriminately admitted, was held not within the act. *Bellis* v. *Burghall*, 2 *Esp.* 722.

In a late case it was held, that the act extended to licensed taverns and hotels, and that it was no defence that the company frequenting the per-

formances were respectable, or that the admission was not received for the immediate benefit of the house. *Green* v. *Botheroyd*, 3 *Carr. & P.* 471. TIPPLING.

In another case it was held, that to make a party liable to a penalty under the act, it was not essential that he should take money for admission; and that it was sufficient to show that dancing was publicly carried on in a house belonging to defendant, without its being duly licensed; and Lord *Ellenborough* said, that the taking of money for admission would be evidence of ownership. *Archer* v. *Wellengrice*, 4 *Esp. Rep.* 186.

XII. Tippling in Alehouses.

Tippling is a species of drunkenness, and is provided against by the 21 Jac. I. c. 7, s. 2, which in effect enacts, "that if any person or persons whatsoever his or their habitation or abiding, shall remain or continue drinking or tippling in any inn, victualling-house, or alehouse, and the same being viewed and seen by any mayor or other head officer, or justice or justices of the peace within their several limits, or duly proved in such manner as is directed by stat. 1 Jac. I. c. 9,* (*i. e.* since 21 Jac. I. c. 7, s. 1, 2, by the oath of one witness, or voluntary confession of the party; and after such confession his oath may be taken, and be sufficient proof against any other offending,) unless it be in such case or cases as be tolerated or excepted in 1 Jac. I. c. 9, s. 1; (*viz.* labouring and handicraftsmen in cities and towns corporate and market towns, upon the usual working days, for one hour at dinner-time to take their diet in an alehouse; and labourers and workmen, which for the following of their work by the day, or by the great in any city, town corporate, market town, or village, shall for the time of their said continuing in work there, sojourn, lodge, or victual in any inn, alehouse, or other victualling-house, other than for urgent and necessary occasions, to be allowed by two justices of peace; every person or persons so offending shall forfeit for every such offence the sum of 3*s.* 4*d.* to the use of the poor of the parish where the said offence shall be committed, to be levied by distress. And if any offender or offenders be not able to pay the said forfeiture, it shall and may be lawful for any mayor, bailiff, or other head officer, justice or justices of the peace, where any such conviction shall be, to punish the said offender or offenders by setting him, her, or them in the stocks for every such offence by the space of four hours."† Penalty on persons guilty of tippling. 21 Jac. I. c. 7, s. 2. Persons excepted. Penalty. Distress. Stocks.

The provisions of 1 Jac. I. c. 9, and 1 Car. I. c. 4, against publicans for suffering tippling in his house, are repealed by 9 Geo. IV. c. 61; but by the 1 Wm. IV. c. 64, s. 13, as we have seen, *ante*, p. 62, a penalty is imposed for suffering drunkenness or disorderly conduct in the house. Suffering tippling.

The wine and spirit license, as also the beer and cyder license, contain clauses of forfeiture for wilfully or knowingly permitting drunkenness or other disorderly conduct in the inn or house,‡ see forms, (No. 3), (No. 30), *post*. Forfeiture of license.

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* Repealed by the 9 Geo. IV. c. 61.

† This penalty and punishment is enacted by the 4 Jac. I. c. 5, the 21 Jac. I. enacting that it shall be also imposed on persons offending against that act. The 1 Jac. I. c. 5, and 1 Car. I. c. 4, are repealed by the 9 Geo. IV. c. 61. Before these two acts were repealed, it was held in *Rex* v. *Dove*, 3 *B. & A.* 596, that a conviction against an alehouse keeper for suffering persons to tipple in his house, stating it to be on the oath of one witness, was bad, for not stating those persons were inhabitants or strangers, the 1 Car. I. c. 4, having required a conviction for suffering strangers to tipple to be on the oath of two witnesses.

See forms of conviction on the repealed act, 1 Jac. I. c. 9, Paley on Convictions, by Dowling, 527.

‡ The 21 Jac. I. c. 7, s. 4, as to disqualifying the alehouse keeper from having a license after having suffered tippling, &c. is repealed by the 9 Geo. IV. c. 61.

DRUNKENNESS.

XIII. Drunkenness.

Voluntary drunkenness no excuse.

Drunkenness is an offence for which a man may be punished in the Ecclesiastical Court,* as well as by justices of peace by statute.

He who is guilty of any crime whatever, through his voluntary drunkenness, shall be punished for it as much as if he had been sober.† 1 *Hawk.* c. 1, s. 6.

Penalty for the offence. 21 Jac. 1, c. 7.

By stat. 21 Jac. I. c. 7, s. 1. 3, incorporating the second section of 4 Jac. c. 5, every person who shall be drunk, and thereof shall be convicted before one justice, or mayor, on view, confession, or oath of one witness, shall forfeit for the first offence 5*s.*, to be paid within one week after conviction to the churchwardens, who shall be accountable for the same to the use of the poor; and if he shall refuse or neglect to pay the same as aforesaid, it shall be levied by distress; and if the offender be not able to pay the said sum of 5*s.* he shall be committed to the stocks, there to remain by the space of six hours.‡

Second offence.

And by s. 3 any person upon a second conviction of drunkenness shall be bounden with two sureties in one recognizance or obligation of 10*l.*, with condition to be thenceforth of good behaviour.

Binding to good behaviour.

To be of good Behaviour]—Lord *Hale*, speaking of stat. 34 Edw. III. c. 1, which gave justices power to bind malefactors to their good behaviour, generally, without any time limited, says, that it is not meant that the same shall be perpetual, but in the nature of bail, viz. to appear at such a day at their sessions, and in the mean time to be of good behaviour. 2 *Hale*, 136. See further, *post*, Surety, Vol. V.

Navy.

Every person in his Majesty's pay in the navy, being guilty of drunkenness, shall incur such punishment as a court-martial shall think fit to impose. 22 Geo. II. c. 33, Art. 2, Navy. See *post*, Military Law, Vol. III.

Forfeiture of license.

As to the forfeiture of a publican's license for, see *ante*, 99.

Action for bill.

A publican cannot recover for beer furnished to third persons by the order of an individual who has previously become intoxicated by drinking in his house. *Brandon* v. *Old*, 3 *C. & P.* 440.

XIV. Opening Inns, &c. on Sundays, Fast-Days, &c.

Penalty.

We have already seen the 1 Will. IV. c. 64, s. 14, prohibits persons licensed to retail beer and cyder under that act from opening their houses, or selling beer or cyder, &c. during certain hours on Sundays, fast-days, &c., *ante*, p. 63.

Forfeiture of license.

The license to retail beer and cyder contains a clause of forfeiture for selling, &c. beer or cyder during certain hours on Sundays, Christmas-day, or Good Friday, or any public fast or thanksgiving days. See the form of the license, *post*, (No. 3).

Penalty.

Forfeiture of license.

The 21st section of the 9 Geo. IV. c. 31, *ante*, 82, imposes penalties for offences against the tenor of the wine and spirit license; and in such license there is a clause of forfeiture for keeping open the house except for the reception of travellers, or permitting or suffering any beer or other exciseable liquor to be conveyed from or out of the premises during the usual hours of the morning and afternoon service in the church or chapel of the parish or place in which the house is situate, on Sundays, Christmas-day, or Good Friday; or not maintaining good order or rule therein. See form of the license, *post*, (No. 30.)

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* See Burn's Ecclesiastical Law, tit. *Drunkenness.*

† There was a law in Greece, "that he who committed a crime when drunk should receive a double punishment;" one for the crime itself, and the other for the ebriety which prompted him to commit it. 4 *Bla. Com.* 26.

‡ See forms of proceedings with respect to drunkenness, *post*, (No. 39) *et seq.*

It would be an offence at common law and indictable to keep open an inn on a Sunday, and suffer tippling and noise therein, if it amounted to a common nuisance. See Nuisance, Vol. III. and form of indictment, *post*, (No. 46). OPENING ON SUNDAYS, &c.

The 21 Geo. III. c. 49, s. 1, prohibits, under penalties, the keeping open of inns, &c. for debating on Sundays. See *post*, Lord's Day, Vol. III. Indictment for debating societies.

XV. Quartering of Soldiers.

By the annual acts against mutiny and desertion, the constable, and in his default a justice of the peace, may quarter soldiers in inns, livery stables, alehouses, and victualling-houses; as is set forth more at large in title Military Law, (*Soldiers*), Vol. III.

By the terms of the license for selling beer or cyder by retail, all provisions for billeting officers and soldiers in victualling-houses, contained in any act for punishing mutiny and desertion, and for the better payment of the army and their quarters, are to extend and apply to the house and premises mentioned in the license. See form of the license, *post*, (No. 3).

XVI. Liability of Innkeepers towards their Guests.

(1.) Liability to receive and entertain them.

Liability to receive Guests]—Innkeepers are bound by law to receive travellers, passengers, wayfaring men, and such like persons who come to their inns, and are also bound to protect the property of those guests. They have no option either to receive or reject guests; and as they cannot refuse to receive guests, so neither can they impose unreasonable terms on them. *Per Lord Kenyon*, C. J., *Kirkman* v. *Shawcross*, 6 *T. R.* 17. And an innkeeper continues so liable, notwithstanding he has taken down the sign, provided he continue to carry on the inn as such. *Palmer*, 373, *post*, 102. Liability to receive guests.

But an innkeeper is not bound to receive a guest when the inn is so full that it cannot conveniently hold him; and he is not liable for not receiving a guest, unless he be tendered a fair remuneration for his accommodation, for he is not bound to give him credit.

This same liability attaches as to the reception of the travellers' horses, and he is bound to receive the horses of those travellers who choose only to put their horses in his stables and themselves resort elsewhere, unless his stable be already full. *Watbroke* v. *Griffith*, *Mo.* 876, 7. *Saunders* v. *Plummer*, *Or. Bridg.* 227. Horses.

An innkeeper is also bound to receive whatever goods his guests bring with them; but he is not bound to receive the goods of one who purposes to deposit them with him and to go elsewhere; for as he reaps no profit from the deposit of goods, he is not bound to take them under his charge. *Id. Ibid. York* v. *Grindstone*, 1 *Salk.* 388. It is no excuse for not receiving goods with the guest, that there are suspicious persons in the house. *Jones on B.* 95, 96. Goods.

As to receiving thieves and offenders against revenue laws, and other improper persons, see *ante*, 96.

An innkeeper is not bound to furnish any guest who requires them with post horses, although he has taken out a license and has painted over his door "licensed to let post horses," and he may let or refuse them to whom he pleases. *Semble*, *Dicas* v. *Hides*, 1 *Stark. C. N. P.* 247. *Holt*, *C. N. P.* 207, S. C. But if the party does hire and the innkeeper agrees to let, he must so let them, if the fair price of the letting is tendered. *Massiter* v. *Cooper*, 4 *Esp. Rep.* 260. To furnish post horses.

If one who keeps a common inn improperly refuse either to receive a traveller as a guest into his house, or to find him victuals or lodging upon his tendering him a reasonable price for the same, he is not only liable to render Remedies for refusal to receive, &c.

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damages for the injury, in an action on the case,* at the suit of the party grieved, but may also be indicted and fined at the suit of the king. 1 *Hawk.* c. 78, s. 2. And it is said in 4 *Bla. Com.* 167, that inns being intended for the lodging and receipt of travellers, may be indicted, suppressed, and the innkeepers fined, if they refuse to entertain a traveller without a very sufficient cause.

The indictment should state the person refused was a *traveller*, otherwise it would be quashed; *R.* v. *Luellin*, 12 *Mod.* 445; stating his being a sick person would not do.

No action lies for a mere refusal to receive the traveller, unless some special damage attend such refusal, such as the traveller being compelled to go a distance elsewhere, &c. See *Bro. Ab., Action on the Case*, 76; *Godb.* 346. *Palm.* 374.

It is said that the innkeeper may be compelled by the constable of the town to receive and entertain a traveller as his guest; and that it is no way material whether he hath a sign before his door or not, if he make it his common business to entertain travellers. But how the officer may compel him may be a question: it seemeth that all the officer can do, is either to cause such alehouse to be suppressed, or else to present such offence at the assizes or sessions, so that such offender may be thereupon indicted. *Dalt.* c. 7; see *Bull. N. P.* 73; 5 *T. R.* 273; 12 *Mod.* 445; *Newton* v. *Trigg*, 1 *Show.* 270.

(2.) Liability for Loss of Goods.

Liability for loss of goods, &c.

Liability for Loss of Goods, &c.]—The innkeeper is not only bound to receive and entertain all travellers, and their horses and goods, as above mentioned, but is also liable for any loss or damage arising to such horses or goods while the traveller remains as a guest in the inn with the same. 1 *Rol.* 2, l. 35. 37; 8 *Co.* 32; 4 *M. & S.* 310; *Richmond* v. *Smith*, 8 *B. & Cres.* 9.

The innkeeper is in fact in the nature of an insurer for the safety of the goods of his guest, and his liability in this respect is analogous to that of a common carrier, and is liable for any loss not occasioned by the act of God or the King's enemies. *Richmond* v. *Smith*, 8 *B. & Cres.* 9.

He is thus liable for every kind of goods which the guest may have with him in that character as long as he continues his guest, as well for charters, obligations, bonds, &c. as for other property, although the stealing of such was not formerly a larceny; *Calye's case*, 8 *Rep.* 33 a; but this liability extends only to the horse and goods of the guest, and not to the person, therefore he is not liable for the battery of the guest though committed by the innkeeper's servants. *Id.*

Not liable for injury to person of guest.

Who a guest.

It is necessary to render the innkeeper thus liable that the party leaving the goods in the innkeeper's custody should at the time of the injury be a *guest* at the inn. One who goes casually to an inn and eats and drinks, or sleeps there, is a guest, although not a traveller; *York* v. *Grindstone*, 1 *Salk.* 388; *Bennett* v. *Mellor*, 5 *T. R.* 273; *Cro. Jac.* 224; so is one who remains at the end of his journey at an inn without a special contract, even for half a year. *Latch.* 126, 127; *Parker* v. *Flint*, *Holt*, 366; 12 *Mod.* 255.

Where the plaintiff's servant came to the inn, and desired to have the liberty of leaving the goods, which he could not dispose of in the market, until the next week, which proposal was rejected, whereupon he sat down in the inn as a guest, with the goods behind him, and during the time, the goods were taken away; it was held, that although his request was not complied with, he was entitled to protection for his goods during the time he continued in the inn as a guest. *Bennet* v. *Mellor*, 5 *T. R.* 273.

The party continues a guest though he goes to view the town for any time; 2 *Cro.* 189; or goes out and says he will return at night; *Dyer*, 158 b;

* See a precedent of a declaration, 2 Chit. Plead. 668.

or is absent for two or three days, if the keeping the goods is beneficial to the innkeeper in the mean time, as a horse, &c. 1 *Rol.* 3, l. 20; 2 *Cro.* 189.

The owner may sue for the loss of goods deposited in the inn by his servant, while the latter is a guest there, though he himself be not a guest; *Beedle* v. *Morris*, *Cro. Jac.* 224; *Bennett* v. *Mellor*, 5 *T. R.* 273; 1 *Rol. Ab.* 3, E. 7; 3 *Bulstr.* 270; so if they be thus deposited by a party not his servant. 1 *Rol. Ab.* 3, E. 6; *Robinson* v. *Walter*, 3 *Bulstr.* 270.

Soldiers quartered upon innkeepers are guests, and entitled to the same protection as other guests. It has been said that a soldier is entitled to this protection during the first fourteen days only, and that he is afterwards to be considered as a lodger. But the case of *Harland* goes only to show that he is a guest, though he has resided fourteen days in the inn at which he was quartered, in opposition to an opinion before entertained that one ceased to be a guest after residing three days, and does not limit the soldier's privilege as a guest to the fourteenth day. *Harland's case*, *Clayton*, 97; *Com. Dig. Action on Case for Negligence*, B. 1; *Willcock on Alehouses*, 54.

Who not a guest.

On the other hand if a man comes to an inn and delivers his horse to the hostler, and requires him to be put to pasture, which is done accordingly, and the horse is stolen, the innholder shall not answer for it. *Calye's case*, 8 *Rep.* 32.

Holt, C. J. doubted whether a man is a guest by setting up his horse at an inn, though he never went into the inn himself; but the other three justices held that such person is a guest by leaving his horse, as much as if he had staid himself, because the horse must be fed, by which the innkeeper has gain; otherwise, if he had left a trunk, or a dead thing. *York* v. *Grindstone*, 1 *Salk.* 388.

So if a man come to an inn with a hamper, in which he hath certain goods, (to wit, hats, as the case was,) and depart leaving it with the host, and two days after come again, and in the time of his absence this was stolen; he shall not have any action against the host, because he was not a guest at the time of the stealing, and the host had no benefit by the keeping thereof, and therefore shall not be charged for the loss thereof in his absence. 1 *Rol. Abr.* 2.

If one come to an inn, and make a previous contract for lodging for a set time, and do not eat or drink there, he is no guest, but a lodger, and so not under the innkeeper's protection; but if he eat and drink, or pay for his diet there, it is otherwise. *Parker* v. *Flint*, 12 *Mod.* 255; *Holt*, 366, S. C.

So if an attorney hire a chamber in an inn for a whole term, the host is not chargeable with any robbery in it, because the party is as it were a lessee. *Mod.* 877; *Latch.* 127.

If a person ask to have a room in the inn, to be used by him for the purposes of his trade or other special purposes, he does not hold such room as a guest. *Burgess* v. *Clements*, 4 *Maule & S.* 306, *post*, 104.

A person is not a guest who having been invited by the innkeeper to sup as a friend remains to sleep there on account of the lateness of the hour, for he is voluntarily received as a visitor in a private house, and not in respect of the innkeeper's liability to entertain him, for which he would be entitled to make his charge. *Calye's case*, 8 *Rep.* 32 a.

Delivery to innkeeper how far necessary.

Although the guest doth not deliver his goods to the innholder to keep, nor acquaints him with them, yet if they be damaged, lost, or stolen, the innkeeper shall be charged. *Calye's case*, 8 *Rep.* 33.

It has been said that there must be *quasi* a committal to the innkeeper's custody, and that merely leaving a thing about the house does not constitute such committal. *Kitchen* v. *Hill*, *Lancaster Summer Assizes*, 1828, cor. *Hullock*, B.

But this as a general position appears incorrect, for it is clear that the goods need not be in the special keeping of the innkeeper to make him liable. Per *Buller*, J. *Bennett* v. *Mellor*, 5 *T. R.* 273. He is certainly not liable for the loss of or damage to goods left by his guest in an improper part of the inn, as if valuable commodities be left openly in a court-yard: nor is he liable for goods cumbersome left very negligently by the guest in an exposed

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situation, as where a person brought packages of linen and left them in the waggon in an outer yard, after the innkeeper had told him that he would not be responsible for them unless he removed them into an inner yard. Nor is he liable for goods left in an open yard, or in a public room, after the innkeeper has informed the guest that he would not be liable for them unless placed in a particular place. See *Calye's case*, 8 *Rep.* 33 a; *Dyer*, 266, pl. 9; *Brande* v. *Glass*, *Mo.* 158.

The innkeeper is not liable for the other goods of his guest after an agreement between them that he should be answerable for such things only as should be delivered into the immediate custody of himself or his wife, whether made before or after he became a guest, for such an agreement is a waiver on the part of the guest of the general security which the common law has given; and if the guest practise a deceit upon the innkeeper by stating he has no goods, or less than he really has, he can recover only for such as he made known to him. *Brande* v. *Glass*, *Mo.* 158.

Deceit by guest.

Liability where innkeeper has not the custody of the goods.

The innkeeper will be exonerated where the guest chooses to have his goods under his own care.

If a guest take upon himself the exclusive charge of the goods which he brings into the house of an innkeeper, he cannot afterwards charge the innkeeper with the loss. An innkeeper is not bound to furnish a shop to every guest who comes into his house; and if a guest takes exclusive possession of a room, which he uses as a warehouse or shop, he discharges the innkeeper from his common law liability. *Farnwall and another* v. *Packwood*, 1 *Stark. C. N. P.* 247; *Curtin* v. *Packwood*, *Holt's C. N. P.* 209; *Burgess* v. *Clements*, 4 *M. & S.* 306.

Where a person, originally coming as a guest, applied for a room for the purpose of exhibiting goods for sale, the use of which was granted to him by the innkeeper's wife, who at the same time told him, that there was a key in the door, and that he might lock it, (which was equivalent to telling him that he must take charge of it,) but which he neglected to do, and during the night a part of the goods were stolen; it was held, that the innkeeper was not responsible. *Burgess* v. *Clements*, 4 *M. & S.* 306.

Where a traveller went to an inn and desired to have his luggage taken into the commercial room to which he resorted, from whence it was stolen, it was held the innkeeper was responsible, although he proved that according to the usual practice of his house the luggage would have been deposited in the guest's bedroom, and not in the commercial room, if no order had been given respecting it. Lord *Tenterden*, C. J. said, "it appears that the plaintiff went to the defendant's inn as a guest, taking certain goods with him. It was the habit of the servants of that inn to place the goods of their customers in their bed rooms, but the plaintiff chose to have the package in question carried into the room to which travellers in general resorted. It is clear that at common law when a traveller brings goods to an inn the landlord is responsible for them; and if it had been intended by the defendant not to be responsible unless his guests chose to have their goods placed in their bedrooms, or some other place selected by him, he should have said so. In this respect I think the situation of the landlord was precisely analogous to that of a carrier." *Richmond* v. *Smith*, 8 *B. & Cres.* 9.

When not liable by refusing to take charge of the goods.

If an innkeeper bid his guest take the key of his chamber and lock the door, and tell him that he will not take the charge of the goods, yet if they be stolen he shall be answerable, because he is charged by law for all things which come to his inn; and he cannot discharge himself by such or the like words. *Dalt.* c. 56; *Blackerby*, 169.

But if it be proved that the guest accepted the key, and took on himself the care of his goods, it is for the jury to determine whether this evidence of his receiving the key proves that he did it *animo custodiendi*, and with a purpose of exempting the innkeeper, or whether he took it merely because the landlord forced it on him, or for the sake of securing greater privacy, in order to prevent persons from intruding themselves into his room. *Per* Lord *Ellenborough*, C. J.; *Burgess* v. *Clements*, 4 *M. & S.* 310, 311.

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If the innkeeper be desirous of locking up the goods, saying he cannot otherwise warrant them, and the guest refuses, he is not liable, *per curiam*. *Dyer*, 266 b. If the innkeeper's house be full, he is not liable for refusing to take the goods, *per curiam*. *Dyer*, 158 b.; 1 *Rol.* 3, l. 45.

Liable though an infant, &c. ill or absent, &c.

The innkeeper is thus liable, though he be of non-sane memory and the guest knows it; 1 *Rol. R.* 2, l. 40; *Cro. Eliz.* 622; or though he be an infant. *Id. sed vid.* 1 *Rol.* 2, l. 43.

The innkeeper is liable although ill at the time and incapable of attending to his affairs, for he is bound to retain servants to secure the goods of his guest when incapable of doing so himself, for the same reason he is liable though absent when the guest arrived, or though he was obliged to go elsewhere after the guest arrived. *Cross* v. *Andrews*, *Cro. Eliz.* 622; 1 *Rol. Abr.* 4 G. 3, 4.

When liable where goods stolen by guest's servant, &c.

It seems an innkeeper is not liable for damage occasioned by the misconduct of his guest or the guest's servant, and if goods be stolen, lost, or injured by the servant of the guest, or by any person introduced into the inn by the guest. *Calye's case*, 8 *Rep.* 33 a; *Yelv.* 162; *Com. Dig. Action on Case for Negligence*, B. 1, 2.

Guest's stealing goods.

A guest in a common inn, rising in the night-time, and carrying goods out of his chamber into another room, and from thence to the stable, intending to ride away with them, is guilty of felony: for the least removal of the thing taken from the place where it was before is a sufficient asportation for this purpose. *Dalt.* c. 40, s. 87; 1 *Hawk.* c. 33, s. 18; see **Larceny**, Vol. III. p. 531.

Burglary.

If the chamber of the guest at an inn be forced open and his goods stolen, the burglary must be laid in the dwellinghouse of the landlord. 1 *Hale*, 557; R. v. *Prosser*, 2 *East*, 502.

XVII. Rights of Innkeeper to Remuneration, Lien, &c.

Remuneration, amount of, &c.

Remuneration, amount of, &c.]—An innkeeper is not entitled to greater charges than what are reasonable. In deciding as to what is reasonable, not only the intrinsic value of the goods must be taken into estimation, but also the trouble and risk which the innkeeper takes upon himself in his character of innkeeper. *Newton* v. *Trigg*, 1 *Show.* 268; *Carth.* 150. It has indeed been said that an innkeeper cannot fix his own prices, and that the Court of King's Bench or the judges of assize may set them. *Id.* 1 *Bulstr.* 109.

Extortion.

If an innkeeper be guilty of a gross over-charge in his bill, the guest may tender him a reasonable amount, or the innkeeper may be indicted and fined for his extortion. *Kirkman* v. *Shawcross*, 6 *T. R.* 7; *Cro. Jac.* 609; see *ante*, 95.

Sale of spirits, &c. under 20*s.* at a time. 24 Geo. 2, c. 40.

By the 24 Geo. II. c. 40, s. 12, it is enacted, "no person shall recover any sum of money, debt or demand on account of *spirituous liquors*, unless it shall *bonâ fide* have been contracted at one time to the amount of 20*s.* or upwards; nor shall any particular article in any account for distilled spirituous liquors be allowed where the liquors delivered at one time shall not amount to the full value of 20*s.* at the least, and that without fraud or covin, and where no part of the liquors so sold shall have been returned or be agreed to be returned directly or indirectly; and if any retailer, *with* or without license, shall take any pawn by way of security for payment of any money for such spirituous liquors or strong waters, he shall forfeit 40*s.* for every pawn or pledge so taken, to be levied by warrant of one justice, half to the poor and half to the informer, and the owner shall have such remedy for recovering such pawn or the value thereof as if it had never been pledged."

Under this act it has been decided that an innkeeper cannot recover the amount of the items in his bill for spirits or spirits mixed with water, unless each item is for spirits furnished at one time to the amount of 20*s.* although forming items in a bill for a dinner, and that furnished not to the defendant but to others at his request. *Gilpin* v. *Rendle*, 1 *Selw. N. P.* 61; *Burneyat* v. *Hutchinson*, 5 *B. & A.* 241.

INNKEEPERS' RIGHTS.

In *Jackson* v. *Attrill, Peake Rep.* 180, the plaintiff was a spirit merchant. A. who sold spirits on his own account, resided in one half of a house, of which defendant occupied the other, there keeping an eating house. It was held, that the plaintiff was entitled to recover the amount of items under 40*s.* for spirits furnished by A. to the defendant for the use of the guests resorting to his house in the way of his trade, for the statute did not contemplate such sales but sales of small quantities to the consumer, with the intention of preventing dram drinking.

But this case is somewhat shaken by that of *Burneyat* v. *Hutchinson*, 5 *B. & Ald.* 241, in which the court said that it would be a great evil to introduce such a qualification as that of a sale to the consumer himself.

In a case where the defendant was indebted to the plaintiff in different sums in respect of spirituous liquors so furnished and other goods, and the plaintiff being indebted to the defendant in a less sum, they agreed on a balance, the court held that this balance might be recovered, for the defendant was to be taken to have paid the amount due for spirituous liquors in setting off against the plaintiff's account generally what was due from the plaintiff to him, (which appeared to have been more than the charge for spirits); and on the ground that though the plaintiff had originally no action to recover a debt so incurred, it being reasonable that defendant should pay it, had he paid it in money he could not have recovered back the amount, and such allowance in the account stated (which was not to be referred to the legal rather than to the illegal demand) was equivalent to payment. *Dawson* v. *Remnant*, 6 *Esp.* 24.

It has been held that the plaintiff was not entitled to recover on a bill of exchange, which the defendant had accepted in part in respect of money lent and in part of a debt for *spirits* furnished in small quantities, although the residue of the consideration was good; *Scott* v. *Gillimore*, 3 *Taunt.* 226; and see *Gaitskill* v. *Greathead*, 1 *D. & R.* 359, 360; and *Spencer* v. *Smith*, 3 *Camp.* 9; in which it was held that the plaintiff was entitled to recover the amount of a bill of exchange accepted by the defendant, (a military officer,) of which the entire consideration was money due for spirits furnished in small quantities to his recruits.

Lien for remuneration.

Remedy for Remuneration by Lien]—It is laid down in *Bac. Abr. Inns*, D.; 1 *Show. Rep.* 269, that an innkeeper may detain the *person* of the guest who eats, or the horse which eats, till payment. And that he may do this without any agreement for that purpose. And that the law annexes such a condition without the express agreement of the parties; for it would be hard to oblige him to sue for every little debt; and a greater hardship, that he might not be able to find who was his guest. But the correctness for this position as regards the detaining the *person* of the guest, is more than doubtful, and it is submitted cannot be supported.

In trover for a horse in an innkeeper's hands, denial is no evidence of conversion, unless the plaintiff tender what the horse has eaten out; and the jury is to judge if sufficient were tendered. *Bull. N. P.* 45.

But a horse committed to an innkeeper may be detained only for his own meat, and not for the meat of the guest, or of any other horse; for the chattels in such case are only in the custody of the law for the debt that arises from the *thing itself*, and not for any *other debt* due from the same party; for the law is open for all such debts, and doth not admit private persons to take reprisals. *Bac. Abr. Inns*, D.; 14 *Vin. Abr.* 438; 1 *Bulstr.* 237; *Rose* v. *Bramstead*, 2 *Rol.* 438.

It should seem, however, that an innkeeper may detain the goods of the guest for his bill although there be no distinct charge for lodging and taking care of them.

The innkeeper may detain a horse for its food though it be left with him against its real owner's consent, if the innkeeper receive it without knowing that fact, and thus, though the horse were stolen; the innkeeper is not obliged to consider who is the *owner*, but only as to who brings him is his guest or not. See *Skipwith* v. ———, 1 *Bulstr.* 170; *Robinson* v. *Walter*, 1 *Rol. Rep.* 449; 1 *Salk.* 388; *York* v. *Greenhaugh*, 2 *Ld. Raym.* 866.

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He may detain the guest's horse for the amount due in respect of it, whether in the stable or at pasture. *York* v. *Grindstone*, 1 *Salk.* 388; *Newton* v. *Trigg*, 1 *Show.* 268; 2 *Rol. Abr.* 85.

Lien, &c.

But if an innkeeper previously agree to give the guest credit for his entertainment he cannot detain his horse or goods, as the innkeeper then relies on the personal responsibility of his guest. *Jones* v. *Thurlow*, 8 *Mod.* 172.

The innkeeper is entitled to feed the horse during the time of its detention and to charge the amount in account for which he detains it; and even where a man desired the innkeeper to let his horse have no more food, it was held liable to a detainer notwithstanding. *Gilbert* v. *Berkeley*, *Skin.* 648, pl. 6; *Holt.* 366.

If a horse committed to an innkeeper be detained by him for his meat, and the owner take him away, the innkeeper must make fresh pursuit after him, and retake him; otherwise the custody of him is lost, for he cannot retake him at any other time; for if a distress be rescued, and the party upon fresh pursuit do not retake it, the distress is lost. 2 *Roll. Rep.* 238.

But if a horse be committed to an hostler, who detains him for his meat, and afterwards the owner agree that he shall retain him till he be satisfied, here he hath not only the custody of him as a distress, but also the property in him as a pledge; and if the owner take it from him, he may not only retake it upon fresh pursuit, but wherever he meets it; because he had a property by such agreement, and a man that hath a property may retake his own wherever he meets it. 2 *Roll. Rep.* 238.

If the horse be once taken out with the consent of the innkeeper, he loses his lien thereon for the keep up to that time. *Stra.* 556.

The 11 & 12 Will. III. c. 15, s. 2, which prevented the innkeeper from detaining the goods for his bill, and allowing him only to bring his action in case of his selling ale, &c. in unmarked pots, or refusing to give his bill in writing, &c. appears repealed by the 5 Geo. IV. c. 74, s. 23.

Goods detained not to be used.

An innkeeper that detains a horse for his meat cannot use him except for keeping him in health, because he detains him as in custody of the law: and by consequence the detention must be in the nature of a distress, which cannot be used by the distrainer. See *Bac. Abr. Inns*, D.

Or sold, except by custom in London and Exeter.

By the custom of London and Exeter, if a man commit a horse to a hostler, and he eat out the price of his head, the hostler may take him as his own, upon the reasonable appraisement of four of his neighbours; which was, it seems, a custom arising from the abundance of traffick with strangers, that could not be known, to charge them with the action. But the innkeeper hath no power to sell the horse, by the general custom of the realm. *Bac. Abr.* Inns, D.; *Jones* v. *Thurlow*, 8 *Mod.* 172.

So in the case of *Jones* v. *Pearle*, 1 *Stra.* 557. In trover for three horses, the defendant pleaded that he kept a public inn at Glastonbury, and that the plaintiff was a carrier, and used to set up his horses there; and 36*l.* being due to him for keeping the horses, which was more than they were worth, he detained and sold them, as well he might: but on demurrer, judgment was given for the plaintiff, an innkeeper having no power to sell horses, except by special custom, as in the city of London; and, besides, when the horses had been once out, the power of detaining them for what was due before did not subsist at their coming in again.

Remedy by law.

Remedy for Remuneration by Action]—The innkeeper may sustain an action of *assumpsit* or debt for the amount of his bill, and this notwithstanding he detains the goods as a lien. *Watbroke* v. *Griffith*, *Mod.* 876; *Yelv.* 67.

XVIII. Privileges and Disqualification of Innkeepers.

Under Turnpike Acts.

No trustee or commissioner of the turnpike roads may act while he keeps a victualling house or other house of public entertainment, or sells wine, cyder, beer, ale, spirituous, or other strong liquors by retail, under a penalty of 50*l.* for every offence. 3 Geo. IV. c. 126, s. 64. *Post*, Highways, (*Turnpike*,)

INNKEEPERS' PRIVILEGES.

No person selling wine, ale, spirituous liquors, or provisions by retail, shall be capable of holding any place of profit under any trustees or commissioners of any turnpike road. 3 Geo. IV. c. 126, s. 75.

Constable.

The 3 Geo. IV. c. 77, s. 19, which prohibited innkeepers from being constables, &c. is now expired, but it is said, per *Holt*, C. J., 6 *Mod.* 42, that no alehouse keeper should be a constable; and see, 1 *Ld. Raym.* 138.

XIX. Forms, *List of.*

(1.) Forms relative to the Beer and Cyder License under 1 Will. IV. c. 64.

Application for a License to retail Beer and Cyder in London, (No. 1.)—the like to retail Beer and Cyder out of London, (No. 2.)

License to sell Beer and Cyder by retail, (No. 3.)

General Form of Information for an Offence under 1 Will. IV. c. 64, (No. 4.)

General Form of Summons on such Information, (No. 5.)

General Form of Conviction under 1 Will. IV. c. 64, (No. 6.)

Information or Conviction on 1 Will. IV. c. 64, s. 6, for not putting up a descriptive Board, (No. 7.)—the like on 1 Will. IV. c. 64, s. 7, for selling Beer, &c. without a License, (No. 8.)—the like for selling Beer, &c. in a House not specified in License, (No. 9.)—the like for selling Wine or Spirits in a House licensed only to sell Beer, (No. 10.)—the like on 1 Will. IV. c. 64, s. 12, for selling Beer, &c. otherwise than in the Standard Measures, (No. 11.)—the like on 1 Will. IV. c. 64, s. 13, for permitting Drunkenness or Disorderly Conduct in a licensed House, (No. 12.)—the like where party guilty of a like Third Offence, and the Magistrates adjudge the Offender disqualified from selling Beer for two years, &c. (No. 13.)—the like for an Offence against letter of license, as suffering Gaming, &c. (No. 14.)—the like on 1 Will. IV. c. 64, s. 13, for selling adulterated Beer, (No. 15.)—the like for mixing Drugs in Beer, (No. 16.)—the like for adulterating Beer, (No. 17.)—the like on 1 Will. IV. c. 64, s. 14, for selling Beer, &c. before Four in the Morning or after Ten in the Evening on a week Day (No. 18.)—the like for selling Beer, &c. between Ten and One or Three and Five on a Sunday (No. 19.)—the like against a Witness on Stat. 1 Will. IV. c. 64, s. 20, for not appearing to give Evidence, (No. 20.)

Notice, &c. of Appeal, (No. 21.)

Recognizance on 1 Will. IV. c. 64, s. 16, on Appeal against Conviction (No. 22.)—the like to bind Informer to appear at Sessions on an Appeal in pursuance of 1 Will. IV. c. 64, s. 17, (No. 23.)

Warrant of Distress under 1 Will. IV. c. 64, (No. 24.)—Warrant of Commitment under same Act, (No. 25.)

(2.) Forms relative to the Wine and Spirit License under 9 Geo. IV. c. 61.

Precept to High Constable to order Petty Constables to give Notice of Meeting for licensing Public Houses under 9 Geo. IV. c. 61, s. 2, (No. 26.)

High Constable's Order to Petty Constables to give Notice of Licensing Meeting under like Act, sect. 2, (No. 27.)

Notice of intended Application for a License to sell Liquors by retail, under like Act, sect. 10, (No. 28.)

Notice of intended Application to Transfer such License, on like Act, s. 14, (No. 29.)

License to keep Inn and sell Wines, &c. on like Act, sect. 13, (No. 30.)

License granted at a Special Meeting in case of Death, on like Act, s. 14, (No. 31.)

General Form of Information and Summons for an Offence under like Act, (No. 32.)

General Form of Conviction for an Offence under like Act, (No. 33.)

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Conviction on like Act, sect. 18, for selling Wine or Spirits by retail without a License, (No. 34.)

Conviction on like Act, sect. 18, of a licensed Publican for selling an excisable Liquor in Premises not being those licensed, (No. 35.)

Conviction on like Act, sect. 19, of a licensed Person for not using the Standard Measures, (No. 36.)

Conviction on like Act, sect. 21, for a First or Second Offence against the tenor of Publican's License, (No. 37.)

Notice of Appeal, Recognizance thereon, Warrant of Distress and Commitment, (No. 38.)

(3.) Miscellaneous.

Information for Drunkenness on 21 J. c. 7, (No. 39.)—Summons thereon, (No. 40.)—Conviction for Drunkenness on Justice's own view, (No. 41.)

Warrant to Churchwardens (if they are not present at the Conviction, or the Offender makes default by not appearing) to receive the Penalty for Drunkenness by stat. 21 J. c. 7, (No. 42.)—the like to levy the Penalty of Drunkenness on Nonpayment, (No. 43.)

Certificate by Constable of Want of Distress, (No. 44.)

Commitment to the Stocks for Drunkenness on Inability to Pay the Penalty, on stat. 21 J. c. 7, (No. 45.)

Indictment for selling Ale, &c. on a Sunday, (No. 46.)

(1.) Forms relative to the Beer and Cyder License, &c. under 1 Will. 4, c. 64.

(No. 1.)

Application for a license to retail beer and cyder in London.*

To his Majesty's Honourable Commissioners of Excise, or to such persons as the said Commissioners have authorised and employed to grant Licenses for selling Beer, [Cyder, and Perry,] by retail.

I, John Styles, [state the christian and surname of the applicant,] *now residing at , in the parish of , in the county of , being a householder and duly qualified in that behalf, being desirous of selling beer, ale, and porter,* [or if cyder and perry also, add those words accordingly,] *by retail, under the provisions of an act made and passed in the first year of the reign of his present Majesty, to enable the general sale of beer and cyder by retail in England, do hereby apply to you for, and request you to furnish me, within ten days after this application, with a license to enable me to sell beer, ale and porter,* [or if cyder and perry also say so,] *by retail, in the house or premises situate at* [here describe the house or premises wherein the beer, &c. is to be sold, specifying the situation of it, and the name, if any], *and I propose the following person* [or *persons*, if the applicant, instead of one surety in 20*l.* offers two sureties of 10*l.* each,] *as my surety, according to the said statute, namely, John Doe,* [state his christian and surname and his trade or occupation,] *now residing at , in the parish of , in the county of and who will, together with myself, execute a bond and pay the license duty according to the said statute. Given under my hand, this day of, &c.* *J. S.*

(No. 2.)

Application for a license to retail beer, &c. out of London.

To the Collectors and Supervisors of Excise for the Collection or District of

I, John Styles, &c. [here state the nature of the application as in the preceding form.]

(No. 3.)

License to sell beer and cyder by retail on 1 Will 4, c. 65.†

WE the undersigned, being of the commissioners of the excise [or *I the undersigned, being a person authorised and employed by the commissioners of excise to grant licenses for selling beer* [or *cyder and perry*, as the case may require,] *by retail*, or

* See the 2d section of the 1 Wil. IV. c. 64, *ante*, p. 58.

† The schedule of the act gives this form.

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being a collector or supervisor of excise for the collection or district of ,] do hereb authorise and empower A. L., now being a householder, and dwelling at , in th parish of , within the limits of the chief office of excise [or *within the limits the said collection or district*], *to sell beer, ale, and porter,* [or *cyder and perry,*] *b retail in the dwellinghouse of the said A. L., and in the premises thereunto belonging the said A. L. having duly entered into a bond with D. S. of , and E. S. of as his surety* [or *sureties*], *pursuant to the act in such case made: Provided and upo condition that he or she* [*does not sell any beer, ale, or porter made otherwise tha from malt and hops,*] [omit these words in licenses to retail cyder and perry] ; *no mix or cause to be mixed any drugs or other pernicious ingredients in any beer, ale, o porter,* [or *in any cyder or perry,*] *nor fraudulently dilute, deteriorate, or adulterat any beer, ale, or porter,* [or *any cyder or perry*] ; *nor sell any beer, ale, or porter,* [o *any cyder or perry,*] *knowing the same to have been fraudulently diluted, deteriorated or adulterated; nor use, in selling any beer, ale, or porter,* [or *any cyder or perry, any measures which are not of the legal standard; nor wilfully or knowingly permi any drunkenness or any violent or quarrelsome or other disorderly conduct in his* [o *her*] *house or premises; nor knowingly suffer any unlawful games or any gaming whatsoever therein; nor knowingly permit or suffer persons of notoriously bad character to assemble and meet together therein; nor permit or suffer any beer, ale, or porter* [or *any cyder or perry,*] *to be drank or consumed in or upon or to be conveyed from o out of his* [or *her*] *premises between the hours of ten of the clock in the forenoon and one of the clock in the afternoon, nor between the hours of three and five of the clock in the afternoon, on Sundays, Christmas Day, and Good Friday, or any day appointed for a public fast or thanksgiving, nor at any time before the hour of four o the clock in the morning, or after the hour of ten of the clock in the evening, of any day; but do maintain good order and rule therein; and all provisions for billeting officers and soldiers in victualling houses, contained in any act for punishing mutiny and desertion, and for the better payment of the army and their quarters, are to extend and apply to the house and premises mentioned in this license: and this license shall continue in force from the day of next until the day of then next ensuing, and no longer; provided, and upon condition, that the said A. L. shall not in the meantime become a sheriff's officer, or officer for executing the process of any court of justice, nor shall in the meantime cease to be a householder; and this license shall cease and determine, and shall become void, in case of any of the conditions or regulations contained therein shall be transgressed, or shall not be observed by the said A. L. Given under our hands and seals,* [or *my hand and seal,*] *this day of , one thousand eight hundred and , at*

(No. 4.)

General form of information for an offence under 1 Will. 4, c. 64.

—— } *BE it remembered that on this day of , in the year , E. F.*
to wit. } *of , personally came before me J. P., Esquire, one of his Majesty's justices of the peace in and for the said county, and informed me that* [here state the offence as in the following forms], *whereby the said A. B. has forfeited the sum of , the same being his first* [or *second*, or *third*] *offence against the provisions of an act to permit the general sale of beer and cyder by retail in England; and thereupon the said E. F. prayeth that the said A. B. may be convicted of the said offence, and that the said penalty* [or *penalty and forfeiture*] *may be awarded accordingly, with costs, according to the said statute, and that the said A. B. may be summoned before two of his Majesty's justices in petty sessions for the , to answer the said information and make his defence thereto. Before me, J. P., &c.* E. F.

(No. 5.)

General form of summons on such information.

County of } *TO A. O, of the* [*parish*] *of , in the said county, and also to the*
—— } *constable of the said* [*parish*] *of , and all others whom it may concern.*

WHEREAS an information hath been this day exhibited by E. F. of , in the county of , before me J. P., Esquire, one of his Majesty's justices of the peace acting in and for the said county setting forth that [here copy the information, stating the offender throughout in the second person, and the prayer of the information in the past tense, and conclude thus] ; *these are therefore to summon and require you the said A. B. to appear before me and such other of his Majesty's justices of the peace for the said county in petty sessions as may be then and there present, on the day of next ensuing, at the hour of in the forenoon of the same day, at , in the said county of , to answer the matter of*

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complaint contained in the said information, *and to show cause, if any you have, why you should not be convicted of the said offence charged in the said information; and I do authorize you the said constable to serve this my summons, and do require you to attend me at the time and place last above-mentioned, then and there to make a return to me of the execution of this summons. Herein fail you not. Given under my hand and seal at* , in the said county, the *day of* , *in the year of our Lord* 1830. *J. P.* (L. S.)

(No. 6.)

General form of conviction under 1 Will. 4, c. 64.

The 25th section of the 1 Will. IV. c. 64, gives the general form of conviction to be used for offences or penalties under the act, and enacts that it shall be sufficient without particularly stating the case or facts in evidence. See the form and enactment, *ante*, p. 67.

(No. 7.)

Information on conviction on 1 Will. 4, c. 64, s. 8, for not putting up a descriptive board.*

[State the formal parts of the information, as *ante*, (No. 4), or of the conviction, as *ante*, p. 67. State the offence thus]: *for that the said A. B. being licensed to sell beer, ale, and porter,* [or *cyder and perry*, if the fact,] *by retail, under the provisions of an act to permit the general sale of beer and cyder by retail in England, on, &c. at, &c. whilst he continued so licensed as aforesaid, did not preserve or keep up, painted in letters three inches or more in length, in white upon a black ground, or in black upon a white ground, publicly visible and legible, upon a board placed over the door of the house or premises situate at, &c. in which the said A. B. was so licensed to sell beer, &c.* [or cyder, &c.] *by retail, the christian and surname of the said A. B. the person mentioned in such license, at full length, together with the words "Licensed to sell beer by retail," according to the said statute, contrary to the form of the said statute, whereby, &c.* [conclude, if in information, as in general form, information, *ante*, (No. 4); or, if a conviction, as in conviction, *ante*, (No. 67.)

(No. 8.)

Information or conviction on 1 Will. 4, c. 64, s. 7, for selling beer, &c. without a license.†

[*For the formal parts of the information or conviction, see post*, Index, Convictions for Offences against, Vol. II. State the offence thus]: *that the said A. B. not being duly licensed to sell beer* [or *cyder*], *as keeper of a common inn, alehouse, or victualling house, under the provisions of an act passed in the first year of the reign of his present Majesty, to permit the general sale of beer and cyder by retail in England, did, to wit, on, &c. at, &c. sell, that is to say, to one G. H.* [or *to a certain person unknown,*] *certain beer,* [or *cyder or perry,*] *to wit,* [*one quart of beer, or cyder or perry,* as the case is,] *by retail, without having an excise retail license in force, authorizing him so to do, contrary to the form of the statute in such case made and provided, whereby, &c.* [conclude as usual. 20*l.* penalty.]

(No. 9.)

The like for selling beer, &c. in a house not specified in license.‡

[*For the formal part of the information or conviction, see post*, Index, Convictions for Offences against, Vol. II. State the offence thus]: *for that the said A. B. being duly licensed under the provisions of an act passed in the first year of the reign of his present Majesty, to permit the general sale of beer and cyder by retail in England, by a certain license to sell beer, as the keeper of a common inn, alehouse, and victualling house, in a certain house and premises at, &c. in the parish of* , *in the county of* , *specified in the said license, did on, &c. at, &c. sell, that is to say, to one G. H.* [*or a certain person unknown,*] *certain beer,* [or *cyder or perry,*] *by retail, that is to say,* [*one quart of ale,*] *in a house and place situate in, &c., not being the said house or premises specified in such his license, and in which the said A. B. was so licensed to sell beer,* [or *cyder or perry,*] *as aforesaid, nor any part or portion thereof, contrary to the form of the statute in such case made and provided, whereby, &c.* [conclude as usual.]

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* See the provisions of the act, *ante*, p. 60.

† See the provisions of the act, *ante*, p. 60; the proceedings are to be conducted under the Excise act, 7 & 8 Geo. IV. c. 53; see *ante*, p. 60, 61.

‡ See the provisions of the act, *ante*, p. 60.

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being a collector or supervisor of excise for the collection or district of ,] do hereby authorise and empower A. L., now being a householder, and dwelling at , in the parish of , within the limits of the chief office of excise [or *within the limits of the said collection or district*], *to sell beer, ale, and porter,* [or *cyder and perry,*] *by retail in the dwellinghouse of the said A. L., and in the premises thereunto belonging, the said A. L. having duly entered into a bond with D. S. of , and E. S. of , as his surety* [or *sureties*], *pursuant to the act in such case made: Provided and upon condition that he or she* [*does not sell any beer, ale, or porter made otherwise than from malt and hops,*] [omit these words in licenses to retail cyder and perry] ; *nor mix or cause to be mixed any drugs or other pernicious ingredients in any beer, ale, or porter,* [or *in any cyder or perry,*] *nor fraudulently dilute, deteriorate, or adulterate any beer, ale, or porter,* [or *any cyder or perry*] ; *nor sell any beer, ale, or porter,* [or *any cyder or perry,*] *knowing the same to have been fraudulently diluted, deteriorated, or adulterated; nor use, in selling any beer, ale, or porter,* [or *any cyder or perry,*] *any measures which are not of the legal standard; nor wilfully or knowingly permit any drunkenness or any violent or quarrelsome or other disorderly conduct in his* [*or her*] *house or premises; nor knowingly suffer any unlawful games or any gaming whatsoever therein; nor knowingly permit or suffer persons of notoriously bad character to assemble and meet together therein; nor permit or suffer any beer, ale, or porter,* [or *any cyder or perry,*] *to be drank or consumed in or upon or to be conveyed from or out of his* [or *her*] *premises between the hours of ten of the clock in the forenoon and one of the clock in the afternoon, nor between the hours of three and five of the clock in the afternoon, on Sundays, Christmas Day, and Good Friday, or any day appointed for a public fast or thanksgiving, nor at any time before the hour of four of the clock in the morning, or after the hour of ten of the clock in the evening, of any day; but do maintain good order and rule therein; and all provisions for billeting officers and soldiers in victualling houses, contained in any act for punishing mutiny and desertion, and for the better payment of the army and their quarters, are to extend and apply to the house and premises mentioned in this license: and this license shall continue in force from the day of next until the day of then next ensuing, and no longer; provided, and upon condition, that the said A. L. shall not in the meantime become a sheriff's officer, or officer for executing the process of any court of justice, nor shall in the meantime cease to be a householder; and this license shall cease and determine, and shall become void, in case of any of the conditions or regulations contained therein shall be transgressed, or shall not be observed by the said A. L. Given under our hands and seals,* [or *my hand and seal,*] *this day of , one thousand eight hundred and , at*

(No. 4.)

General form of information for an offence under 1 Will. 4, c. 64.

—— } *BE it remembered that on this day of , in the year , E. F.*
to wit. } *of , personally came before me J. P., Esquire, one of his Majesty's justices of the peace in and for the said county, and informed me that* [here state the offence as in the following forms], *whereby the said A. B. has forfeited the sum of , the same being his first* [*or second, or third*] *offence against the provisions of an act to permit the general sale of beer and cyder by retail in England; and thereupon the said E. F. prayeth that the said A. B. may be convicted of the said offence, and that the said penalty* [or *penalty and forfeiture*] *may be awarded accordingly, with costs, according to the said statute, and that the said A. B. may be summoned before two of his Majesty's justices in petty sessions for the , to answer the said information and make his defence thereto. Before me, J. P., &c. E. F.*

(No. 5.)

General form of summons on such information.

County of } *TO A. O. of the* [*parish*] *of , in the said county, and also to the*
—— } *constable of the said* [*parish*] *of , and all others whom it may concern.*

WHEREAS an information hath been this day exhibited by E. F. of , in the county of , before me J. P., Esquire, one of his Majesty's justices of the peace acting in and for the said county setting forth that [here copy the information, stating the offender throughout in the second person, and the prayer of the information in the past tense, and conclude thus] ; *these are therefore to summon and require you the said A. B. to appear before me and such other of his Majesty's justices of the peace for the said county in petty sessions as may be then and there present, on the day of next ensuing, at the hour of in the forenoon of the same day, at , in the said county of , to answer the matter of*

(No. 14.)

Infor convi 1 Wi s. 13, fence of lic

[State the formal parts of the information, as *ante*, (No. 4), or of the conviction, as *ante*, p. 67. State the offence thus]: *that the said A. B. being a seller of beer* [or *cyder and perry*] by retail, having *a license under the provisions of an act passed in the first year of the reign of his present Majesty, to permit the general sale of beer and cyder by retail in England*, to wit, *on*, &c. *at*, &c. *did transgress and neglect* [or *was a party in transgressing and neglecting*, or *did allow to be transgressed and neglected*] *the conditions and provisions specified in such license in the house and premises situate at*, &c. licensed and specified *in and by such license, that is to say, by then and there* [knowingly suffering *certain unlawful games* [or *gaming*,] *to wit, an unlawful game of* [*skittles, bowls, dice, cards, bagatelle, or other game of mere chance, as the case may be*] *and an unlawful game called hazard, to be played in the said house and premises*, [state any other offence against the tenor of the license in this way,]] against the tenor *of the said license and against the form of the statute in such case made and provided, whereby*, &c. [conclude, if in an information, as in general form of information, *ante*, (No. 4), or if a conviction, as in conviction, *ante*, p. 67.]

(No. 15.)

Infor convi 1 Wil s. 13, adulte

[State the formal parts of the information, as *ante*, (No. 4), or of the conviction, as *ante*, p. 67. State the offence thus]: *that the said A. B. being a seller of beer, ale, and porter* [or *cyder and perry*] *by retail, having a license under the provisions of an act passed in the first year of the reign of his present Majesty, to permit the general sale of beer and cyder by retail in England, to wit, on*, &c. *at*, &c. *did knowingly sell, to wit, to one G. H.* [*or to a certain person unknown*] *certain beer, to wit,* [*one pint of ale*], *made otherwise than from malt and hops, that is to say, made of*, &c. [here set out generally what it was made of, but if it cannot be ascertained what it was made of, omit this averment,] *contrary to the form of the statute in such case made and provided, whereby*, &c. [conclude, if an information, as in general form of information, *ante*, (No. 4), or if a conviction, as in conviction, *ante*, p. 67.]

(No. 16.)

The lik ing dru

[State the formal parts of the information, as *ante*, (No. 4), or of the conviction, as *ante*, p. 67. State the offence thus]: *that the said A. B. being a seller of beer, ale, and porter* [*or cyder and perry*] *by retail, having a license under the provisions of an act passed in the first year of the reign of his present Majesty, to permit the general sale of beer and cyder by retail in England, to wit, on*, &c. *at*, &c. *did mix and cause to be mixed divers drugs and other pernicious ingredients, to wit,* [here set out the ingredients shortly, perhaps the precise description of them might be omitted altogether] *with a certain beer, to wit,* [*one barrel of ale,*] *and did then and there in the house and premises of the said A. B. situate at*, &c., *mentioned in and licensed by the said license, sell a certain quantity, to wit,* [*one pint*] *of the said beer so mixed with the said drugs and ingredients to one G. H.* [*or to a certain person unknown,*] *contrary to the form of the statute in such case made and provided, whereby*, &c. [conclude, if an information, as in general form of information, *ante*, (No. 4), or if a conviction, as in conviction, *ante*, p. 67.]

(No. 17.)

The lik terating

[State the formal parts of the information, as *ante*, (No. 4), or of the conviction, as *ante*, p. 67. State the offence thus]: *that the said A. B. being a seller of beer, ale, and porter* [*or cyder and perry*] *by retail, having a license under the provisions of an act passed in the first year of the reign of his present Majesty, to permit the general sale of beer and cyder by retail in England, to wit, on*, &c. *at*, &c., *did fraudulently dilute and adulterate with certain beer, to wit,* [*one barrel of porter,*] *and did then and there, in the house and premises of the said A. B., situate at*, &c. *mentioned in and licensed by the said license, sell a certain quantity, to wit,* [*one pint*] *of the said beer so diluted and adulterated to one G. H.* [*or to a certain person unknown,*] *contrary to the form of the statute in such case made and provided, whereby*, &c. [conclude, if an information, as in general form, *ante*, (No. 4), or if a conviction, as in form, *ante*, p. 67.]

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[a] See the provisions, *ante*, p. 62. The 15th section of the act, *ante*, p. 63, enacts as to the penalty.

FORMS.

The like for selling wine and spirits in a house licensed only to sell beer, &c.*

(No. 10.)

[For the formal parts of the information or conviction, see post, Title, Convictions for Offences against, Vol. II. State the offence thus]: *that the said A. B. being duly licensed under the provisions of an act passed in the first year of the reign of his present Majesty, to permit the general sale of beer and cyder by retail in England, by a certain license to sell beer, as the keeper of a common inn, alehouse, and victualling house, in a certain house and premises at, &c. did, to wit, on, &c. there deal in and sell, by retail, that is to say, to one G. H.* [or *a certain person unknown,*] *certain wine and spirits, to wit,* [*one bottle of wine and one pint of spirits,*] *without being licensed so to do, contrary to the form of the statute in that case made and provided, whereby, &c.*

Information or conviction on 1 Wm. 4, c. 64, s. 12, for selling beer, &c. otherwise than in standard measures.†

(No. 11.)

[State the formal part of the information, as *ante*, (No. 4), or of the conviction, as *ante*, 67. State the offence thus]: *that within thirty days now last past, to wit, on, &c. at, &c. the said A. B., being a person licensed under the act passed in the first year of the reign of his present Majesty, to permit the general sale of beer and cyder by retail in England, to sell beer* [or *cyder and perry*, if the fact] *by retail, did sell and dispose of to one G. H.* [or *a certain person unknown*] *by retail a certain quantity of beer, being a quantity not less than half a pint, to wit,* [*one pint of ale*], *in a pint measure and vessel not sized according to the standard, contrary to the form of the statute in such case made and provided, whereby the said illegal measure hath become forfeited, and whereby, &c.* [conclude, if an information, as in general form, information, *ante*, (No. 4); or if a conviction, as in conviction, *ante*, 67.]

Information or conviction on 1 Wm. 4, c. 64, s. 13, for permitting drunkenness or disorderly conduct in a licensed house.‡

(No. 12.)

[State the formal parts of the information, as *ante*, (No. 4), or of the conviction, as *ante*, 67. State the offence thus]: *that the said A. B. being a seller of beer* [or *cyder and perry*, if the fact,] *by retail, having a license under the provisions of an act passed in the first year of the reign of his present Majesty, to permit the general sale of beer and cyder by retail in England, to wit, on, &c. at, &c., did permit a certain person, to wit, one G. H.* [or *a certain person unknown*] *to be guilty of drunkenness* [*and disorderly conduct*] *in a certain house and premises, situate at, &c., being the house and premises mentioned in such license, and wherein the said A. B. was so licensed to sell beer* [or *cyder and perry*] *as aforesaid, contrary to the form of the statute in such case made and provided; whereby, &c.* [conclude, if an information, as in general form of information, *ante*, (No. 4), or if a conviction, as in conviction, *ante*, 67.]

The like, where party guilty of a like *third* offence and magistrates adjudged the offender disqualified from selling beer for two years, &c.

(No. 13.)

[Proceed as in the above form, but after stating the forfeiture of the penalty and costs, and adjudication thereof, state the adjudication as to the disqualification of the offender from selling beer thus]: *and we the said J. P. and I. O. do hereby further adjudge that the said A. B. shall be disqualified from selling beer, ale, or porter* [or *cyder or perry*, as the case is] *by retail for the space of two years next ensuing this conviction; and also* [if the justices think fit] *we do hereby further adjudge that no beer, ale, or porter* [or *cyder or perry*, as the case may be] *shall be sold by retail by any person or persons in the house or premises situate at, &c., being the house and premises mentioned in the said license of the said A. B. Given under our hands and seals the day and year first above written.*

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* See the provisions of the act, *ante*, p. 60.

† See the provisions of the act, *ante*, 61.

‡ See the provisions of the act, *ante*, 62. The act, it will be seen, enacts also, that any person concerned in the breach of the conditions of the license, shall be deemed guilty of disorderly conduct. It is not, it should seem, necessary, however, to set out the nature of the breach in a conviction for such offence, the above form would suffice. But as this may admit of some doubt, it would be as well perhaps to insert the particulars of the breach of the license, as in form, *post*, (No. 14.)

FORMS.

(No. 14.)

Information or conviction on 1 Will. 4, c. 64, s. 13, for an offence against tenor of license.*

[State the formal parts of the information, as *ante*, (No. 4), or of the conviction, as *ante*, p. 67. State the offence thus]: *that the said A. B. being a seller of beer* [or *cyder and perry*] *by retail, having a license under the provisions of an act passed in the first year of the reign of his present Majesty, to permit the general sale of beer and cyder by retail in England, to wit, on, &c. at, &c. did transgress and neglect* [or *was a party in transgressing and neglecting*, or *did allow to be transgressed and neglected*] *the conditions and provisions specified in such license in the house and premises situate at, &c. licensed and specified in and by such license, that is to say, by then and there knowingly suffering certain unlawful games* [or *gaming*,] *to wit, an unlawful game of rouge et noir, and an unlawful game called hazard, to be played in the said house and premises*, [state any other offence against the tenor of the license in this way,] *against the tenor of the said license and against the form of the statute in such case made and provided, whereby, &c.* [conclude, if in an information, as in general form of information, *ante*, (No. 4), or if a conviction, as in conviction, *ante*, p. 67.]

(No. 15.)

Information or conviction on 1 Will. 4, c. 64, s. 13, for selling adulterated beer.

[State the formal parts of the information, as *ante*, (No. 4), or of the conviction, as *ante*, p. 67. State the offence thus]: *that the said A. B. being a seller of beer, ale, and porter* [or *cyder and perry*] *by retail, having a license under the provisions of an act passed in the first year of the reign of his present Majesty, to permit the general sale of beer and cyder by retail in England, to wit, on, &c. at, &c. did knowingly sell, to wit, to one G. H.* [or *to a certain person unknown*] *certain beer, to wit,* [*one pint of ale*], *made otherwise than from malt and hops, that is to say, made of, &c.* [here set out generally what it was made of, but if it cannot be ascertained what it was made of, omit this averment,] *contrary to the form of the statute in such case made and provided, whereby, &c.* [conclude, if an information, as in general form of information, *ante*, (No. 4), or if a conviction, as in conviction, *ante*, p. 67.]

(No. 16.)

The like for mixing drugs in beer.

[State the formal parts of the information, as *ante*, (No. 4), or of the conviction, as *ante*, p. 67. State the offence thus]: *that the said A. B. being a seller of beer, ale, and porter* [or *cyder and perry*] *by retail, having a license under the provisions of an act passed in the first year of the reign of his present Majesty, to permit the general sale of beer and cyder by retail in England, to wit, on, &c. at, &c. did mix and cause to be mixed divers drugs and other pernicious ingredients, to wit,* [here set out the ingredients shortly, perhaps the precise description of them might be omitted altogether] *with a certain beer, to wit,* [*one barrel of ale,*] *and did then and there in the house and premises of the said A. B. situate at, &c., mentioned in and licensed by the said license, sell a certain quantity, to wit,* [*one pint*] *of the said beer so mixed with the said drugs and ingredients to one G. H.* [or *to a certain person unknown,*] *contrary to the form of the statute in such case made and provided, whereby, &c.* [conclude, if an information, as in general form of information, *ante*, (No. 4), or if a conviction, as in conviction, *ante*, p. 67.]

(No. 17.)

The like for adulterating beer.

[State the formal parts of the information, as *ante*, (No. 4), or of the conviction, as *ante*, p. 67. State the offence thus]: *that the said A. B. being a seller of beer, ale, and porter* [or *cyder and perry*] *by retail, having a license under the provisions of an act passed in the first year of the reign of his present Majesty, to permit the general sale of beer and cyder by retail in England, to wit, on, &c. at, &c., did fraudulently dilute and adulterate with certain beer, to wit,* [*one barrel of porter,*] *and did then and there, in the house and premises of the said A. B., situate at, &c. mentioned in and licensed by the said license, sell a certain quantity, to wit,* [*one pint*] *of the said beer so diluted and adulterated to one G. H.* [or *to a certain person unknown,*] *contrary to the form of the statute in such case made and provided, whereby, &c.* [conclude, if an information, as in general form, *ante*, (No. 4), or if a conviction, as in form, *ante*, p. 67.]

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* See the provisions, *ante*, p. 62. The 15th section of the act, *ante*, p. 63, enacts as to the penalty.

FORMS.

(No. 18.)

Information or conviction on 1 Will. 4, c. 64, s. 14, for selling beer, &c. between four in the morning or after ten in the evening on a week day.*

[State the formal parts of the information, as *ante*, (No. 4), or of the conviction, as *ante*, 67. State the offence thus]: *that the said A. B. being a person licensed to sell beer by retail under the act of parliament passed in the first year of the reign of his present Majesty, to permit the general sale of beer and cyder by retail in England, to wit, on, &c. at, &c. did keep his house, situate at, &c. mentioned in and licensed by the said license, open for the sale of beer* [or *cyder and perry*] [or *did sell and retail beer, to wit, (one pint of ale) to one E. F.* [or *to a certain person unknown*] *in and at his house, situate at, &c. mentioned in and licensed by the said license, at a certain time before the hour of four of the clock in the morning of the day and year aforesaid, to wit, at the hour of one of the clock in that morning,* [or *after the hour of ten of the clock in the evening of the day and year aforesaid, to wit, at the hour of twelve in that evening,*] *contrary to the form of the statute in such case made and provided, whereby,* &c. [conclude, if an information, as in general form of information, *ante*, (No. 4), or if a conviction, as in conviction, *ante*, 67.]

(No. 19.)

The like for selling beer, &c. between 10 and 1 or 3 and 5 on a Sunday, &c.†

[State the formal parts of the information, as *ante*, (No. 4,) or of the conviction, as *ante*, 67. State the offence thus:] *that the said A. B. being a person licensed to sell beer by retail under the act of parliament passed in the first year of the reign of his present Majesty, to permit the general sale of beer and cyder by retail in England, to wit, on, &c. the said day being a Sunday,* [or *Good Friday* or *Christmas-day* or *a day appointed for a public fast or thanksgiving,*] *at, &c. did keep his house, situate at, &c. mentioned in and licensed by the said license, open for the sale of beer* [or *cyder and perry,*] [or *did sell and retail beer, to wit, one pint of ale to one E. F.* [or *to a certain person unknown*] *in and at his house, situate, &c. mentioned in and licensed by the said license,*] *at a certain time between the hours of ten of the clock in the forenoon and one of the clock in the afternoon, to wit, at the hour of twelve of the clock in that forenoon of the day and year aforesaid,* [or *between the hours of three and five of the afternoon of the day and year aforesaid, to wit, at the hour of two of the clock in that afternoon,*] *contrary to the form of the statute in such case made and provided, whereby,* &c. [conclude, if an information, as in general form of information, *ante*, (No. 4), or if a conviction, as in conviction, *ante*, 67.]

(No. 20.)

Information or conviction against a witness on stat. 1 Will. 4, c. 64, s. 20, for not appearing to give evidence.‡

[State the formal parts of the information, as *ante*, (No. 4), or of the conviction, as *ante*, 67. State the offence thus]: *that A. W. of in the said county, labourer, was on the day of instant, duly summoned as a witness to give evidence before J. P. and K. P. Esquires, two of his Majesty's justices of the peace in petty sessions, acting in and for the said county,* [or as the case may be,] *at in the said county, on , the day of aforesaid at the hour of* [*twelve in the forenoon*] *of the same day, on the part of one A. B.* [*the complainant*, or *the person accused,*] *touching a complaint against B. A. of in the said county, alehouse-keeper, victualler, and retailer of beer and ale,* [or *cyder and perry*, as the case may be,] *for,* &c. [here state the alleged offence concisely,] *contrary to the form of the statute in such case made and provided; but that the said A. W. did wilfully neglect and refuse to appear at such time and place as aforesaid for the purpose aforesaid, and did not assign nor did there appear any reasonable excuse for such his neglect and refusal, whereby and for which neglect and refusal he hath forfeited a sum not exceeding ten pounds, to be awarded on conviction as may be thought fit.* [Conclude, if an information as *ante*, (No. 4), or if a conviction, as *ante*, 67.]

(No. 21.)

Notice, &c. of appeal.

The forms relative to appeals in general will be found, *post*, title, **Appeal**, Vol. I. and may be readily adapted to an appeal under the 1 Wil. IV. c. 64, which only lies against a conviction for a third offence. See the 16th section, *ante*, 63.

* See the provisions of the act, *ante*, p. 62, 63.

† See the form of indictment, *post*, (No. 45), for selling beer, &c on a Sunday.

‡ See other forms, *post*, **Evidence** (*Witness*), Vol. II. See the provisions of the act, *ante*, p. 65.

FORMS.

No. (22.)

Recognizance on 1 Wil. 4, c. 64, s. 16, on appeal against conviction.*

County of } BE it remembered, that on the day of in the year of the reign of
} our Sovereign Lord William the Fourth, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, B. A. of in the said county, alehouse keeper, [or victualler, as the case may be,] C. D. of in the county of yeoman, and I. D. of the same place, yeoman, personally came before us, J. P. and K. P., Esquires, two of the justices of our said Lord the King assigned to keep the peace of the said county, and acting in petty sessions for and acknowledged themselves to owe to our said Lord the King, that is to say, the said B. A. the sum of pounds, and the said C. D. and I. D. each the sum of pounds separately, of good and lawful money of Great Britain, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said Lord the King, his heirs and successors, if the said B. A. shall make default in the condition hereon indorsed, [or hereunder written.]

Whereas the said B. A. was this day duly convicted before us the justices aforesaid, of having on, &c. [state the offence shortly from the conviction,] being for his third offence, whereby and for which offence he the said B. A. hath forfeited the sum of pounds: Now the condition of the above [or within] written recognizance is such, that if the said B. A. shall duly prosecute an appeal against the said conviction at the next general [or quarter] sessions of the peace to be holden at in and for the said [county] of aforesaid, and in case the said B. A. shall forthwith abide the judgment of the court thereupon, and pay such or cause to be paid the costs as by the said court shall be awarded, then the said recognizance to be void, or else remain in full force.

Taken and acknowledged the day and year first above [or within] written before us, J. P.
K. P.

(No. 23.)

Recognizance to bind informer to appear at sessions on an appeal in pursuance of 1 Wil. 4, c. 64, s. 17. †

County of } BE it remembered, that on the day of in the year of the
} reign of our Sovereign Lord William the Fourth, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, A. I. of in the county of labourer, came before us, J. P. and J. O. Esquires, two of his Majesty's justices of the peace for the said county of and acknowledged to owe to our said Lord the King the sum of of lawful money of Great Britain, to be levied of his goods and chattels, lands and tenements, to the use of our said Lord the King, his heirs and successors, if the said A. I. shall make default in the condition following:—

Whereas the above bound A. I. on the day of instant, came before me, J. P. one of the said justices, and gave me to understand and be informed that one A. O. [here follow the words of the information,] whereby he has forfeited the sum of being for his third offence: Now the condition of this recognizance is such, that if the above bound A. I. shall appear at the next general quarter sessions [or next general sessions] of the peace to be holden at in and for the said county, [riding, city, liberty, town corporate, or place, as the case may be,] then and there to give evidence against the said A. O. so complained of and informed against, and not to depart without leave of the court, then this recognizance to be void.

Acknowledged before us, the day and year first above written. J. P.
J. O.

(No. 24.)

Warrant of distress under 1 Wil. 4, c. 64.

The form of the warrant of distress in pursuance of the 21st section of the 1 Wil. IV. c. 64, *ante*, 66, may be collected from the above forms of informations, and the general form of a warrant of distress, *post*, title, **Distress**, Vol. I.

(No. 25.)

Warrant of commitment under same act.

The form of the warrant of commitment in pursuance of the 21st section of the 1 Wil. IV. c. 64, *ante*, 66, may be collected from the above forms of informations, and the general form of a warrant of commitment, *ante*, 8; see the 27th section of the 1 Wil. IV. c. 64, providing for the validity of the commitment, though informal, *ante*, 67.

* See *ante*, p. 63.

† See the provisions, *ante*, p. 64.

FORMS.

(2.) Forms relative to the Wine and Spirit License under 9 Geo. IV. c. 61.

(No. 26.)

Precept to the high constable to order petty constables to give notice of meeting for licensing public-houses under 9 Geo. 4, c. 61, s. 2.*

County of } *TO A. B. Gentleman, High Constable of the division* [or *hundred, &c.*]
} of within the said county.

We the majority of justices present at a petty session of the justices in the division of in the county aforesaid [or *liberty of, &c.* according to the fact], *held this day in pursuance of the statute in that case made and provided, do hereby appoint the day of at the hour of of the clock of the forenoon of that day, at for holding a special sessions of justices, called the general licensing meeting for the said division* [or *hundred, &c.*] *for granting licenses for keeping inns, alehouses, and victualling-houses, to sell exciseable liquors by retail, to be drunk or consumed upon the premises of the applicant in the said division,* [or *hundred*]; *and we do hereby require you within five days after receipt hereof to order the constables within your constablewick to affix on the church door in their respective districts a notice of the day, hour, and place at which such meeting is to be held as aforesaid, and to give or leave a copy of such notice at the dwelling-house of every justice of the said division,* [or *hundred, &c.*] *and of every innkeeper who has given notice of his intention to keep an inn and apply for an ale license within their respective districts. Dated this day of A. B., C. D., E. F., G. H. &c.*

[the signatures of the majority of justices.]

(No. 27.)

High constable's order to petty constables to give notice of licensing meeting under 9 Geo. 4, c. 61, s. 2.†

County of } *BY virtue of a precept from his Majesty's justices of the peace acting within the said hundred* [or *division*] *to me directed; you are hereby required on sight hereof to affix on the church door within your district a notice that a special session of justices, called the general licensing meeting, will be holden on the day of next, at the hour of of the clock of the forenoon of the same day at for granting licenses for keeping inns, alehouses, and victualling-houses, to sell exciseable liquors by retail, to be drunk or consumed upon the premises therein to be specified; and also to leave a copy of such notice at the dwelling-house of every justice of the peace of the said division* [or *hundred*] *in your district, and also at the dwelling-house of every innkeeper or person who has given notice of his intention to keep an inn and to apply for an ale license within your district.*

(No. 28.)

Notice of intended application for a license to sell liquors by retail in an inn under 9 Geo. c. 61.‡

TO the Overseers of the Poor, and the Constable of the [*parish*] *of and to all whom it may concern.*

I A. B. [state the trade or occupation,] *now residing at in the parish of in the county of and for six months last past having resided at in the parish of* [or *of* ,] *do hereby give notice, that* [if application is intended to be made to a special session, here state the cause for such application] *it is my intention to apply at the general annual licensing meeting* [or *at the special session*] *to be holden at on the day of next ensuing, for a license to sell exciseable liquors by retail, to be drunk or consumed in the house or premises thereunto belonging, situate at* [here describe the house intended to be opened, specifying the situation of it, the person of whom rented, the present or late occupier, whether kept or used as an inn, alehouse, or victualling-house within the three years preceding; and if so, by whom and under what sign:] *and which I intend to keep as an inn, alehouse, or victualling-house.*

Given under my hand this day of one thousand eight hundred and

N.B.—A copy of this notice to be served upon one of the overseers of the poor, and upon one of the constables or other peace officers of the parish in which is situate the house intended to be opened.

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* The form of a precept to the high constable to give notice of an adjourned meeting under the 5th section, may be readily framed from this. See *ante*, 73.

† The form of the high constable's order to petty sessions to give notice of an adjourned sitting under the 5th section, may be readily framed from this.

‡ This form is prescribed by the act.

FORMS.

(No. 29.)

Notice of intended application for permission to transfer such license under 9 Geo. 4, c. 61.*

TO the Overseers of the Poor and the Constables of the [parish] *of* *in the county of* *and to all whom it may concern.*

I A. B. [*or we the executors, &c. &c. of the late A. B.*] *victualler, being authorised by virtue of the license granted to me* [*or him, or her*] *at the general annual licensing meeting* [*or special session*] *held at* *on the* *day of* *one thousand eight hundred and* *to sell exciseable liquors by retail, to be drunk or consumed in the house or premises thereunto belonging, situate at* [here describe the situation of the house,] *and commonly known by the sign of the* *do hereby give notice, that it is my* [*or our*] *intention to apply at the special session to be holden at* *in the county of* *on* *day of* *one thousand eight hundred and* *for permission to transfer the above-mentioned license to C. D.* [state his trade or occupation] *now residing at* *in the parish of* *in the county of* *and for six months last past having resided at* [*or in the several parishes of* *in the county of* [*or counties of* *,] *that the said C. D. intending to keep as an inn, alehouse, or victualling-house, the said house so as aforesaid kept by me* [*or us,*] *may sell exciseable liquors by retail, to be drunk or consumed in the said house or premises thereunto belonging.*

Given under my hand this *day of* *one thousand eight hundred and*

N.B.—A copy of this notice to be served upon one of the overseers of the poor, and upon one of the constables or other peace officers of the parish in which is situate the house kept by the person whose notice it is.

(No. 30.)

Form of license to keep an inn, &c. under 9 Geo. 4, c. 61.*

At the general annual licensing meeting [*or an adjournment of the general annual licensing meeting,* [*or at a special petty session*] *of his Majesty's justices of the peace acting for the division* [*or liberty, &c.* as the case may be,] *of* *in the county of* *holden at* *on the* *day of* *in the year one thousand eight hundred and* *for the purpose of granting licenses to persons keeping inns, alehouses, and victualling-houses, to sell exciseable liquors by retail, to be drunk or consumed on the premises, we, being* *of his Majesty's justices of the peace acting for the said county* [*or liberty, &c. &c.* as the case may be,] *and being the majority of those assembled at the said session, do hereby authorise and empower A. L. now dwelling at* *in the parish of* *and keeping* [*or intending to keep*] *an inn, alehouse, or victualling-house, at the sign of the* *in the* *of* *in the division and county aforesaid, to sell by retail therein, and in the premises thereunto belonging, all such exciseable liquors as the said A. L. shall be licensed and empowered to sell under the authority and permission of any excise license, and to permit all such liquors to be drunk or consumed in his said house or in the premises thereunto belonging; provided that he* [*or she*] *do not fraudulently dilute or adulterate the same, or sell the same knowing them to have been fraudulently diluted or adulterated; and do not use in selling thereof any weights or measures that are not of the legal standard; and do not wilfully or knowingly permit drunkenness or other disorderly conduct in his* [*or her*] *house or premises; and do not knowingly suffer any unlawful games or any gaming whatsoever therein; and do not knowingly permit or suffer persons of notoriously bad character to assemble and meet together therein; and do not keep open his or her house, except for the reception of travellers, nor permit or suffer any beer or other exciseable liquor to be conveyed from or out of his* [*or her*] *premises during the usual hours of the morning and afternoon Divine Service in the church or chapel of the parish or place in which his* [*or her*] *house is situated, on Sundays, Christmas-day, or Good Friday, but do maintain good order and rule therein; and this license shall continue in force from the* *day of* *next until the* *day of* *then next ensuing, and no longer: provided that the said A. L. shall not in the meantime become a sheriff's officer, or other officer executing the process of any court of justice, in either of which cases this license shall be void. Given under our hands and seals on the day and at the place first above written.*

(No. 31.)

License granted at a special meeting, in case of

At a special meeting of his Majesty's justices of the peace acting in and for the division of the hundred of [*or liberty, &c.*, according to the fact,] *in the*

* This form is prescribed by the act, see *ante*, 74.

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death, &c. under 9 Geo. 4, c. 61, s. 14.

county of , holden at , within and for the said division [or *liberty*] *on the day of one thousand eight hundred and , for the purpose of authorising and empowering persons to open or continue open, in certain cases, common inns, alehouses, or victualling-houses;*

It having been duly made to appear that at the last general annual licensing meeting [or *an adjournment of the last general annual licensing meeting*, or *at a special session*,] *holden within the said division, for the purpose of licensing persons to keep common inns, alehouses, or victualling-houses within the said division,* [or *liberty, &c.*] *A. B. of* , [in cases of death, add *since dead,*] *was authorised and empowered, at the sign of the , in the parish of , in the division* [or *liberty*] *and county aforesaid, to keep a common inn, alehouse, or victualling-house, and to sell certain excisable liquors under such authority and permission; and also that the said A. B. died on or about the day of* [or *hath removed from the said house*, or *hath yielded up the possession of the said house to C. D.*, or *house hath become unoccupied*, as the case may be.]

We being [number] *of his Majesty's justices of the peace acting in and for the said division and county, assembled at the said special meeting, and being the majority there assembled,* do authorise and empower the said C. D. (he having produced the certificate required by law) to continue open the said house as an alehouse or victualling-house, and to utter and sell therein, and in the premises thereunto belonging, and not elsewhere, victuals and all such excisable liquors as the said A. B. hath been* [in case of death, *was*] *licensed and empowered to sell under the authority and permission of such excise license granted and assigned as aforesaid, to sell by retail therein, and in the premises thereunto belonging, all such excisable liquors as the said A. B shall be licensed and empowered to sell under the authority and permission of any excise license, and to permit all such liquors to be drunk or consumed in his said house or in the premises thereunto belonging, and that the said A. B. hath been* [in case of death, *was*] *duly licensed and empowered. Provided that the said C. D. do not fraudulently dilute or adulterate the same, or sell the same knowing them to have been fraudulently diluted or adulterated; and do not use in selling thereof any weights or measures that are not of the legal standard; and do not wilfully or knowingly permit drunkenness or other disorderly conduct in his* [or *her*] *house or premises; and do not knowingly suffer any unlawful games or any gaming whatsoever therein; and do not knowingly permit or suffer persons of notoriously bad character to assemble and meet together therein; and do not keep open his or her house except for the reception of travellers, nor permit or suffer any beer or other excisable liquor to be conveyed from or out of his* [or *her*] *premises, during the usual hours of the morning and afternoon divine service in the church or chapel of the parish or place in which his* [or *her*] *house is situated, on Sundays, Christmas-day, or Good Friday, but do maintain good order and rule therein; and this license shall continue in force from the day of next until the day of then next ensuing, and no longer: provided, that the said C. D. shall not in the meantime become a sheriff's officer, or officer executing the process of any court of justice, in either of which cases this license shall be void. Given under our hands and seals, on the day and at the place first above written.*

(No. 32.)

General form of information and summons for an offence under 9 Geo. 4, c. 61.

The general form of an information or summons for an offence against the 1 Will. IV. c. 64, *ante*, 110, may be adopted for an offence against the 9 Geo. IV. c. 61, *mutatis mutandis*.

(No. 33.)

General form of conviction on like act.

The 32d section of the 9 Geo. IV. c. 61, prescribes a general form of conviction for an offence against that act, and the same should therefore be adopted. See the form, *ante*, 85.

(No. 34.)

Conviction on 9 Geo. 4, c. 61, s. 16, for selling

} *BE it remembered, that on this day of in the year of our Lord*
to wit. } *A. B. of the parish of in the county of was duly con-*

* Query, if a majority be necessary, see *ante*, 79.

(No. 42.)

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Warrant to churchwardens (if they are not present at the conviction, or the offender makes default by not appearing) to receive the penalty for drunkenness; by stat. 21 J. c. 7.

County of } To the Churchwardens of the parish of in the said county.

FORASMUCH as A. O. of in the county aforesaid, labourer, is convicted before J. P. Esquire, one of his Majesty's justices of the peace for the said county, for that he the said A. O. on the day of , in the year , at the parish of , in the said county, was drunk, contrary to the statute in such case made; whereby he hath forfeited the sum of 5s., to the use of the poor of the said parish: These are therefore to require you to demand and receive of and from him the said A. O. the said sum of 5s., to be by you accounted for to the use aforesaid: And if he shall refuse or neglect to pay the same, by the space of one week after such demand made that then you certify to me such refusal and neglect, to the end that such proceedings may be had thereupon, as to justice doth appertain. Given under my hand and seal this day of in the year .

(No. 43.)

Warrant to levy the penalty of drunkenness, on non-payment; by stat. 21 J. c. 7.[a]

County of } To the Constable of in the said county.

WHEREAS A. O. of in the parish of , in the county aforesaid, labourer, was, on the day of , convicted before me , one of his Majesty's justices of the peace for the said county, for that he the said A. O. was, on the day of , at aforesaid, in the parish and county aforesaid, by which he hath forfeited the sum of 5s. And whereas I the said did issue my warrant on the same of to the churchwardens of the parish of aforesaid, to demand and receive the said sum of 5s. of and from the said A. O.: And whereas it duly appears to me, as well on the oath of C. W., churchwarden of the parish of aforesaid, as otherwise, that they the said churchwardens did on the day of demand the said sum of 5s. of and from the said A. O., but that he the said A. O. hath neglected to pay the same as aforesaid, and that the same is not yet paid: These are therefore to command you forthwith to levy the said sum by distraining the goods of him the said A. O. And if within the space of [six] days next after such distress by you taken, the said sum, together with reasonable charges for taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained as aforesaid, and out of the money arising by such sale, that you do pay the said sum of 5s. to the churchwardens of the said parish, for the use of the poor of the said parish, rendering to him the said A. O. the overplus upon demand, the necessary charges of taking, keeping, and selling the said distress being first deducted. And if the said A. O. be not able to pay the said sum of 5s. and sufficient distress cannot be found whereon to levy the said sum, that you certify the same to me, together with the return of this warrant. Given under my hand and seal this day of .

(No. 44.)

Certificate by constable of want of distress.

County of } A. C., constable of , in the said county, maketh oath this day of , in the year , before me the justice within mentioned, that he hath made diligent search for, but doth not know of, nor can find any goods of the within mentioned A. O. whereon to levy the within sum of 5s.

A. C.

Before me the said justice, J. P.

(No. 45.)

Commitment to the stocks for drunkenness on inability to pay the penalty; on stat. 21 J. c. 7.

County of } To the Constable of in the said county.

WHEREAS A. O. of in the said county, labourer, was on the day of convicted before me one of his Majesty's justices of the peace for the said county, for that he the said A. O. was on the day of drunk at aforesaid, in the parish of , in the said county; whereby he hath forfeited the sum of 5s. And whereas it duly appears to me that the said A. O. is not able to pay the said sum of 5s., these are therefore to require you, in his Majesty's name, to set him the said A. O. in the stocks, there to remain for the space of six hours. Given under my hand and seal the day of .

No. (46.)

Indictment for selling ale on a Sunday.†

THE jurors for our Lord the King upon their oath present, that A. B. late of, &c. being a common sabbath breaker and profaner of the Lord's day, on, &c. and on divers

[a] See general form of warrant, post, title Distress, Vol. I.

† See ante, p. 100.

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[division] *aforesaid, of the county aforesaid, did, on, &c. at, &c.* [here state the offence, which may be thus, *knowingly suffer certain unlawful games, that is to say, ascertain unlawful game called* rouge et noir *and a certain unlawful game called* hazard *to be played in the house so licensed aforesaid,*] *against the tenor of the license so to him granted as aforesaid, and against the provisions of the said act relative to the maintenance of good order and rule; whereby the said A. B. has forfeited the sum of , this being adjudged to be the first* [or *second*, as the case may be] *offence of the said A. B. against the said provisions of the said act to regulate the granting of licenses to keepers of inns, alehouses, and victualling-houses in England, besides the costs of this conviction, which we, C. D. and E. F., the said justices, do hereby assess at the sum of* [*twenty*] *shillings, pursuant to the statute in such case made and provided. Given, &c.*

(No. 38.)

Notice of appeal. Recognizance. Warrant of distress. Commitment, &c.

The forms of notice of appeal, recognizance thereon, warrant of distress and commitment, &c. may be readily framed from those directed, *ante*, (Nos. 21, 22, 23, 24, 25).

(3.) Miscellaneous Forms.

(No. 39.)

Information on drunkenness; on 21 J. c. 7.*

County of { *THE information of A. I. of in the county aforesaid, (yeoman,) exhibited before me, J. P. Esquire, one of his Majesty's justices of the peace for the said county, the day of in the year who on his oath saith,*

That A. O. of in the county aforesaid, labourer, on the day of in the year aforesaid, at the parish of in the said county, was drunk, contrary to the statute in such case made: and thereupon he the said A. I. prayeth that he the said A. O. may forfeit the sum of 5s. to the use of the poor of the said parish, as by the said statute is required.

Before me, *A. I.*

J. P.

(No. 40.)

Summons thereon.

County of } *To the Constable of*

FORASMUCH as information upon oath hath been made before me J. P. Esquire, one of his Majesty's justices of the peace for the said county, that A. O. of in the county aforesaid, labourer, on the day of in the year , at the parish of , in the county aforesaid, was drunk, contrary to the statute in such case made. These are therefore to require you to summon the said A. O. to appear before me, at , in the said county, on , the day of , to answer unto the said information, and to show cause why the penalty of 5s. should not be levied on the goods of him the said A. O. for the said offence, and be you then and there to certify what you shall have done in the premises. Given under my hand and seal, the day of , in the year .

(No. 41.)

Conviction for drunkenness on justice's own view.†

County of } *BE it remembered, that on the day of , in the year of our* } *Lord , at the parish of , in the county of , I, J. P. Esquire, one of the justices of our Lord the King assigned to keep the peace in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, personally saw one A. O. of the parish of aforesaid, labourer, drunk, contrary to the form of the statute in that case made and provided: Whereupon it is considered and adjudged by me the said justice, that the said A. O. be convicted, and he is by me accordingly hereby convicted of the offence of being drunk, upon my own view as aforesaid, according to the form of the statute in that case made and provided: And I do hereby adjudge that the said A. O. for the said offence hath forfeited the sum of 5s. to be paid and distributed as the law directs. In witness whereof I the said justice to this present conviction have set my hand and seal, the day and year above written.*

* As to the offence, see *ante*, p. 100.

† For the general form of convictions, see *post*, title **Conviction**, Vol. I. Where the justice convicts on his own view, there is no occasion for any information or summons.

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(No. 42.)

Warrant to churchwardens (if they are not present at the conviction, or the offender makes default by not appearing) to receive the penalty for drunkenness; by stat. 21 J. c. 7.

County of } *To the Churchwardens of the parish of* *in the said* } *county.*

FORASMUCH as A. O. of in the county aforesaid, labourer, is convicted before me J. P. Esquire, one of his Majesty's justices of the peace for the said county, for that he the said A. O. on the day of , in the year , at the parish of , in the said county, was drunk, contrary to the statute in such case made; whereby he hath forfeited the sum of 5s., to the use of the poor of the said parish: These are therefore to require you to demand and receive of and from him the said A. O. the said sum of 5s., to be by you accounted for to the use aforesaid: And if he shall refuse or neglect to pay the same, by the space of one week after such demand made, that then you certify to me such refusal and neglect, to the end that such proceeding may be had thereupon, as to justice doth appertain. Given under my hand and seal the day of in the year .

(No. 43.)

Warrant to levy the penalty of drunkenness, on non-payment; by stat. 21 J. c. 7.*

County of } *To the Constable of in the said county.*

WHEREAS A. O. of in the parish of , in the county aforesaid, labourer, was, on the day of , convicted before me , one of his Majesty's justices of the peace for the said county, for that he the said A. O. was, on the day of , at aforesaid, in the parish and county aforesaid, by which he hath forfeited the sum of 5s. And whereas I the said did issue my warrant on the day of to the churchwardens of the parish of aforesaid, to demand and receive the said sum of 5s. of and from the said A. O.: And whereas it duly appears to me, as well on the oath of C. W., churchwarden of the parish of aforesaid, as otherwise, that they the said churchwardens did on the day of demand the said sum of 5s. of and from the said A. O., but that he the said A. O. hath neglected to pay the same as aforesaid, and that the same is not yet paid: These are therefore to command you forthwith to levy the said sum by distraining the goods of him the said A. O. And if within the space of [six] days next after such distress by you taken, the said sum, together with reasonable charges for taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained as aforesaid, and out of the money arising by such sale, that you do pay the said sum of 5s. to the churchwardens of the said parish, for the use of the poor of the said parish, rendering to him the said A. O. the overplus upon demand, the necessary charges of taking, keeping, and selling the said distress being first deducted. And if the said A. O. be not able to pay the said sum of 5s. and sufficient distress cannot be found whereon to levy the said sum, that you certify the same to me, together with the return of this warrant. Given under my hand and seal this day of .

(No. 44.)

Certificate by constable of want of distress.

County of } *A. C., constable of , in the said county, maketh oath this day* } *of , in the year , before me the justice within mentioned, that he hath made diligent search for, but doth not know of, nor can find any goods of the within-mentioned A. O. whereon to levy the within sum of 5s.*

Before me the said justice, J. P. *A. C.*

(No. 45.)

Commitment to the stocks for drunkenness on inability to pay the penalty; on stat. 21 J. c. 7.

County of } *To the Constable of in the said county.*

WHEREAS A. O. of in the said county, labourer, was on the day of convicted before me one of his Majesty's justices of the peace for the said county, for that he the said A. O. was on the day of drunk at aforesaid, in the parish of , in the said county; whereby he hath forfeited the sum of 5s. And whereas it duly appears to me that the said A. O. is not able to pay the said sum of 5s., these are therefore to require you, in his Majesty's name, to set him the said A. O. in the stocks, there to remain for the space of six hours. Given under my hand and seal the day of .

No. (46.)

Indictment for selling ale on a Sunday.†

THE jurors for our Lord the King upon their oath present, that A. B. late of, &c. being a common sabbath breaker and profaner of the Lord's day, on, &c. and on divers

* See general form of warrant, post, title **Distress**, Vol. I. † See *ante*, p. 100.

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7 Geo. 4, c. 54.

knowledge, landed therefrom, and their names, rank, occupation, and description, as far as he shall be informed thereof; and if the master of any such vessel shall refuse or neglect to make such declaration, or shall make a false declaration, he shall for every such offence forfeit the sum of twenty pounds, and the further sum of ten pounds for each alien who shall have been on board at the time of the arrival of such vessel, or who shall have, to his knowledge, landed therefrom within this realm, whom such master shall wilfully have refused or neglected to declare; and in case such master shall neglect or refuse forthwith to pay such penalty, it shall be lawful for any officer of the custom, and he is hereby required to detain such vessel until the same shall be paid: provided always, that nothing herein-before contained shall extend to any mariner whom the master shall certify in writing by him subscribed, to be actually employed in the navigation of such vessel during the time that such mariner shall remain so actually employed; which certificate so subscribed every such master is hereby required to give."

Penalty for omission, or for false declaration.

Not to extend to foreign mariners navigating the vessel.

Alien on arrival from abroad to declare his name, description, &c. and deliver his passport. Sect. 3.

Sect. 3 enacts, "that every alien who shall after the commencement of this act arrive in any part of the United Kingdom from foreign parts, or pass from Great Britain to Ireland, or from Ireland to Great Britain, shall immediately after such arrival or passage deliver to the chief officer of the customs at the port of debarkation any passport which shall be in his or her possession, and declare in writing to such chief officer, or verbally make to him, a declaration to be by him reduced into writing, of the name of the vessel in which he or she shall have arrived, and also of his or her names, rank, occupation and description, and if a domestic servant, then also the names, rank, and description of his or her master or mistress; and shall also in like manner declare the country and place from whence he or she shall then have come, and the place within this realm to which he or she is then going, and the name and place of abode of the person within this realm (if any) to whom he or she is known, which declaration shall be made in or reduced into such form as shall be approved by one of his Majesty's principal secretaries of state; and if any such alien coming into this realm shall neglect or refuse to deliver up his or her passport, he shall forfeit and pay the sum of five pounds; and if he or she shall neglect or refuse to make such declaration, or shall wilfully make any false declaration, he or she shall be punished in the manner herein-after mentioned."

Officer of customs to register the declaration, and deliver a certificate to the alien. Sect. 4.

Sect. 4 enacts, "that the officer of the customs to whom such passport shall be delivered and declaration made, shall immediately register such declaration in a book to be kept by him for that purpose (in which book certificates shall be printed in blank, and counterparts thereof, in such form as shall be approved by one of his Majesty's principal secretaries of state), and shall insert therein the several particulars by this act required in proper columns, in both parts thereof, excepting such particulars as shall be inserted in the column of remarks, which shall be entered only in one of such parts, and shall cut off one part of such certificate containing all the particulars, excepting such as shall be contained in the column of remarks, and deliver the same to the alien who shall have made such declaration."

Officer of customs to transmit declaration, &c. to Alien Office. Sect. 5.

Sect. 5 enacts, "that the chief officer of the customs in every port shall within two days transmit the declaration of every master of a vessel, and every passport, and a true copy of every such certificate, if in Great Britain, to one of his Majesty's principal secretaries of state at the Alien Office in Westminster, and if in Ireland, to the chief secretary for Ireland."

Alien, within one week after arrival, shall produce or transmit the certificate to the Alien Office, and make declaration where he intends to reside. Sect. 6.

Sect. 6 enacts, "that every alien arriving in this realm after the commencement of this act, shall, within one week after his or her arrival at the place which shall be expressed in such certificate as the place to which he or she proposes to go, produce such certificate, if such place shall be in the city of Westminster, or within five miles thereof, at the Alien Office in Westminster, and shall declare in writing at what place he or she intends to reside; and if the place expressed in the certificate shall be out of the limits aforesaid, shall make a declaration in writing at what place he or she intends to reside, and transmit the same by the post, if in Great Britain, to one of his Majesty's principal secretaries of state at the Alien Office in Westminster, and if in Ireland, to the chief secretary for Ireland; and if any such alien shall

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neglect or refuse to produce such certificate, or to make or transmit such declaration as aforesaid, or shall wilfully make or transmit any false declaration respecting any of the particulars aforesaid, he or she shall be punished in the manner herein-after mentioned.

Alien to declare residence half-yearly. Sect. 7.

Sect. 7 enacts, "that every alien being in this realm after the commencement of this act, shall, on the first day of January and on the first day of July in every year, or within one week after those respective days, make a declaration in writing of his or her place of residence, and therein state at what place he or she intends in future to reside, and shall within the same week transmit such declaration by the post, if in Great Britain, to one of his Majesty's principal secretaries of state at the Alien Office in Westminster, and if in Ireland, to the chief secretary for Ireland, and if any alien shall neglect or refuse to make or transmit such declaration as last aforesaid, or shall wilfully make or transmit any false declaration, he or she shall be punished in the manner herein-after mentioned."

Secretary of state, &c. may require a more frequent declaration. Sect. 8.

Sect 8 enacts, "that it shall be lawful for one of his Majesty's principal secretaries of state to require any alien, being in Great Britain, and for the chief secretary for Ireland to require any alien, being in Ireland, to make a declaration of his or her actual place of residence, and of the place at which he or she intends to reside in future, at shorter intervals than such a declaration is herein-before required, which intervals may be either limited by time, or made to depend on the alien's change of residence, as to such principal secretary or chief secretary respectively shall seem meet; and such requisition may be made either by a warrant under the hand and seal of such principal secretary or chief secretary respectively, to be delivered to the alien, or left at his or her last declared place of residence, or otherwise by a notice to be published in the London Gazette, or in the Dublin Gazette, as the case may be; and every alien named in any such warrant or notice shall make and transmit such declaration as often as he or she shall be required so to do by such warrant or notice; and if he or she shall neglect or refuse so to do, he or she shall be punished in the manner herein-after mentioned."

Penalty on alien for false declarations, or neglecting to make the same. Sect. 9.

Sect. 9 enacts, "that if any alien in any of the cases aforesaid shall neglect to make such declaration as is by this act required, or to transmit the same, in the cases in which he is required so to do, within the time in that behalf limited, or shall wilfully make or transmit any false declaration, every person so offending shall, upon conviction thereof before two justices of the peace, for every such offence, either forfeit any sum not exceeding fifty pounds, or be imprisoned for any time not exceeding six months, at the discretion of such justices."

Certificate to be forwarded to the alien, setting forth place of abode, &c. Sect. 10.

Sect. 10 enacts, "that upon the receipt at the Alien Office, or at the office of the chief secretary for Ireland, of any declaration, in any of the cases aforesaid, such clerk as shall be for that purpose nominated by one of his Majesty's principal secretaries of state, or by the chief secretary for Ireland respectively, shall within three days make out, in such form as shall be for that purpose approved by one of his Majesty's principal secretaries of state, a certificate, setting forth the names, rank, occupation, and description of the alien, and his or her place of abode, and shall transmit the same by the post to such alien; and if any alien shall, by his or her default, not be possessed of such certificate, or shall without any lawful excuse reside in any other place than that expressed in such certificate, every such alien shall for every such offence forfeit the sum of twenty pounds; and if any alien, being required by any justice of the peace to produce such certificate, shall refuse or neglect so to do, he or she shall be deemed not to be possessed of any certificate."

Penalty for not having certificate, or residing elsewhere.

Alien on departure may have his passport sent to the port, and delivered to him on making declaration. Sect. 11.

Sect. 11 enacts, "that where any alien, about to depart from this realm after the commencement of this act, shall be desirous of having possession of the passport by him or her delivered on his or her debarkation, and shall notify by letter to the Alien Office in Westminster, or to the chief secretary's office in Dublin, the port at which he or she intends to embark, the proper clerk of those respective offices shall forthwith transmit such passport by the post to the chief officer of the customs of the port so notified, to be by him delivered to such alien, on his or her making the declaration herein-after next mentioned; and every such alien shall, before his or her embarkation, declare

Almanac.

What, and effect of, in evidence.

WHAT, and Effect of]—The almanac is part of the law of the land, having been established by different statutes, and the courts must take judicial notice of it; 6 *Mod.* 41, 81; 1 *Leon.* 242; *Ld. Raym.* 994; *Page* v. *Fawcett*, *Cro. Eliz.* 227; and will be good evidence to prove when a particular day happened. *Id.*

The almanac to go by in such cases is that annexed to the Common Prayer Book. 6 *Mod.* 81. See further, *post*, **Time**, Vol. V.

Stamp duties as to. 55 Geo. 3, c. 185.

Stamp Regulations as to]—Almanacs are in general liable to stamp duties. The stamp duties on almanacs granted by former acts are repealed by the 55 Geo. III. c. 185, and the undermentioned duties granted in lieu thereof:

	£	s.	d
Almanac or calendar, or any book or pamphlet serving the purpose of an almanac or calendar, for any time not exceeding one year.	0	1	3
Almanac or calendar, or any book or pamphlet serving the purpose of an almanac or calendar for several years; for each year for which such almanac or calendar shall be made or intended . .	0	1	3
Almanac or calendar perpetual, or any book or pamphlet serving the purpose of a perpetual almanac or calendar	0	10	0

Perpetual almanacs exempt. 9 Anne, c. 23.

By stat. 9 Anne, c. 23, s. 52, calendars or perpetual almanacs, contained in any Bible or Common Prayer Book, are not liable to these duties.

One stamp.

Where an almanac contains more than one sheet, it shall be sufficient to stamp only one of the sheets. 9 Anne, c. 23, s. 26.

Printing on stamp. 21 Geo. 3, c. 56.

Every almanac shall be so printed that some part of the printing be upon the stamp. Stat. 21 Geo. III. c. 56, s. 5.

Selling almanacs unstamped. 16 Geo. 2, c. 26. 30 Geo. 2, c. 19.

If any person shall sell, hawk, carry about, utter, or expose to sale any almanac unstamped, he shall, on conviction before one justice, on the oath of one witness, be committed to the house of correction for any time not exceeding three months; and any person may apprehend and carry him before such justice; and on producing a certificate of the conviction under the hand of such justice he shall have a reward of 20*s.*, to be paid by the receiver-general of the stamp duties. Stat. 16 Geo. II. c. 26, s. 5; 30 Geo. II. c. 19, s. 26.

Penalty on printers' apprentices, &c. for printing almanacs without stamps. 55 Geo. 3, c. 185.

"If any apprentice, journeyman, or servant of any printer or printers shall, without his or their knowledge, print at his or their press any almanac or calendar, or any book or pamphlet serving the purpose of an almanac or calendar, liable to any duty imposed by this act, upon any paper not duly stamped for denoting such duty, it shall be lawful for any person or persons to seize and apprehend any such apprentice, journeyman, or servant so offending, and to carry him before any justice of the peace for the county, city, riding, division, or place where the offence shall be committed; and it shall be lawful for any such justice of the peace to commit any such apprentice, journeyman, or servant so offending, and being thereof convicted by his own confession, or by the oath of one or more credible witness or witnesses, before such justice of the peace, to the house of correction for any time not exceeding three calendar months." 55 Geo. III. c. 185, s. 8.

Forgery of.

As to forgery of stamps on almanacs, see 55 Geo. III. c. 185, s. 6; *post*, **Forgery**, Vol. II.

Form.

Conviction for selling an unstamped almanac.

[Commencement as usual, *post*, **Conviction**,] *informed me, that C. D. of, &c. on, &c. at, &c. did sell* [*sell, hawk, carry about, utter, or expose to sale*] *a certain almanac unstamped; contrary to the form of the statute in such case made and provided: whereupon, &c.* [conclude as usual, *post*, **Conviction**, Vol. I.]

Ambassadors.

AN Ambassador is a person sent by one sovereign to another with authority, and letters of credence, to treat on affairs of state. 4 *Inst.* 143. What.

Ambassadors may, by a precaution, be warned not to come to the place where sent, and if they then do it they shall be taken for enemies; but being once admitted even with enemies in arms they shall have the protection of the laws of nations and be preserved as princes. *Moll.* 146. If a banished man be sent as an *ambassador* to the place from whence he is banished he may not be detained or molested there. 4 *Inst.* 153. Protection of.

But if he be not received or admitted as ambassador he has no privilege as such, and an ambassador may be refused in respect of him by whom sent, or in respect of the person sent, as if he is notoriously flagitious, or if he be disagreeable to the state to which he is sent. An ambassador ought not however to be refused without cause. See *Grotius and Molloy*, cited *Com. Dig.* title *Ambassador*.

If a foreign *ambassador* commits any crime here, which is *contra jus gentium*, as treason, felony, &c. or any other crime against the law of nations, he loseth the privilege of an *ambassador* and is subject to punishment as a private alien; and he need not be remanded to his sovereign but of curtesy. *Dacr. Abr.* 327. But if a thing be only *malum prohibitum* by an act of parliament, private law, or custom of the realm, and it is not *contra jus gentium*, an ambassador shall not be bound by them; 4 *Inst.* 153; and it is said *ambassadors* may be excused of practices against the state where they reside (except it be in point of conspiracy, which is against the law of nations,) because it doth not appear whether they have it in *mandatis*, and then they are excused by necessity of obedience. *Bac. Max.* 26; *Toml. Dict. Ambassador;* 1 *Bla. Com.* 253. Offences by.

The killing an *ambassador* has been adjudged high treason. 3 *Inst.* 8. Killing of.

Some *ambassadors* are allowed by concession to have jurisdiction over their own families, and their houses permitted to be sanctuaries; but where persons who have greatly offended fly to their houses, after demand and refusal to deliver them up, they may be taken from thence. 4 *Inst.* 152. Privilege of.

See the exception in the alien act as to ambassadors, &c. *ante*, p. 127.

As to the other privileges of ambassadors from arrest in civil suit, see 1 *Bla. Com.* 253; *Tidd*, 9th ed. 191. 535; 1 *Chit. Stat.* title *Ambassadors;* 1 *Cait. Com. Law*, 69.

Ambiguity, *Evidence to explain, post,* **Evidence**, Vol. II. *p. 28. When indictment bad for, post,* **Indictment**, *Vol. III.*

Amendment.

[5 Geo. II. c. 15; 7 Geo. IV. c. 48, s. 64; 9 Geo. IV. c. 15.]

Of Proceedings in General]—Whatever at common law may be amended in *civil cases*, may be also amended in *criminal* cases. 1 *Salk.* 51. In general.

With respect to *judicial* acts or papers there can be no doubt that they are amendable for any mistake therein, at any time before they become matters of record, and that of common right and not by virtue of any statute. 1 *Salk.* Judicial acts.

IN GENERAL.

47; 2 *Burr.* 1099. Thus the court may alter their own judgment any time in the same term in which it is passed, and either pass another or remedy a defect in the former. 6 *East*, 328; 1 *M. & S.* 442.

At sessions.

And the justices at sessions may amend their judgment during the same sessions, because in consideration of law their sitting is but one day; but not at any subsequent period, unless they professedly adjourn, which they may do. *South Cadbury* v. *Bradden*, 2 *Salk.* 606; *Bac. Abr. Court of Sessions.*

But no amendment can be made by any authority when once the term or the session is over and the judgment solemnly entered on the record. Even when judgment on appeal has been pronounced erroneously by a mistake of the chairman, the justices cannot rectify it afterwards, even with the assent of the whole number who were present, nor can the Court of King's Bench assist them. A clear illustration of this principle arose out of the decision of an appeal against an order of removal at the Berks Easter Sessions, 1828. The majority of the justices voted for confirming the order, in which opinion the chairman concurred; but in pronouncing the judgment of the court he, by mistake, delivered it thus, "The order is quashed," which was entered accordingly by the clerk of the peace. The mistake, which was in the mere pronouncing of the judgment, was not discovered till a subsequent part of the same day, when the sessions had regularly closed. Mr. *Shepherd* afterwards moved the Court of King's Bench on the affidavit of the justices themselves, for a *mandamus* to re-hear the appeal, or to correct the judgment by the chairman's notes; but the Court of King's Bench held, that they had no power to interfere, and the judgment remained as entered. *Talfourd's Dickenson's Sessions*, 434, and note; 4 *Mod.* 395. In a late case, however, the Court of King's Bench granted a *mandamus* to justices to amend the record of a game conviction, by setting out the evidence on which it was founded, as near as possible, in the words used by the witness. *R.* v. *Warnford*, 2 *D. & R. Mag. Ca.* 511; and see *R.* v. *Allen*, cited *id.*

Ministerial acts.

Mere *ministerial* acts may at any time be amended; 1 *Saund.* 249, 50, c. n. 1; 1 *Stra.* 136; and any matter not of record may be amended by the record, if a mistake has arisen in the former. 2 *Ld. Raym.* 1519; *Rep. temp. Hardw.* 43; 1 *Barnard*, 31.

Of defects in form on judgments or orders of justices. 5 Geo. 2, c. 15.

By the 5 Geo. II. c. 15, it is enacted, "that on all appeals to the sessions against the judgments or orders of any justices of the peace, the sessions shall cause *any defect of form* that shall be found in any such judgments or orders to be rectified and amended without any costs to the parties concerned, and after such amendment shall proceed to hear, examine, and consider the truth and merits of all matters concerning such judgments or orders, and examine proofs relating thereto, and make such determinations as if there had not been any defect or want of form."

Upon this statute it has been holden, that if an order of removal be defective on the face of it—in any matter of *substance*—as if it omit the statement, that the removal is upon the complaint of the parish officers; or omit the statement, that the pauper was actually chargeable; or omit to show the jurisdiction of the removing justices; the sessions cannot amend, even by facts proved before them, and the order must be quashed. *R.* v. *Great Bedwin*, *Burr. Set. Ca.* 163. But the substitution of the name of one parish for the other, obviously by the mistake of the clerk, as where an order after an adjudication, that the settlement was Huggershall, directed the pauper to be carried to Harrow, has been holden amendable within the statute; and therefore the sessions, in the case alluded to, amended the order, and confirmed it, according to the obvious intention of the magistrates. *R.* v. *Harrow on the Hill*, 2 *Bott*, 706. And in a late case, where an order of removal was directed to the churchwardens and overseers of the parish of L., and it appeared that L. was a vill and had no churchwardens, it was held, that the defect was mere matter of form, and might be amended by the justices under the above act. *R.* v. *Inhabitants of Amlwch*, 3 *D. & R. Mag. Ca.* 303.

Other statutes allow amendments in some cases, though after the proceedings to be amended have become matters of record, as the 7 Geo. IV. c. 64, s. 19, *ante*, 3; 9 Geo. IV. c. 15, *post*, p. 131.

INDICTMENTS.

The 7 Geo. IV. c. 48, s. 17, allows amendments by justices of the peace of any information, conviction, or warrant of commitment for any offence under that act which relates to the excise and customs, *post*, Excise, Vol. II. Excise.

As to the amendments of poor rates, *post*, Poor, Vol. IV. Poor rates.

Of Indictments]—Indictments stand upon the same principles with respect to amendment, as those to which all pleadings are subject at common law. 4 *Burr.* 2569; 3 *Mod.* 167; 1 *Ch. C. L.* 297. And as the indictment is the finding of a jury upon oath, it cannot be amended by the court, unless under the 7 Geo. IV. c. 64, s. 19, *ante*, 3, or under Lord *Tenterden's* act, 9 Geo. IV. c. 15, without the concurrence of the grand inquest, by whom it is presented, and this before they are discharged. *Id.* Of indictments.

To this rule, however, there is an exception in the case of indictments removed from London, because by the charters of that city only the substance of the record can be removed from it, and the original remains a certain guide for the amendment. 1 *Keb.* 252; 2 *Hawk.* c. 25, s. 97; *Bac. Ab. Indictment*, (11). And it is the common practice for the grand jury to consent at the time they are sworn, that the court shall amend matters of form, altering no matter of substance; and mere informalities may, therefore, be amended by the court before the commencement of the trial; *id.*; though it was formerly the practice to award process to the grand jury to come into court and amend them. *Id.* *Cro. C. C.* 44.

As to the amendment of indictments in cases of pleas in *abatement*, under the 7 Geo. IV. c. 64, s. 19, see *ante*, p. 3. On pleas in abatement.

By the 9 Geo. IV. c. 15, entitled, "An Act to prevent a failure of Justice by reason of *Variances* between *Records and Writings* produced in Evidence in support thereof," after reciting that "great expense is often incurred, and delay or failure of justice takes place at trials, by reason of variances between writings produced in evidence and the recital or setting forth thereof upon the record on which the trial is had, *in matters not material to the merits of the case*, and such record cannot now in any case be amended at the trial, and in some cases cannot be amended at any time," it is enacted, "that it shall and may be lawful for every *court* of record holding plea in civil actions, any *judge sitting* at *nisi prius*, and any court of oyer and terminer and general gaol delivery in England, Wales, the town of Berwick-upon-Tweed, and Ireland, *if such court or judge shall see fit so to do*, to cause the record on which any trial may be pending before any such judge or court in any civil action, or in any *indictment or information* for any misdemeanor, when any variance shall appear between any matter *in writing or in print*, produced in evidence, and the recital or setting forth thereof upon the record whereon the trial is pending, to be forthwith amended in such particular, by some officer of the court, on payment of such costs (if any) to the other party as such judge or court shall think reasonable; and thereupon the trial shall proceed as if no such variance had appeared; and in case such trial shall be had at *nisi prius*, the order for the amendment shall be indorsed on the postea and returned together with the record; and thereupon the papers, rolls, and other records of the court from which such record issued shall be amended accordingly." On variances, by 9 Geo. 4, c. 15.

As it has been held that the court of quarter session is not, according to technical acceptation, a court of oyer and terminer, (1 *Hale*, 165), it seems that this act gives no power of amendment to the sessions, and that on a variance at the sessions the defendant must still be acquitted. *Talfourd's Dickenson's Sessions*, 353.

It has been considered that material variances totally differing in substance from the instrument set forth, and such as would evidently mislead the defendant, are not amendable under the act. See *M. & M.* 253; 4 *C. & P.* 22, 24.

A mistake in the caption of an indictment may be amended at any time, it being a mere ministerial act. See 1 *Ch. C. L.* 335. The entry roll and record of nisi prius have been altered to make them agree with the amended caption after the term in which the *certiorari* was returned, and even after a general verdict of guilty. 4 *East*, 175. If the original indictment be Mistakes in caption, &c. of indictment.

CRIMINAL INFORMATIONS, &c.

right, and the clerk enters it on the wrong plea roll, it may be amended. 6 *Mod.* 281; *Cro. Car.* 144.

The caption of an inquisition cannot be amended after it is filed; 2 *Hawk.* c. 25, s. 97; but see 1 *Stark. C. L.* 261; and as to amending coroners' inquisitions, see *R.* v. *Evett*, 6 *B. & Cress.* 247; 9 *D. & R.* 237, S. C.; *post*, Coroner, Vol. I.

Inquisitions.

Criminal informations.

Of Criminal Informations]—Criminal informations, which are not found upon the oath of a jury, may be amended by the court, and even by a single judge at chambers, at any time before trial: 4 *Burr.* 2527; 12 *Mod.* 229; 2 *Stra.* 871; 4 *T. R.* 457; 1 *Ch. C. L.* 298, 868: and a mere clerical error in the caption, and not the body of the information, may be rectified even after verdict. 3 *Mod.* 169; *ante*, 131. And the reason assigned for this difference between indictments and informations is, that the latter are originally framed by an officer of the crown, while the former are the accusations of a number of men sworn to inquire and to decide according to evidence. 4 *Burr.* 2569.

The amendment in a criminal information may be extensive and material. *Rep. t. Hardw.* 203, 209; 3 *Anstr.* 714.

As to the amendment of informations on pleas in abatement, see *ante*, 3, and as to the amendment of on variances in written instruments, *ante*, 131.

Practice as to.

When the amendment is made before a judge at his chambers, the prosecutor must apply for a summons to show cause why the alteration should not be effected. 4 *Burr.* 2528. On this the judge will issue a summons in the cause, directed to the defendant's clerk in court, agent, attorney, or solicitor, requiring him to attend him at his house or chambers, and show cause why the specific amendment should not be made. *Id.* But though he is thus desired to attend, his consent is not requisite. And the judge will proceed to make an order that the information be amended, by making the proper alteration in the part it is thought proper to alter. *Id.* (*a*)

Pleas.

Of Pleas]—Pleas are amendable at common law before they are filed upon record; 1 *Salk.* 47; *Com. Dig. Amendment*, (2 C. 1); but when once they are entered on the roll, they can only be altered by virtue of some legislative provision. 1 *Salk.* 47; 2 *Burr.* 1099. Pleas in abatement to an indictment for a misdemeanor are not amendable. *R.* v. *Cooke*, 2 *B. & Cress.* 871; 4 *D. & R.* 592, S.C.

Amends, *Tender of.* *See* Justices of Peace, Vol. III

Amercement. *See* Leet, Vol. II.

Amicable Contest. *See* Fighting, Vol. II.

(*a*) See form of rule to show cause why the return to a writ of *certiorari* and caption of indictment should not be amended, 4 *Chit. C. L.* 196; also a form of rule absolute for amending the caption, *id.* 197.

Amicus Curiæ.

If a judge is doubtful or mistaken in matter of law, a stander-by may inform the court as *amicus curiæ*. 2 *Co. Inst.* 178. Any one as *amicus curiæ* may move to quash a bad indictment. *Comb.* 13. It seems the party himself should be present. 2 *Show.* 297.

Anchors. *See* Ships, Vol. V.

[1 & 2 *Geo. IV. c.* 75, *s.* 18.]

Ancient Maps and Ancient Deeds, *Proofs by.* *See* Evidence, Vol. III. p. 41.

Angling. *See* Fish, Vol. I.

Animals.

Stealing of, see *post*, Larceny, Vol. III; Maiming of, *post*, Cattle, Vol. I.: Cruelty to, *post*, Cattle, Vol. I.; Keeping of Dangerous Animals, *post*, Dogs, Vol. I.; Homicide, Vol. III.; Nuisance, Vol. III.

Annuity. (*a*)

[29 Geo. *III. c.* 41; 53 *Geo. III. c.* 141; 56 *Geo. III. c.* 53.]

What.

An Annuity, in its general meaning, is an annual payment of a certain sum of money granted to another for life, for years, or in fee, to be received of the grantor or his heirs, so that no freehold be charged therewith, whereof a man shall never have assize or other action, but a writ of annuity. *Terms de la Ley*, 44; *Co. Lit.* 144 b. In an annuity the principal is gone for ever, and is satisfied by periodical payments. *Winter* v. *Moulsley*, 2 B. & *Ald.* 906.

Regulations as to.

To guard against the fraudulent and oppressive practices of usurious money lenders exercised on young heirs and other necessitous persons entitled to property in expectancy, the legislature found it necessary to interpose by the 17 Geo. *III. c.* 26, now repealed by the 53 Geo. III. c. 141; and since the latter act, the 3 Geo. IV. c. 92, and 7 Geo. IV. c. 75, have been passed, explaining and furthering the provisions thereof. See 1 *Chit. Col. Stat.* p. 22.

(*a*) As to annuities in general see *Bac. on Annuities*; *Com. Dig. Annuity*; and 33 Geo. III. c. 14, as to the Royal Exchange Assurance Annuity Company; and 39 Geo. III. c. 83, as to the Globe Insurance Company.

ANNUITY.

53 Geo. 3, c. 141. Contracts for purchase of annuities by persons under age void. Endeavouring to induce infants to grant annuities.

By the 8th section of the 53 Geo. III. c. 141, it is enacted, "that all contracts for the purchase of any annuity or rent-charge with any person being under the age of twenty-one years shall be and remain utterly void, any attempt to confirm the same after such person shall have attained the age of twenty-one years notwithstanding. And that if any person shall either in person, by letter, agent, or otherwise howsoever, procure, engage, solicit, or ask any person being under the age of twenty-one years to grant or attempt to grant any annuity or rent-charge, or to execute any bond, deed, or other instrument for securing the same, or shall advance or procure or treat for any money to be advanced to any person under the age of twenty-one years, upon consideration of any annuity or rent-charge to be secured or granted by such infant after he or she shall have attained his or her age of twenty-one years, or shall induce or solicit or procure any infant, upon any treaty or transaction for money advanced or to be advanced, to make oath or to give his or her word of honour or solemn promise that he or she will not plead infancy, or make any other defence against the demand of any such annuity or rent-charge, or the repayment of the money advanced to him or her when under age, or that when he or she comes of age he or she will confirm or ratify or in any way substantiate any annuity or rent-charge; every such person shall be guilty of a misdemeanor, and being thereof lawfully convicted in any court of assize, oyer and terminer or general gaol delivery, shall and may be punished for the said offence by fine, imprisonment, or other corporal punishment as the court shall think fit to award."

Misdemeanor.

Acting as solicitors, &c. in such cases.

By the 9th section of the same act it is enacted "that all and every solicitors and solicitor, scriveners and scrivener, brokers and broker, and other persons or person who from and after the passing of this act shall ask, demand, accept or receive directly or indirectly any sum or sums of money, or any other kind of gratuity or reward, for the soliciting or procuring the loan, and for the brokerage of any money that shall be actually and *boná fide* advanced and paid as and for the price or consideration of any such annuity or rent-charge, over and above the sum of ten shillings for every one hundred pounds so actually and *boná fide* advanced and paid, shall be deemed and adjudged guilty of a misdemeanor; and being convicted of such offence in any court of assize, oyer and terminer or general gaol delivery, shall and may for every such offence be punished by fine and imprisonment, or one of them, at the discretion of the court; and that the person or persons who shall have paid or given any sum or sums of money, gratuity, or reward, shall be deemed a competent witness or witnesses to prove the same."

Misdemeanor.

Witnesses.

Indictment, &c.

On an indictment under this latter section, it is not necessary to prove that the defendant took the exact sum laid in the indictment, though it be not laid under a videlicet. *R.* v. *Gillham*, 6 *T. R.* 265; see form of indictment, *id.*; see 1 *Esp.* 285.

On the trial of such an indictment it must be left to the jury to consider, whether the excess of 10*s.* in the £100 were really taken as a fair charge for drawing the writings, &c. or whether it was not so taken as a device to avoid the statute. *R.* v. *Gillham*, 6 *T. R.* 265.

Oath, &c. of annuitant's life.

Oath, &c. of Annuitant's Life]—By stat. 29 Geo. III. c. 41, s. 27, and other acts respecting life annuities, oath of an annuitant's life may be made before a justice of the peace, who shall give a certificate thereof without fee or stamp duty, in order to entitle such person to receive his annuity.

Certificates of lives of nominees abroad required.

By sect. 2 of stat. 56 Geo. III. c. 53, passed to amend the acts of 48 Geo. III. c. 142, 49 Geo. III. c. 64, and 52 Geo. III. c. 129, for enabling the commissioners for the reduction of the national debt to grant life annuities, it is enacted, "that in case any person who shall have been named as a nominee, on the continuance of whose life any annuity is to depend, shall after his or her nomination become resident in any kingdom or state in Europe in amity with his Majesty, or if he or she shall become resident in any other kingdom, state, or place beyond the seas, then and in every such case a certificate that such nominee was living on the day specified therein, (being some day after any annuity depending upon his or her life shall have

become due,) granted under the hand and seal of the chief magistrate of any city, town, or place, or any other magistrate acting at the time as such, or for and in the place of any such chief magistrate where such nominee may be then living, shall be deemed sufficient and effectual for proving the continuance of the life of such nominee, and for the purpose of enabling the person entitled to the annuity dependent upon the life of such nominee to receive the same; provided no British minister, or consul, or governor, or person acting as such, shall be resident in such city, town, or place, although a British minister, or consul, or governor, or person acting as such may be resident in the kingdom, state, or settlement wherein such nominee shall be then living."

56 Geo. 3, c. 53.

Sect. 3. "Provided always, that to every such certificate as aforesaid there shall be affixed an affidavit or solemn affirmation made before any justice of the peace or magistrate in England or Scotland respectively, or if in Ireland before one of the barons of the exchequer there, by the person or persons entitled to the said annuity, or by the person applying to receive the same on his, her, or their behalf, that the matters contained in such certificate are, to the best of his or her belief, true; and that the person described or certified therein is the nominee or one of the nominees on whose life or lives the annuity whereof such half-yearly or other payment shall be claimed doth depend."

Identity to be verified by affidavit or affirmation before justices in England and Scotland, and before a baron in Ireland.

Answer in Chancery, *Proof of.* *See post,* Evidence, Vol. II. p. 45, 6.

Apothecary. *See* Physicians, Surgeons, and Apothecaries, Vol. V. p. 80.

Apparel. *See* Assault, Vol. I.

Appeal.

THE term *Appeal* is used in two senses: in its

What.

First, it signifies a complaint and removal to a superior court of the *judgment of* an inferior one, being in the nature of a writ of error, and in this sense it is used when applied to the removal of orders or convictions of justices out of sessions to the judgment of the court of session. In this sense it differs from the remedy by *certiorari*, not being, as the latter is, a common law right for the purpose of obtaining the judgment of a superior tribunal, but a qualified right given only by the special provisions of a statute.

To sessions, &c.

Secondly, it signifies an accusation by a private individual against another for some heinous offence, demanding punishment on account of the particular injury suffered, rather than for the offence against the public.

Appeals of murder, &c.

This latter mode of appeal had fallen entirely into disuse until the case of *Ashford* v. *Thornton*, in 1818, 1 *Barn. & A.* 405, where full information may be gained on the subject. This case occasioned the passing of the 59 Geo. III. c. 46, which, after reciting, "whereas appeals of murder, treason, felony, and other offences, and the manner of proceeding therein, have been found to be

Abolished by 59 Geo. 3, c. 46.

WHEN IT LIES IN GENERAL.

oppressive; and the trial by battle in any suit, is a mode of trial unfit to be used; and it is expedient that the same should be wholly abolished;" enacts, "that from and after the passing of this act, all appeals of treason, murder, felony, or other offences, shall cease, determine, and become void; and that it shall not be lawful for any person or persons, at any time after the passing of this act, to commence, take, or sue appeal of treason, murder, felony, or other offence, against any other person or persons whomsoever, but that all such appeals shall, from henceforth, be utterly abolished; any law, statute, or usage to the contrary in anywise notwithstanding."

And sect. 2 enacts, "that from and after the passing of this act, in any writ of right now depending, or which may hereafter be brought, instituted, or commenced, the tenant shall not be received to wage battle, nor shall issue be joined nor trial be had by battle in any writ of right; any law, custom, or usage to the contrary notwithstanding."

We will now notice the *general* law and practice relative to appeals in the first sense under the following order. As to appeals in *particular* cases, see the various titles throughout this work.

I. *When it lies in general*, 136.
II. *When Justices to inform party of his right to*, 137.
III. *To what Sessions*, 137.
IV. *Preliminary Steps; as 1st, Notice of*, 141; *2d, Recognizance, &c.* 145; *3d, Effect of not taking such steps*, 145.
V. *Hearing & Trial*, 146; *Judgment*, 147; *and Adjournment of Trial*, 150.
VI. *Entering and Respiting of, and Notice of Trial*, 150.
VII. *Costs*, 151.
VIII. *Forms*, 152.

I. When it Lies in General.

Only lies when given by statute.

An *appeal*, as we have already seen, *ante*, p. 135, is not like a *certiorari* a common law right, it lies only where it is expressly given by statute. *R.* v. *Cashiobury*, 3 *Dowl. & Ryl. Mag. Ca.* 485; *R.* v. *Hanson*, 4 *Barn. & Ald.* 521; 1 *Maule & Selw.* 448. On the other hand, a *certiorari* always lies unless expressly taken away. *Id.*

Must be expressly given.

The right of appeal must be given by express enactment, and cannot be extended by an equitable construction to cases not distinctly enumerated in the statute. *R.* v. *Justices of Surrey*, 2 *T. R.* 509; *Paley on Conv. by Dowling*, 268, 269.

But a right of appeal given generally by a statute cannot be defeated by inference; therefore, where an appeal was given against any matter not declared by a statute final and conclusive, and it was enacted that certain accounts should not be *binding* unless allowed by justices; an appeal was held to lie against such allowance. *R.* v. *Justices of Cumberland*, 1 *Dowl. & Ryl. Mag. Ca.* 240; 1 *B. & Cres.* 64, S. C.

As to the right of appeal under a subsequent statute, making the enactments of prior statutes applicable thereto, see, *post*, Excise, Vol. II.

Sometimes expressly excluded.

In some cases the legislature has expressly excluded the right of appeal, and it has been held, that if an order of commitment be excepted out of the appeal clause, as there must be a conviction apparent in the commitment, the conviction is not the subject of appeal. *R.* v. *Justices of Staffordshire*, 12 *East*, 572.

In the recent amendments of the criminal law, a power of appeal is given when on summary conviction the sum adjudged to be paid shall exceed 5*l.*,

or the imprisonment adjudged shall exceed one calendar month, or the conviction take place before one justice. See the 7 & 8 Geo. IV. c. 30, s. 38, *post*, Malicious Injuries to Property, Vol. III.; and the 7 & 8 Geo. IV. c. 29, s. 72, *post*, Larceny, Vol. III. WHEN IT LIES IN GENERAL.

For *particular* cases in which the right of appeal is given, see the various titles throughout this work.

II. When Justices to inform Party of his Right of Appeal.

When Justices to inform party of his right of appeal.

In general there is no enactment requiring any information, by justices or others, to be given to a party of his right to appeal, and he is bound to know the law in this respect, or else lose the benefit of it.

Where a statute in general terms requires the justices to make known to a party his right to appeal, it is necessary that they should inform him of the steps he should adopt towards enforcing his right; as of his giving them a notice in writing, as well as entering into a recognizance. See, per Ld. *Kenyon*, *R.* v. *Leeds*, 4 *T. R.* 583.

But the necessity for this minute information may be waved, as in *R.* v. *Justices of West Riding of Yorkshire*, 3 *M. & S.* 493, where a defendant had been convicted by two justices for an offence against the 17 Geo. III. c. 56, s. 14; by section 20 of which the justices are bound to make known to the defendant, at the time of conviction, his right to appeal at the next general quarter sessions, and it appearing from the return to a *mandamus* that the justices had in fact made known to the defendant his right to appeal, whereupon he waved any intention of appealing by replying to them that he thought he had better pay the penalty: the court held, that the justices need not have gone on to inform him of the necessary steps to be taken in order to appeal. And Lord *Ellenborough*, C. J. said, "How could it be necessary for the convicting magistrates to proceed after the party had signified to them that he did not mean to appeal? The argument is founded upon a supposed necessity of engrafting the observance of all the provisions of the statute as they apply to another state of things, as was the case in *R.* v. *Justices of Leeds*, 4 *T. R.* 583, into this case, where the same reason for their observance does not exist. All that the statute positively requires is, that the justices shall make known to the person convicted his right to appeal,—they did so; and if he had thereupon gone on to signify his intention to appeal, *non liquet*, that they would not also have proceeded to make known to him the further steps that were to be taken by him; but why should they do so nugatory an act as to inform him what he must do to appeal, and to enforce his right, after he had declined appealing and waved his right?"

III. To what Sessions.

To what sessions appeal to be made.

The statute in general points out the sessions to which the appeal is to be made. The appeal usually given by the legislature is not to the next *general sessions*, if there be such sessions holden distinct from the quarter sessions, but to the next *quarter* sessions *R.* v. *Justices of London*, 15 *East*, 632.

As to place.

As to Place]—An appeal from a conviction by justices of a particular franchise must be to the sessions held for that franchise, and not to the general quarter sessions for the county. In the case of a conviction under 22 Car. II. c. 1, s. 6, which directs an appeal "to the judgment of the justices of peace in the next quarter sessions;" it was held, that an appeal from the conviction of corporation magistrates must be to the sessions of the borough. *South Moulton case*, *Skin.* 122; *Burr.* 592, S. C. But there is an exception in case of orders of removal of the poor, in order that appeal may never be *ab eodem ad eundem*. *Id.*

TO WHAT SESSIONS.

As to Time]—If there be no time pointed out by the statute as to when the appeal must be made, it must be made in a *reasonable* time. *R.* v. *Justices of Oxfordshire*, 1 *Maule & S.* 448; *R.* v. *Justices of Gloucestershire*, 3 *M. & S.* 127; *R.* v. *Justices of Herts*, 3 *M. & S.* 459; *post*, 143.

When no time fixed.

To next sessions:

The time for the appeal is in general limited to the *next* sessions after the conviction or act to be appealed against, or else to the sessions which shall be held after so many days from the conviction or act done.

From what time such session is to be reckoned.

Many difficult questions have arisen as to what time the term *next* session is to be calculated from—generally speaking, it means the next *practicable session* after the principal act done; see *R.* v. *Justices of Essex*, 1 *B. & A.* 210; *R.* v. *Hendon*, 2 *D. & R.* 249; 1 *D. & R. Mag. Ca.* 245, S. C.; *R.* v. *Justices of Sussex*, 15 *East*, 206; *R.* v. *Thackwell*, 6 *D. & R.* 61; 4 *B. & C.* 62; 3 *D. & R. Mag. Ca.* 121, S. C; but as no fixed rule can be well laid down, it is best to refer to the following decisions thereon.

Against a "judgment."

Under a statutory provision, giving an appeal from a conviction to the next quarter sessions, the sessions *next after the conviction* are intended, and not the sessions next after the execution or levying of the penalty. *Roper* v. *Hyde*, 1 *Term Rep.* 414. This case arose on an appeal against a conviction on the 24 Geo. III. c. 31, for not entering horses liable to duty. *Et per Ashhurst*, J. "the words of the act are decisive, for it says, 'if any person shall find himself aggrieved by the *judgment* of any such justice, &c. he may appeal to the justices at the *next* general quarter sessions;' therefore the plaintiff should have appealed to the sessions next after the judgment." *Et per Buller*, J. "The cases relative to appeals against orders of removal are very distinguishable from the present. All orders of removal are *ex parte* proceedings, and the other party cannot know any thing of them till the actual *removal*, but this conviction is more like a judgment of this court than an order of removal. The grievance to the party is the *judgment* and not the *execution*. A writ of error will lie before execution, and an appeal is in the nature of a writ of error, it complains of the judgment. If a contrary construction prevailed, it would be such a snare to magistrates that they could never be safe, for the justices do not issue their warrants of execution till they know whether an appeal will be brought or not; and they could never know when the party found himself aggrieved, if he were not to appeal to the next sessions after the conviction." *Id.*

Against a "conviction."

Where an appeal was given within three months after *conviction*, the party has three months to signify his intention of appealing, and is not bound to appeal to the sessions which occurred within that time. The statute does not require the appeal to be lodged within this time, for that could not in some instances be done, as more than three months often intervene between the Epiphany and Easter Sessions. *R.* v. *Middlesex*, 6 *M. & S.* 279.

Against "cause of complaint."

The time from whence the right to appeal commences, where the act limits it after the "*cause of complaint*" arises, may be collected from the following decision:—By the General Highway Act, 13 Geo. III. c. 78, s. 80, an appeal is given upon giving notice "within six days after the cause of the complaint arises." In *R.* v. *Devon*, 1 *M. & S.* 411, it was determined that the levy under, and not the signing of, the warrant of distress, was "the cause of complaint," and therefore where a person assessed under this act had refused to pay, and a warrant of distress was signed and granted by two justices on the 4th of December, which was executed on the 12th, and the party thereupon gave notice of appeal within six days after the 12th of *December*. The sessions dismissed the appeal. But Lord *Ellenborough* ruled upon a motion for a mandamus, that the party had appealed in time, it being within six days after he was actually damnified: "It is not necessary he should appeal on the warrant, for *non liquet*, that it would be proceeded upon."

The appeal clause in the Turnpike Act, 4 Geo. IV. c. 95, s. 87, is very similar; and where, under this statute, the justices made an order on the surveyor of a township to perform certain statute duty on a turnpike road, and to pay to the turnpike surveyor part of the composition, it was held, that the order of the magistrates was not complete until the surveyor of the township

TO WHAT SESSIONS.

was in possession of the order, and that the *cause of complaint* arose when the order was *served*; and the notice of appeal being given within six days after the service, a mandamus was issued to compel the sessions to hear it. *Bayley*, J. observed, "that parties are often present in court when rules are pronounced, but they are not bound to take notice of them until they are *served*. The surveyor may or may not be present when this order is made, and it is desirable that the practice should be uniform when he attends and when not. If he does not attend, he cannot state the *matter* of appeal as required till he is served with the order." *R.* v. *Lancashire Justices*, 8 *B.* & *C.* 595; 2 *Man.* & *R.* S. C.

As to time.

Again, in further illustration of this: on an appeal under an act for the inclosure of certain lands in Middlesex, passed with a clause giving an appeal in the usual terms, "within six months from the time when *the cause of complaint* shall have arisen," the commissioner, at a meeting under the act, holden on the 18th of June, 1818, showed the map to the present appellant, with *the allotment marked out upon it*, which he, the commissioner, had assigned to him, the appellant. The latter raised some objections to it, and desired the commissioner to reconsider it. He did so, but did not think fit to make any alteration, and having received no further application, on the 28th of August following sent a formal notice to the appellant that the land remained allotted to him according to the map exhibited to him on the 18th of June previous, and on the same day the said allotment was accordingly *staked* out by command of the said commissioner. According to the particular act, as well as the General Act of Inclosure, no allotment ought to be *made* till the roads have been *set out*, and the roads in this case could not be *staked out* till the end of July, because the crops were on the ground. The appeal was lodged on the 9th of January, and respited till the 29th of April, when it was opposed on the ground of not having been lodged *in time*, i. e. within six months from the *cause of complaint arising*; and the justices dismissed the appeal on this ground: but on motion for a mandamus to compel the justices to enter continuances and hear the appeal, the Court of King's Bench thought "there was no actual setting out of the allotment in this case, according to the true construction of the act, till something was actually done founded upon the plan," and made the rule absolute. *R.* v. *Justices of Middlesex*, *Talfourd's Dick. Sessions*, 423, 4; and 1 *Chit. R.* 367.

Against "thing done."

In a private inclosure act power was given to the commissioners to set out land in a certain proportion in case of tithes to the vicar, with the following clause of appeal—"and if any person shall think themselves aggrieved by *any thing done* in pursuance of this act, they may appeal to any general quarter session of the peace for the county, &c. within six calendar months *after such cause of complaint shall have arisen*." The commissioners made an allotment upon the map, which the vicar inspected in November, 1812, and appointed an agent, who attended a subsequent meeting, when an alteration was made, which such *agent approved*, and it was understood at the meeting, where such agent so concurred, that all objections were reconciled and the allotments definitively settled. In November, 1813, the commissioners *gave notice that* all tithes were to cease from the 29th of September last preceding. The vicar, being dissatisfied, *entered an appeal* against the commissioners' allotment at the Epiphany sessions, 1814, being within six calendar months from *the date of the notice* of the commissioners above-mentioned; this came on to be heard at the following Easter session, but was dismissed as being out of time. The question was, from what period the "grievance commenced." The Court of King's Bench were of opinion, that *the notice of the commissioners of the time from which the tithes were to cease* was the commencement of the vicar's grievance, and therefore that the appeal being within six months from *that* period was in time. *R.* v. *Justices of Gloucestershire*, 3 *M.* & *S.* 127; *Talfourd's Dick. Sessions*, 421. See further as to what is a "thing done" in pursuance of an act, *Smith* v. *Shaw*, 10 *B.* & *Cres.* 277.

"Any act done."

By the 3 Geo. IV. c. 33, s. 7, (which related to remedies against the hundred, but now repealed by 7 & 8 Geo. IV. c. 27,) any person aggrieved by any *act done* under that act might appeal, &c. Where a party so grieved ap-

TO WHAT SESSIONS.

plied to the proper sessions, and they, after *hearing the case and evidence*, dismissed the complaint, not on the merits, but on a supposed want of jurisdiction, the court held that this was an *act done*, against which an appeal would lie. But the opinion was founded on the peculiar provisions and language of that act, and must not be considered as a precedent in any other case. *R.* v. *Tucker*, 3 *B. & C.* 544; see also *Blakemore* v. *Glamorgan Canal C.* 3 *Y. & J.* 60.

Against "a determination."

Where by a local act the management of the parish poor was vested in the churchwardens, overseers, governors and directors of the poor, and an appeal to them was given to any person thinking himself aggrieved by any thing to be done by virtue of the act, and if the appellant should be not satisfied with their *determination*, then an appeal was given to the quarter sessions, and a parishioner having applied for relief against a rate to the churchwardens, overseers, governors and directors, they, at a meeting, resolved to take no further notice of his application; it was held, as they had not come to any *determination* on the subject-matter of his complaint, the parishioner could not appeal to the quarter sessions, but that he ought to have first applied for a mandamus to compel the churchwardens, overseers, governors and directors to hear the appeal. *R.* v. *Justices of Kent*, 9 *B. & C.* 283.

Against "order or proceeding" had.

By 13 Geo. III. c. 78, s. 19, an appeal is given against orders of justices for stopping up roads, "to the parties aggrieved by any *such orders or proceedings* had," &c. and the question was, the precise period from which the grievance was to be estimated, and whether the *terminus à quo* for an appeal was to be reckoned from the time of the order or from the time of the actual stoppage in consequence of that order. The Court of King's Bench held, that an appeal to the session after the actual obstruction of the road was too late, the parties aggrieved having had notice of the order in sufficient time to have appealed to a previous session. *R.* v. *Justices of Pembrokeshire*, 2 *East's R.* 213; see also *R.* v. *Justices of Buckinghamshire*, 3 *M. & S.* 230.

Again: two justices in a special session, the 20th of June, made an order for a public footway to be diverted and turned. On the 4th of July they made another order for the old footway to be stopped up. Appeal at the next *Michaelmas* quarter session, the Midsummer quarter session having been holden on the 11th of July. The justices dismissed the appeal, conceiving that the time within which it was to be made was to be reckoned *from the* date of the *first* order, which was for diverting the *way*. But it was contended, in support of the motion for a mandamus to compel the justices to hear the appeal, that the grievance commenced only at the time of the order for *stopping up the old footway*, not from that of the order for making the new one, and of that opinion was the Court of King's Bench. *R.* v. *Justices of Herts*, 3 *M. & S.* 459. *Talfourd's Dick. Sessions*, 423, 426.

See further *Talfourd's Dickinson's Sess.* 426.

When the appeal is to be to the *next* practicable *session*.

We have already stated, *ante*, p. 138, that where an act directs an appeal to be to the "*next* session," it in general means the next practicable session, and in illustration of this rule the following cases may be referred to.

On motion for a *mandamus* to hear an appeal from an order of removal, Lord *Ellenborough*, C. J. said, "*next session*," in all cases, means next *practicable* session. In this case the distance between the respondent and appellant parishes was twenty-four miles, the appellant parish was distant from the county town thirty-seven miles, only two days intervened between the services of the notice and the day of the session being holden, and one of those was Sunday, which no man is obliged to devote to secular purposes, and without so doing in this case, there could not be sufficient time for all that was necessary to be done. As to entering an appeal for the mere purpose of *respiting*, which it is said might have been done, it is only increasing unnecessary expense. The *next subsequent* session, therefore, in this case was the *next practicable* session. *R.* v. *Justices of Essex*, 1 *B. & A.* 210.

So where an order of removal had been made by two justices on the 22d of September, but the pauper was not removed till the 5th of October. Hull, the place to which the pauper had been removed from Whitley, is sixty miles from Northallerton, where the session began on the 6th of October; at that session no appeal was entered, and at the Epiphany session following,

which began on the 12th of January following, the parish charged offered an appeal; the justices refused to hear it, thinking themselves bound by the words of the statute, which says, "that persons aggrieved may appeal to the justices of the peace *at the next quarter sessions.*" On motion for a *mandamus* to receive the appeal, the court said, "that by *next session* the statute of Car. II. must have meant the *next possible session;* and that here it was impossible for the appellants to lodge their appeal at the Michaelmas session." R. v. Js. Yorkshire W. R., *Dougl.* 183.

And before some recent decisions, it had been thought necessary to enter and respite an appeal at the next practicable sessions, even though the order was served too late to give such notices as are required by the sessions to try such appeal. However, a more sensible rule has now been adopted; and in R. v. *Justices of Southampton*, R. v. *Justices of Devon*, and R. v. *Justices of Kent*, 8 B. & C. 639, and in notis, it was determined that it was not necessary to enter and adjourn an appeal against an order served too late to comply with the notices required of the sessions to try the appeal. Lord *Tenterden*, C. J. observed, the entry for the mere purpose of adjournment is a useless act, and only occasions unnecessary expense; and as to inconvenience which may result from this rule, viz. that the removing parish may not know of the intention to appeal till within eight days of the following sessions, his Lordship said, if it proved an inconvenience, the sessions may require longer notices in such circumstances. These cases overrule that of R. v. *Herefordshire*, 3 T. R. 504, where Lord *Kenyon* said the appeal ought to have been entered and adjourned.

In R. v. *Essex*, *ante*, 140, it may be observed, that Lord *Ellenborough* said, the parish officers must have a reasonable time allowed them to make the necessary inquiries, that they may judge of the propriety of appealing.

Taking this with the judgment in R. v. *Devon*, *supra*, it would seem such reasonable time is allowed besides the days necessary for giving notice of trial.

Where overseers' accounts, allowed by two justices, were delivered to the successors so late that they could not appeal to the next sessions, it was holden, that an appeal to the next practicable sessions was in time, and that the justices might then respite the appeal, though the respondents objected to the delay. R. v. *Thackwell and others*, 4 B. & C. 62; 6 D. & R. 61, S. C.

Only one intervening day between the publication of a poor rate and the *next immediate* quarter session is not sufficient for an effectual notice of appeal. R. v. Js. *Sussex*, 15 *East*, 206; and R. v. Js. *Dorsetshire*, 15 *East*, 200.

Where an order of removal from a town in Yorkshire West Riding to St. Luke's, Middlesex, *dated* 3d of January, was *executed* 12th of January, the next session for said county of York West Riding being on the 18th of January; the parish of St. Luke's did not appeal at that session, but offered to lodge an appeal (for hearing at a subsequent session) at the next session, viz. at Easter: but the justices refused to receive it, on the ground that it was too late: and on a motion for a *mandamus* to receive the appeal, Lord *Ellenborough*, C. J. said, "Although they ought perhaps in strictness to have appealed at the January session, considering the great distance between the parishes, we might have relieved them, if they had at the *next* session *done all that they could have done;* but what did they actually do even at that session? Only *offered* to appeal for a future hearing, but had given no notices, and were not, after all that delay, in a condition to be heard, but only to enter an appeal for hearing at a still subsequent session;" and the rule was discharged. R. v. *Js. of York. W. R.*, 4 *M. & S.* 327.

IV. Preliminary Steps before Trial.

(1.) Notice of Appeal.

Notice of appeal.

When necessary]—The statute which allows an appeal usually directs that

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When necessary.

a notice of the party's intention to appeal shall be previously given either to the justices or to the complainant, or to both; but unless expressly required, a notice of appeal does not appear absolutely necessary. *R.* v. *Js. of Essex*, 4 *Barn. & Ald.* 276. *Infra.*

When the statute expressly requires a notice of appeal to be given, no practice of the sessions can do away with the necessity of such notice as prescribed by the act. *R.* v. *Justices of Lincolnshire*, 3 *B. & Cress.* 548; 5 *D. & R.* 347, S. C.

It is material also to observe, that where the statute giving the appeal directs the appellant to enter into recognizances, but requires no notice, it is not necessary to give the notice required by the sessions. Thus, where an order of sessions required "that all notices of appeal made to the court shall be given by the parties eight days before the sessions begin," and a person convicted under 55 Geo. III. c. 29, entered into the recognizance to prosecute his appeal required by the statute, which statute required no notice, it was held, that the order of sessions required the eight days' notice to be given only in those cases where some notice is prescribed by the statute; and that the recognizance was equivalent to notice. *Holroyd*, J. added, "it appears, that if the conviction is made more than six days before the sessions, the party grieved *must* appeal to the next sessions. Suppose it, then, made seven days before the sessions, he must appeal to those sessions, and yet cannot give the notice prescribed by the sessions." *R.* v. *Js. of Kent*, 6 *M. & S.* 258.

When to be in writing.

When Notice to be in Writing]—The statute giving the appeal, and requiring a notice of it, in general directs such notice to be in *writing*; but unless it expressly so requires it, a verbal notice is sufficient. And the term "*reasonable* notice" does not of itself require a written one. (*a*)

Therefore on a rule for a *mandamus* to hear the appeal of a defendant against the conviction of a magistrate under the 50 Geo. III. c. 48, s. 4, called the Stage Coach Act, by which the defendant was convicted in a penalty for carrying more luggage than is allowed by the act; the defendant had, within fourteen days, entered into a recognizance, as required by the act, to prosecute his appeal against the conviction, and had given notice of appeal to the magistrate, but not to the informer; by the practice of the sessions for the county of *Essex*, eight days' notice of appeal is required to be given, in all cases, by the appellant to the respondent; it was objected at the sessions that the practice not having been complied with in this particular, the appellant was not entitled to be heard, and the sessions allowed the objection, and dismissed the appeal; it was contended that the entering into the recognizance before the magistrate dispensed with the necessity of giving notice of appeal. *Sed per Bayley*, J. "I am of opinion that the sessions ought to have heard this appeal. Wherever the legislature has deemed a notice of appeal to be necessary, they have in express terms prescribed such notice; but here, by the 50 Geo. III. c. 48, s. 25, it is expressly provided, 'that any party aggrieved by the conviction, who shall within fourteen days enter into a recognizance to appear at the next sessions, shall be at liberty to appeal at the next general quarter sessions of the peace to be holden for the county.' The act of parliament, therefore, does not require any notice of appeal; and inasmuch as the party convicted had entered into a recognizance to prosecute his appeal at the next sessions, the informer must have known that it was the intention of the party con-

(*a*) Where by the statute the notice must be *in writing*, it seems that a *printed* notice would be sufficient. By the Statute of Frauds a memorandum in writing is required to be *signed* by the party to be charged; and in *Schneider* v. *Norris* it appeared that the defendant (the vendor) *wrote* the vendee's name on a blank form, on which the defendant's name was printed, and this was held to be a sufficient signing by defendant; and *Le Blanc*, J. said, if it had been *stamped* with his own name that would be sufficient. 2 *M. & S.* 286; see also *Saunderson* v. *Jackson*, 2 *B. & P.* 238. The celebrated Abjuration Act was *stamped* by William III. with his name, as he was too feeble to write. *Cox's Marlborough.*

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victed to appeal, and any further notice was therefore unnecessary. I think therefore that this rule ought to be made absolute." The rule was accordingly made absolute. *R.* v. *Justices of Essex*, 4 *B. & Ald.* 276; and see *R.* v. *Milsrow*, 5 *M. & Selw.* 248.

When to be in writing.

So in a case on the 49 Geo. III. c. 68, in a matter of bastardy. The reputed father had entered into the recognizance required by section 5 of that act, but had given no written notice of appeal. At the sessions he offered to prove that he had given a parol notice to the affiliating justices of his intention to appeal, and of the cause and matter of such appeal, but the sessions would not allow such notice to be proved, and dismissed the appeal. On showing cause against a rule *nisi* for a *mandamus* to the sessions to enter continuances and hear the appeal, *Bayley*, J. observed, "I am of opinion that in this case the sessions ought to have received the evidence of the parol notice of appeal which was tendered by the appellant. It may be convenient that a notice of appeal, particularly where it is a notice of the cause and matter of the appeal, should be in writing, and in many cases the statute giving the appeal requires that there should be a *written* notice: but we cannot say that a notice in writing is necessary where it is not required to be in writing by the clause in the statute which directs a notice to be given. An appeal is usually allowed by statute on certain conditions; and when one of those conditions is, that the party appealing shall give a notice of his appeal, it would be to add a further condition, if we were to hold that such notice must be in writing." Rule absolute. *R.* v. *Justices of Salop*, 4 *B. & A.* 626; and see *R.* v. *Justices of Lincolnshire*, 3 *B. & Cres.* 548; 5 *Dowl. & Ryl.* 347, S. C.; *ante*, 142.

Time of notice. Reasonable time.

Time of Notice]—Where the statute requires a notice of appeal without specifying the time when such notice is to be given, it implies a *reasonable* notice. The reasonableness of such notice as to being in time is for the justices at sessions to decide on. Thus in *R.* v. *Justices of Surrey*, 1 *Dowl. & Ryl.* 160; 1 *Dowl. & Ryl. Mag. Ca.* 64; 5 *B. & A.* 539, S. C. the defendant was convicted on the 6th of November, 1821, under the 12 Geo. II. c. 28, for gaming, and entered into recognizances to appeal against the conviction to the next quarter sessions. It was sworn on the one side, and denied by the other, that at the time of entering into recognizances his attorney gave a verbal notice to the informer of his intention to appeal. The defendant attended in order to prosecute his appeal at the last January sessions, when there having been no notice of appeal in writing, the court refused to hear the appeal. The 5th section of the act giving the appeal states, that "persons aggrieved may appeal, giving reasonable notice to the prosecutor and entering into recognizances," &c. In support of a rule for a *mandamus* to enter continuances and hear the appeal, it was contended that the sessions were to judge what was a reasonable notice of appeal, and they were of opinion that it must be a notice in writing. *Sed per Abbott*, C. J. "We are of opinion that where a statute requires reasonable notice to be given, it does not necessarily mean that the notice should be in writing, but only that as to time or number of days it should be reasonable. Here, however, as the fact is disputed, we shall only grant a *mandamus* to the justices, commanding them to examine whether reasonable verbal notice has been given, and in that case to enter continuances and hear the appeal. The reasonableness of such notice in point of time is certainly for the justices to decide. It is not our province to decide upon affidavits whether reasonable notice was given in point of time, that is for the sessions to determine."

The question as to what is a *reasonable* notice must necessarily depend on the facts of each particular case, and no general rule can be laid down as to it. In appealing against a poor rate a week's notice is the usual time.

Immediate notice.

Sometimes the statute requires *immediate notice* to be given. Thus by the now repealed (*a*) Malicious Trespass Act, 1 Geo. IV. c. 56, s. 5, an appeal is given to the party convicted "on giving *immediate* notice of such appeal,"

(*a*) Repealed by 7 & 8 Geo. IV. c. 27. Re-enacted however in other words by the 7 & 8 Geo. IV. c. 30. See *post*, Malicious Injuries to Property, Vol. III.

NOTICE OF.

Time of notice.

&c. Where a defendant convicted on this statute did not give notice of appeal until *seven* days after the date of the conviction, the court held that this was not such a prompt compliance with the terms of the statute as to justify the sessions in entertaining the appeal, although the court would not say that the word "immediate" must be construed so strictly as to require the notice to be given forthwith on conviction. *R.* v. *Justices of Huntingdonshire*, 5 *D. & R.* 588; 2 *D. & R. Mag. Ca.* 594. S. C.

Computation of days in notice.

If an act of parliament requires that the person aggrieved shall give a certain number of *clear* days' notice of appeal before the quarter sessions of his intention to appeal, this means a number of perfect intervening days between the act done and the first day of the sessions. *R.* v. *Justices of Herefordshire*, 3 *B. & A.* 581; and see *Roberts* v. *Stacey*, 13 *East*, 21. *Post*, Time, Vol. V.

The remaining points as to the time of the notice with reference to the sessions to which the appeal is to be made will be found, *ante*, p. 138 to 141.

By and to whom given.

By whom, and to whom given]—The statute points out the parties by and to whom the notice of appeal is to be given. It must be given by the party grieved or objecting to the proceeding complained of. If several have a joint grievance they may join in giving the notice. See *R.* v. *White*, 4 *Term Rep.* 771; *R.* v. *Justices of Sussex*, 15 *East*, 206. As to the description in the notice of the party complaining, see *infra*.

"Parties concerned"

An inclosure act gave to the party aggrieved a right of appeal for any thing done in pursuance of that act, or of the (recited) General Inclosure Act, on giving to the commissioner *and to the parties concerned ten days' notice* in writing: notice of appeal against an order ascertaining the boundaries between two townships was served on the commissioner, but not *on the lady of the manor*, who was a party materially interested in the question, because the commissioner had (as was alleged) committed a great error in ascertaining the boundaries of the parish to be inclosed, and had included within his boundary a considerable part of an adjoining manor belonging to a Mrs. S. At the sessions it was proposed to respite the hearing of the appeal which had been entered; but as the notice was insufficient, none having been given to the lady of the manor, the justices determined it could not be entered or heard. A *mandamus* being applied for to enter continuances and to hear the appeal, the Court of King's Bench were unanimous in opinion that the justices had acted right and the *mandamus* ought not to issue. The notice of appeal was insufficient. The party who appeals is bound to give eight days' notice by the general act to the commissioner, by the local act ten days' notice to the commissioner *and also to the parties concerned*. The latter therefore *so far* supersedes the provisions of the former, and it would be a great hardship if the *party concerned* were bound by a notice to the commissioner alone. "Party concerned" includes parties directly interested in the soil, which in this case the lady of the manor was, and therefore entitled to notice, which she had not received. *R.* v. *Justices of Lancashire*, 1 *B. & A.* 630.

See further, *post*, 150, as to the entering and respiting.

Contents of notice.

Contents of Notice]—If the statute does not expressly require it, the notice need not state the grounds for the appeal; otherwise it must, and this in a specific manner, so that the objections raised may be known to the justices and parties concerned before hearing the appeal. See *R.* v. *Justices of Westmoreland*, *infra*.

If the appellant unnecessarily states in his notice, as causes of appeal, things which are not so, the court of sessions ought to adjourn the appeal, if they think the respondents have been misled by the terms of the notice, or otherwise to hear it. *R.* v. *Justices of Westmoreland*, 10 *B. & Cres.* 226.

Where a statute gives a right of appeal against acts done in pursuance thereof to parties aggrieved by such acts, the notice of appeal must state that the appellant is *a party aggrieved* by the act of which he complains. *R.* v. *Justices of West Riding of Yorkshire*, 1 *M. & R. Mag. Ca.* 215; *R.* v. *Justices of Essex*, 7 *Dowl. & Ryl.* 658; 3 *Dowl. & Ryl. Mag. Ca.* 483; 5 *B. & Cres.* 431, S. C. See general form, *post*, 152, (No. 1).

As to notices of appeal in *particular* cases, see the various titles throughout this work.

RECOGNIZANCE ON.

(2.) The Recognizance.

Recognisance.

It is required, in many cases, that the party appealing shall enter into a recognizance with sureties, conditioned to try the appeal, and to abide the judgment of the court thereon. The terms in which this recognizance is to be given must depend upon the statute requiring it. See form, *post*, 152, and as to recognizances in general, *post*, tit. Recognizance, Vol. V.

(3.) Effect of not taking necessary Preliminary Steps.

Effect of not taking necessary preliminary steps.

If the appeal, as is usually the case, is given only on certain conditions, such as the giving notice, entering into a recognizance, or the like, in such case if an appeal be lodged at the proper sessions, but dismissed for want of compliance with some of those conditions, the right of appeal is gone, and cannot be renewed at any other sessions. *R.* v. *Justices of Oxfordshire*, 1 *M. & S.* 466; *R.* v. *Justices of Caernarvon*, 4 *B. & A.* 86; *R.* v. *Lambeth*, 3 *D. & R.* 340; 2 *D. & R. Mag. Ca.* 26, S. C.; *Paley on Conv.* 283, *by Dowling*.

Where a conviction on 16 Geo. III. c. 30, made the 13th of July, was appealed against to the next *Michaelmas* sessions, and the party entered into a proper recognizance, but neglected to give any notice of appeal, conformably to the appeal clause, which gave an appeal to the sessions next after twenty-one days from the conviction, "the appellant giving six days' notice," which last words were considered as imperative, and not merely directory, the justices at the first sessions adjourned the appeal, and at the following sessions it was dismissed on the objection of want of notice; and it was held by the Court of King's Bench, that the want of notice was a decisive objection to the first appeal, and that the sessions had not even authority to adjourn it on account of its never having been properly entered; for the court said, the sessions having no jurisdiction for want of notice could not acquire to themselves a jurisdiction by an act of their own; the power of adjournment is only where the sessions cannot conveniently hear the appeal after it has been *duly* entered. *R.* v. *Justices of Oxfordshire*, 1 *M. & S.* 448.

So where a statute gave an appeal from a conviction by a justice to any quarter sessions to be holden within six months from such conviction, on condition that the appellant should give ten days' notice of his intention to appeal, and enter into a recognizance within four days after such notice, an appeal was lodged at the first sessions after a conviction, the sessions discharged it without entering into the merits, for want of proof that the recognizance was entered into within four days of the notice given. At the following sessions, and within the six months of the conviction, a second appeal was lodged, which the court refused to hear. Upon a motion for a *mandamus* to compel the sessions to receive such second appeal, it was held, that the first judgment was conclusive, and that no second appeal could be brought against the same conviction, (on a local act, 17 Geo. III. c. 106,) for it was held, that after the appeal was lodged and adjudged by the justices at sessions to be informal, they were *functi officio*, and could not take cognizance of the second appeal. And Mr. J. *Buller* said, "The act certainly only gives a right of appealing *once*, and the parties having had one appeal are bound by that. If the question had rested solely on the *notice* of appeal for the first sessions which happened, and nothing further had been done, I should not have thought the parties bound by it, for the act gives the power of appealing within a certain time with these two requisites, *viz.* that the appellant must give ten days' notice, and within four days after enter into a recognizance. When the party, therefore, found out his mistake, he might have stopped there, but he persisted in going on with his appeal, and brought it before the court, and took their judgment upon it; the appellant jurisdiction was therefore fully exercised, and though it was originally in the option of the parties whether they would appeal to the first or second sessions which took place within the six months, yet, having made their election to appeal to the

EFFECT OF NOT TAKING NECESSARY STEPS.

first, they must abide by the judgment there given. *R.* v. *Justices of Yorkshire*, 3 *T. R.* 776.

Agreeably, therefore, to what is above laid down, the party who has given notice of appeal, but neglected to enter into the recognizance, may set himself right by giving a fresh notice of appeal, and entering into a recognizance to prosecute *that* appeal, provided it be to a sessions within the time limited. *Paley, Conv.* 285.

Second notice where proper.

V. Hearing, Trial, Judgment, and Adjournment.

(1.) Hearing and Trial.

Practice as to hearing.

Appeals are usually called on for hearing, in the order in which they stand in the paper of the clerk of the peace, which should be that in which they are entered. This, however, appears to be mere matter of arrangement in the discretion of the court, who may take the appeals in any order which the general convenience of the public, or particular circumstances, may seem to them to dictate. *Talfourd's Dick. Sessions*, 432.

In general a preference is given to *foreign* appeals.

Personal appearance of appellant and respondent.

There seems to be no general rule requiring the personal attendance of the appellant, and the necessity for this depends in a great measure upon the practice of each sessions respectively. In an appeal against a conviction on the stage coach act, 50 Geo. III. c. 48, it was resolved by the quarter sessions for the county of Essex, that the appellant must be present at the hearing of his appeal. *R.* v. *Cracklin, Mich.* 1822. The like practice seems to prevail at the Middlesex sessions, and the same reason which requires that the appellant should be present applies equally to the informer. *Paley, Conv. by Dowling*, 290, *n.* (1.)

Proof of notice.

The first step after the appeal is called on, is that the appellant should prove his notice, unless it be admitted, or be not required. As to what notice is sufficient, see, *ante*, p. 141 to 144. The appellant ought not to be allowed to travel out of it; unless the statute requiring the notice do not also require it to contain the causes of appeal, and then the appellant may be allowed to travel out of it, provided it has not misled the respondent, in which case the sessions should sometimes adjourn the appeal. *R.* v. *Justices of Westmoreland*, 10 *B. & Cres.* 226.

Formal objections to conviction to be stated at once.

As soon as the notice of appeal has been proved or admitted, the clerk of the peace proceeds to read the conviction which has been returned by the convicting justices (*a*). If any objections arise on the face of the convic-

Sessions only to take notice of record of conviction returned by justices.

(*a*) The sessions commonly take notice of the record of the conviction returned by the magistrate. Thus a conviction on 48 Geo. III. c. 74, s. 13, having been appealed against, the magistrate returned to the sessions a record of conviction, signed and sealed the 5th June, 1811, setting forth that the appellant on such a day was, on the complaint of *Isaac Mann*, convicted, &c. It appeared on the trial of the appeal, that at the time of the conviction an instrument bearing the same date was regularly signed and sealed by the magistrates, stating that the defendant on the same day was, on the complaint of *W. Bourne* and *Isaac Ottley*, convicted, &c. A copy of this latter instrument had been delivered by the justice's clerk to the defendant, written on the back of the information, which information thereby appeared to be that of *Isaac Mann*, and not of *W. Bourne* and *J. Ottley*, who were in fact the witnesses, and not the informers. This copy was produced by the appellant at the sessions, but the court refused to let it be filed. They, however, took notice of it as a memorandum or *minute* of the conviction, and ordered that which was returned on parchment by the magistrate, and filed, to be quashed, because of its variance from the above minute. This order of the sessions having been removed by *certiorari*, a rule was obtained for quashing it, which in effect was to set up again the conviction returned by the magistrates. Upon argument, the Court of King's Bench considered the conviction returned to the session by the magistrate as the only one of which the sessions could take notice, and that, consequently, they had done wrong in quashing it on account of the manifest mistake in the copy or memorandum

tion, the appellant usually begins, and he is bound to state all his objections thereto at once, in order that they may be met on the other side, for it would be endless if each objection were to be discussed and decided *seriatim*.

When respondent to begin.

Should the objections to the form of the conviction be overruled, or none be taken, *in limine*, the respondent, or his counsel, opens his case upon the merits, and calls his witnesses; and he is not confined to such witnesses as were examined below. Such witnesses may be cross-examined.

Appellant's answer.

If the court thinks the case thus opened and proved requires an answer, the appellant then opens his case and calls his witnesses, with the like liberty of calling fresh evidence, in addition to what he may have relied upon on the hearing of the information.

Respondent's reply.

As soon as his own case is closed, the respondent has a general reply upon the whole case, if, indeed, the appellant calls witnesses; but if the appellant calls no witnesses, the case is closed by the appellant's, or his counsel's, address.

Fresh evidence of.

Both parties are at liberty to examine all competent witnesses on their behalf, without regard to whether they have been examined before or not, unless it is provided by statute, (as by the 48 Geo. III. c. 74, s. 15,) that upon the appeal the same witnesses, and no other, shall be re-examined. *Breedon* v. *Gill*, 1 *Ld. Raym.* 219, which was a conviction on the malt act. And this rule extends to appeals to the commissioners of appeals in matters of excise. *R.* v. *Commissioners of Appeal in Matters of Excise*, 3 *M. & S.* 133. See *R.* v. *Jeffery*, 2 *D. & R.* 860; 1 *D. & R. Mag. Ca.* 455; 1 *B. & C.* 604, S. C.; *Paley, Conv. by Dowling*, 290, *n.* 1; *post*, Excise, Vol. II.

Party relying on a formal objection when concluded.

Where the appeal is limited to the next sessions, and the appellant relies on an objection, independent of the merits, and procures an order of the sessions quashing the conviction on that ground, which order is afterwards set aside by the Court of King's Bench, and consequently the conviction set up again, the appellant cannot afterwards go to the sessions again to hear the appeal discussed on the merits, by entering continuances from the first appeal. *R.* v. *Allen*, 15 *East*, 346; 3 *T. R.* 519, *ante*, 145. But this is otherwise where the sessions quash the conviction for matter of form, subject to the opinion of the Court of King's Bench upon the validity of the objection, and it appears to the court when the conviction is returned that there is no defect of form, and the court will send the case back to be heard on its merits. *R.* v. *Ridgway*, 1 *D. & R.* 132; 1 *D. & R. Mag. Ca.* 38; 5 *B. & Ald.* 527, S. C. See the case in full, *post*, 149.

(2.) Judgment on.

Practice as to.

When the case and proceedings are closed, the chairman collects the opinion of the justices, and pronounces that of the majority for confirming or quashing the order, conviction, or rate, which is the subject of the appeal.

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produced by the appellant. *R.* v. *Allen*, 15 *East*, 333, 346. It was said by the court upon that occasion, that if the justice had done wrong in returning an improper conviction to the sessions, he would be punishable; but it clearly appeared that the copy delivered to the appellant was drawn up in the form he received it by mere mistake, for it was drawn up on the back of the information of the very person who was the true informer. *R.* v. *Allen*, 15 *East*, 333, 346. The court, moreover, refused to send the case down again to be heard upon the merits, for the defendant having chosen to rely upon the formal objection was concluded by that election. *Paley, Conv.* 288.

If therefore the magistrate, in order to sustain the conviction, should mistake the evidence or other proceedings before him, the remedy is by motion, founded on affidavit, to the Court of King's Bench for a *mandamus* to compel the magistrate to state the whole of the evidence adduced before him correctly in his conviction, pursuant to 3 Geo. IV. c. 23. In the matter of *Rix*, 4 *D. & R.* 352; 2 *D. & R. Mag. Ca.* 249, S. C.

If, indeed, a magistrate wilfully misstate material evidence, he will be subject to a criminal information or indictment. 1 *East*, 186.

JUDGMENT ON.

In giving this judgment, the justices who made the order, (*Case of Fixham tithing*, 2 *Salk.* 407,) or who may be rated inhabitants of either of the litigant parishes, (*R.* v. *Yarpole*, 4 *T. R.* 71,) have no right to vote. The chairman has the same right to vote as any other justice present; but he has no casting or double vote to give, in case the numbers, including his own vote, shall be equal. In case of equal division, it seems that the proper course is for the court to order the appeal to stand adjourned till the next sessions; and it has been said, that it is the duty of the clerk of the peace so to enter it. See *R.* v. *The Justices of Leicestershire*, 1 *M. & S.* 442. But this doctrine has been disputed in a recent case of *R.* v. *Justices of Monmouthshire*, 4 *B. & C.* 844; 7 *D. & R.* 334, S. C.; in which it was contended, that as the respondents, in case of removal, are bound to support the order, they fail to do so, when the court does not decide with them, and consequently the order must, on equal division, be quashed. On this point the court gave no opinion, and probably would not have disturbed the law as generally understood and acted upon, in consequence of the ingenious reasonings of the counsel, but the court clearly held that the bench at sessions, having, on an equal division, given judgment that the order should be quashed, that judgment so given, even if erroneous, could not be reviewed by the Court of King's Bench, as no case had been reserved for their opinion. *Talf. Dick. Sess.* 534.

Who may vote and decide.

Special case.

If the right to a *certiorari* is not expressly taken away, the sessions may remit a case, on proved or admitted facts, to the Court of King's Bench, and this is usually done on doubtful and difficult questions. See *post*, title, **Sessions**, Vol. V.

No delegation of authority of session allowed.

The session cannot delegate the decision of an appeal to another; but where the matters in dispute have been referred by consent of the parties, the court will not allow one of these parties afterwards to disturb the decision. *Talf. Dick. Sess.* 433.

Decision of sessions conclusive.

The judgment of sessions upon the appeal, though erroneous, is conclusive, and the Court of King's Bench has no jurisdiction to review their judgment, except on a case sent up for its consideration; and therefore where the sessions, having heard the witnesses on one side, had refused to hear those on the other side, on the ground that their testimony had been prefaced by observations on the part of the advocate, contrary to their usual practice, the court refused to grant a *mandamus* to rehear the appeal. *R.* v. *Js. Caernarvon*, 4 *B. & A.* 86. On that occasion *Bayley*, J. said, "There is no instance, I believe, which can be found in which this court has interfered by *mandamus*, to direct the justices to rehear an appeal which they have once already heard. In this case they entered into the consideration of this appeal, and after having heard it, they have decided that the respondents ought not to be allowed to call witnesses in reply. It is possible, that in that decision they may have been wrong; but it seems to me that we are not at liberty to enter into that question, as no case has been sent up for our consideration. If we were to do so, we should constitute this court a court of appeal from the quarter sessions, and we should have applications continually made to us to overturn their determinations, on the ground of the improper reception or rejection of evidence, and be called upon to review their judgment, although no case has been sent to us for that purpose. It is the duty of sessions to hear and decide, and if they entertain any doubts, to submit them to this court; but where they do not desire our interference we have no jurisdiction;" and see 1 *Ch. Rep.* 164; *R.* v. *Farringdon*, 4 *D. & R.* 735; 2 *D. & R. Mag. Ca.* 365, S. C.; *R.* v. *Js. Monmouth*, 7 *D. & R.* 334; 3 *D. & R. Mag. Ca.* 410; 4 *B. & Cress.* 844, S. C.

In *R.* v. *Js. Cambridgeshire*, 1 *D. & R.* 325, 1 *D. & R. Mag. Ca.* 86, S. C., the defendant B. D. having been convicted of forcibly passing a turnpike-gate without paying tolls, the sessions on appeal rejected evidence to show that the gate had been unlawfully erected, and the Court of King's Bench refused a *mandamus* to compel the sessions to receive such evidence, the admissibility of it being exclusively a question for the justices. The court also refused to issue a *mandamus* to the sessions to hear an original complaint,

touching the conduct of the trustees in the erection of the gate, leaving the party to proceed by indictment for the nuisance, or by an action of trespass, if his passage was obstructed. JUDGMENT ON.

The Court of King's Bench cannot compel the sessions by *mandamus* to give their reasons for their judgment, or make any special entries on their records. *R.* v. *Js. Devon*, 1 *Chit. Rep.* 34, 164; *R.* v. *Js. Worcestershire*, *id.* 649; *Exparte Morgan*, 2 *Chit.* 250; *R.* v. *Commissioners of Flockwold Inclosure*, *id.* 251; *R.* v. *Js. Wilts*, *id.* 257. Sessions not bound to give reasons or make special entries.

The Court of King's Bench will not interfere with the practice of the sessions, unless it appears to be manifestly wrong or unjust. *R.* v. *Js. Essex*, 2 *Chit.* 385; see *R.* v. *Js. Bucks*, 6 *D. & R.* 142; 3 *D. & R. M. C.* 23. Practice of sessions. When conclusive.

If indeed the sessions hear one side and altogether refuse to hear the other, it would be the same as if the case had not been heard at all, and then it seems a *mandamus* would be granted. *R.* v. *Js. Caernarvon*, 4 *B. & Ald.* 86; and *R.* v. *Js. Kent*, 9 *B. & Cress.* 283. Hearing only one side.

And where the sessions quash a conviction for matter of form only, subject to the opinion of the Court of King's Bench upon the validity of the objection, and it appears to the court, when the conviction is returned by *certiorari*, that there is no defect of form, they will send the case back to be heard on the merits. See *ante*, p. 147. In *R.* v. *Ridgway*, 5 *B. & Ald.* 527; 1 *D. & R.* 132; 1 *D. & R. M. C.* 38, S. C., the defendant had been convicted by two justices on the statute 39 & 40 Geo. III. c. 106, s. 4, of attending a meeting of journeymen bleachers, held for the purpose of maintaining, supporting, continuing, and carrying on a combination for the purpose of obtaining an advance of wages. On appeal the sessions quashed the conviction, subject to the opinion of the Court of King's Bench as to its sufficiency in point of form. The conviction having been removed by *certiorari*, and a rule *nisi* obtained for quashing the order of sessions and sending the case back to be heard on the merits; on showing cause, it was contended, that the court had no jurisdiction to quash the order of sessions; for assuming the court below to have come to an erroneous decision, still the defendant having been acquitted in point of form, that acquittal was conclusive in his favour, from analogy to the rule in other criminal cases, and therefore he could not be put in jeopardy a second time for the same offence. The quashing the conviction is to all intents and purposes an acquittal. This is a criminal conviction against the defendant, and the question is, whether the court will entertain a motion which in its consequences may subject him to a second trial for the same offence. In all cases of felony, an acquittal is a bar to further proceedings against the party; and even in cases of misdemeanor, where the defendant has been acquitted in consequence of a mere clerical objection, still it has been held that no new trial can be had. In this case the defendant has been in fact acquitted, whether properly or not is not the question. In *R.* v. *Allen*, 15 *East*, 333; *R.* v. *Redfearne*, 4 *T. R.* 273; and *R.* v. *Cook*, 3 *T. R.* 519, cases had been reserved on *facts*, and in the two latter the conviction had been affirmed by the sessions; *sed per Abbott*, C. J. "I am not aware of any case in which the point now contended for has been decided; I have a perfect recollection of cases having occurred formerly in which orders of removal have been quashed for form by the quarter sessions, subject to the opinion of this court whether the original order was right. Where the justices have declared that they have quashed for form, then in such cases this court has considered whether the form was incorrect; now here the justices have declared that they have quashed this conviction for form, subject to our opinion upon the matter. Is there any distinction between this case in principle and those cases to which I have alluded?" If conviction improperly quashed for form, the decision is not conclusive.

It was then said, in the same case, that many cases of the description alluded to had occurred, but there is a main distinction between orders of removal and convictions on penal statutes. In the former, if the order of removal be irregular and is quashed for irregularity, a fresh order of removal may be made out, for as between two contending parishes an order of removal quashed for want of form would not prevent a fresh removal, and in such cases a special entry is made by the clerk of the peace that the order is quashed for form.

ADJOURNMENT OF.

In such cases the matter of form has been remitted for the opinion of this court. But there is no analogy between an order of removal of a pauper and a conviction on a penal statute. No penal consequences attach to the former, and therefore there can be no harm in this court reviewing the decision of the sessions; but a case has never yet occurred in which this court has interfered to set the sessions right in a criminal matter where the decision of the justices was in favour of the defendant. *Sed per Abbott*, C. J. "I am clearly of opinion that we are bound, in the exercise of our judicial authority, to quash this order of sessions, if upon the face of it it appear to be founded on an insufficient ground; and I should be of the same opinion whether the sessions had or had not specially asked our opinion upon the question. Supposing no case to have been reserved by the sessions, but that their order and the original conviction on which it was founded had been brought before us by *certiorari*, it would be our duty to read the order, and if we saw by the terms of it that they had quashed the conviction for informality or insufficiency, then to read the conviction, and if we found it not to be informal, then to send it back for re-hearing upon the merits. No injustice can arise to the defendant by our sending this case back to the sessions, for as his appeal against the original conviction was entered within the time limited by the act, no subsequent delay can bar him from being heard on that appeal upon the merits."

The court in that case being of opinion that there was no informality in the conviction, quashed the order of sessions, and sent the case back to be heard on the merits.

(3.) Adjournment of Hearing.

Power of.

The sessions may adjourn the hearing of the appeal if they think fit, and they have *power* so to do, though the statute directs them to *determine* the matter. *R.* v. *Js. Wiltshire*, 13 *East*, 352; 10 *B. & Cres.* 226, *ante*, 144.

The occasion for adjourning the hearing is in the discretion of the sessions, depending on the facts of the case.

Adjournment only proper on *regular* appeal.

Though the power of adjournment is inherent in the sessions for their own convenience in hearing the appeal, or for any other good cause, as the absence of a witness, &c. that power can only be exercised on appeals regularly brought before them, that is to say, where all the conditions as to notice, &c. which are the acts of the party appealing, have been observed. *Paley, Conv.* 287; see the cases, *ante*, 145.

VI. Entering and Respiting Appeals, and Notice of Trial.

Entering and respiting, and notice of trial.

If a statute gives a party a right of appeal on entering into a recognizance, and does not require a notice of appeal, he may enter his appeal and get it respited at the next sessions, having previously entered into such recognizance, *without notice* to the other side; but after the appeal has been respited, the usual notice of trying it, as required by the practice of the sessions, must be given, otherwise the sessions will be authorised in dismissing it altogether. Thus in the case of *R.* v. *Justices of Salop*, 2 *B. & A.* 694, on showing cause against a rule *nisi* for a *mandamus* to the sessions to enter continuances and hear the appeal of one J. R. against the conviction of a magistrate under 52 Geo. III. c. 93, sched. L. rule 12, it appeared that the defendant had been convicted in the penalty of £10 for using greyhounds for the purpose of killing a hare, not having taken out a certificate. Immediately upon his conviction he entered into the recognizance required by the act to prosecute his appeal against it at the next *January* sessions. At those sessions he accordingly entered his appeal, and it was respited by the court. At the following sessions he again appeared for the purpose of trying the appeal, but it being objected that there had not been eight days' notice given to the convicting

justice, as was required by the rule of the sessions, the sessions dismissed the appeal and confirmed the conviction. In support of the rule for the *mandamus*, *R.* v. *Justices of Leeds*, 4 *T. R.* 583, was relied on, and it was contended that the entering into the recognizance before the justice dispensed with the necessity of giving the usual notice to him of trying the appeal. But *per Abbett*, C. J. "It was, perhaps, sufficient for the party to entitle himself to enter his appeal at the *January* sessions that he had given the security required by the act, although no notice of appeal had been given by him, but when once he had entered his appeal, he was bound to conform to the practice of the sessions. It was therefore necessary for him to have given the usual notice of trying his respited appeal at the *Easter* sessions, and not having done so, the sessions were authorised in dismissing the appeal altogether."

ENTERING AND RESPITING.

Practice of sessions to be conformed to.

If a statute gives a party a right of appeal, but enacts that it shall not be brought, received, or heard, unless notice be given a certain number of days before the *next* sessions, and a recognizance entered into also; if the party omit to give such notice, and enter into a recognizance before those sessions, the sessions have no power to enter and respite the appeal, and a notice or recognizance for any *adjourned* sessions would not be sufficient; and this, whatever the practice of the sessions might be, the statute expressly requiring a notice and recognizance within a specified time, and for a particular sessions. *R.* v. *Justices of Lancashire*, 3 *B. & Cres.* 548; 5 *D. & R.* 347, S. C., (decided on the 49 Geo. III. c. 68, relating to bastards.)

A rule and practice of the quarter sessions, that in all cases of appeal, not otherwise directed by law, ten days' notice in writing shall be given by appellants to respondents, and that in cases of respited appeals the like notice shall be given, unless there be any agreement between the parties to the contrary, are not applicable to the case of an appeal adjourned to the next sessions at the instance and for the accommodation of respondents; and, therefore, where an appeal having been so adjourned the justices dismissed it at the next sessions, because the appellant had not given notice of his intention to prosecute at the sessions, the court granted a mandamus to the justices to hear the same. *R.* v. *Justices of Lindsey*, 6 *M. & S.* 379.

In general the Court of King's Bench will not interfere with the practice of the Court of Sessions, unless it appears to be manifestly wrong or unjust. *R.* v. *Justices of Essex*, 2 *Chit. R.* 384.

If a respite takes place after due notice, it seems a fresh notice of trial is not necessary. Where an appeal was entered at the *Easter*, and respited until the *Midsummer* sessions, and on the *24th of June* a copy of the order of respite was served on the respondents without any notice of trial, and the respondents appeared at the following sessions in *July;* it was held that the sessions were bound to hear the appeal, though no other notice of trying the appeal had been given than the service of the order of respite. *R.* v. *Lambeth*, 3 *D. & R.* 340; 2 *D. & R. Mag. Ca.* 26, S. C.; *Talf. Dick. Sess.* 433, &c.

Fresh notice.

Where an appellant parish gave notice before *Michaelmas* sessions, that they would, at those sessions, enter and respite and try their appeal with effect at the following sessions, and in the mean time a negociation had taken place with the respondents as to the settlement of the pauper, but without any determination; it was held to be necessary to give a fresh notice of appeal for the following sessions, to entitle the appellant to be heard. *R.* v. *Justices of Essex*, 2 *Chit. R.* 385.

Where an appeal after hearing at one sessions was respited until the following sessions in consequence of an equal division of opinion on the bench, it was held, that no fresh notice of trial was necessary for the following sessions, although by the general practice of the sessions a fresh notice of trial is required when an appeal is respited. *R.* v. *Justices of Buckinghamshire*, 6 *D. & R.* 142; 3 *D. & R. Mag. Ca.* 23, S. C.

VII. Costs.

Costs.

The power to give costs is not incident to the authority of the sessions, nor does it exist at common law, and therefore costs can never be given unless

COSTS.

by the words of the statute under which the justices are acting. Whenever the sessions grant costs, they must ascertain the costs by their order, for they have no power to grant costs generally, like the courts at Westminster, to be afterwards taxed by the proper officer; they may direct the clerk of the peace to ascertain and report to them the items of expenditure, which may be the grounds of their decision, but they must themselves determine the sum to be paid. Such order, when made, cannot be enforced by attachment, but the party disobeying it, after it has been personally served on him, will be liable to be indicted for a misdemeanor, and punished for his contempt by imprisonment and fine. *Talfourd's Dick. Sess.* 435; see further, *post*, title **Costs**, Vol. I.; **Order**, Vol. III.

Construction of the words "heard and determined."

Where an appeal against a poor-rate was entered at the *Midsummer* sessions, and respited until the *Michaelmas* sessions, and then further respited, at the instance of the appellant, till the *Epiphany* sessions, four days previously to which the respondents gave notice that they would not oppose the appeal, and the appeal was accordingly allowed without opposition; it was held, that the appellant was entitled to costs as upon an appeal which had been "heard and determined," within the meaning of 17 G. III. c. 38, s. 4. *R. v. Cawston*, 4 *D. & R.* 445; 2 *D. & R. Mag. Ca.* 269, S. C.

VIII. Forms.

(No. 1.)

General form of notice of appeal against a conviction. (*a*)

, to wit: To , of , in the said county.

THIS is to give you [and each and every of you] notice, that I, A. B. do intend, at the next general quarter sessions (b), [or quarter sessions,] of the peace, to be holden in and for the said county of , at , in the said county, to appeal against a certain conviction of me, the said A. B. by J. P. Esquire, one of his Majesty's justices of the peace for the said county, for having, as is therein and thereby alleged, on , &c. at , &c. [stating the offence]; *and that the causes and grounds of such appeal are, that I am not guilty of the said offence; and that,* &c. [stating any other causes of appeal the party may have (*c*)]: *of all which premises, you [and each and every of you] are hereby desired to take notice. Dated this day of, &c.*

Witness, C. D. *A. B.*

(No. 2.)

General form of a recognizance to try an appeal against a conviction. (*a*)

, } BE it remembered, that on the day of in the first year of the
to wit. } reign of our Sovereign Lord William the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, A. B. of in the said county, (labourer,) E. F. of , in the said county, (yeoman,) and G. H. of , in the said county, (farmer,) personally came before me, J. P. one of his Majesty's justices of the peace for the said county, and acknowledged themselves to owe to our said Lord the King the sum of pounds each, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our said Lord the King, his heirs and successors, if default shall be made in the condition following:

Whereas by a certain conviction, under the hand and seal of L. M. one of his Majesty's justices of the peace for the county aforesaid, the said A. B. is convicted, for that the said A. B. on, &c. [stating the offence]; *and whereas the said A. B. hath given notice unto of his intention to appeal against the said conviction, and of the causes and grounds thereof: Now the condition of this recognizance is such, that if the above bounden A. B. shall personally appear at the next [general quarter] sessions (b) of the peace, to be holden at , in and for the said county, and shall then and there try such appeal, and abide the judgment of the said court of [general quarter] sessions thereupon, and pay such costs as shall be by the said court awarded, then this recognizance to be void.*

Taken and acknowledged before me, *J. P.*

(*a*) For forms of notices of appeal in particular cases, see the various titles throughout this work.

(*b*) See *ante*, p. 137 to 141, as to what sessions the appeal is to be made.

(*c*) See *ante*, p. 144, as to contents, &c. of notice.

(*d*) See other forms, title, **Recognizance**, Vol. V. and the different titles throughout this work.

Appearance.

[48 Geo. III. c. 58.]

On indictments for felony.

IT is a rule that no one can be tried on an indictment for a *felony* unless he appear in *person*. Also, in criminal cases, where an act of parliament requires it, and on an attachment, the defendant must, in general, appear in person. 2 *Hawk. P. C.* c. 22, s. 1.

On indictments for misdemeanors.

On an indictment or information for a crime *less than felony*, the defendant may, by favour of the court, appear by attorney, and this he may do as well before plea pleaded as afterwards until conviction. 1 *Lev.* 146; *Keilw.* 165.

And in case of mayhem, even though it is stated to be done *feloniously* in the indictment, the defendant need not personally attend, but may cause his plea to be delivered in the office; 2 *Stra.* 1101, 816; and a clerk in court may confess an indictment for his client in his absence. 6 *Mod.* 16.

Infants.

Where infants are prosecuted for misdemeanors, it is the constant practice for them to appear by attorney in the crown office, though in civil cases they must defend by guardian. 2 *Ld. Raym.* 1284.

In outlawry.

In order to reverse an outlawry before conviction on an indictment for a misdemeanor, the defendant may appear by attorney, though he cannot do so on a prosecution for a felony; *Com. Dig. Attorney*, (B. 6.); 4 *W. & M.* c. 18; or when he is taken for a contempt, or on a *capi corpus* upon an exigent. *Id.*

Where prosecutor may enter appearance for defendant.

By the 48 Geo. III. c. 58, s. 1, if a person in custody under a warrant or writ of *capias*, founded on an indictment in the Court of King's Bench, (which can only be for a misdemeanor,) shall not cause an appearance and plea or demurrer to be entered for himself within eight days after copy of the indictment delivered with notice to plead in eight days, it shall be lawful for *the prosecutor to cause an appearance* and plea of not guilty to be entered for him, and to proceed to trial as if he were actually present.

What information for penalties not within the act.

An information for penalties under the game law is not an information within the stat. 48 Geo. III. c. 58; and therefore where the prosecutor had entered an appearance and a plea of not guilty for the defendant, the court set aside such verdict for irregularity; *et per* Abbott, C. J. "It is quite clear that the statute does not apply to an information brought for penalties on the game laws. It enacts, 'that when any person shall be charged with an offence for which he may be prosecuted by indictment or information in his Majesty's Court of K. B.' It therefore contemplates offences over which this court has exclusive jurisdiction by indictment or information. Now, penalties under the game laws may be recovered by information not only in this court, but in the other courts in *Westminster Hall*. I think the statute applies only to such offences as the Court of King's Bench may exclusively entertain when prosecuted by indictment or information at the suit of the King." *Davies v. Bint*, 3 *B. & Cres.* 586; 5 *D. & R.* 353, S. C.

On convictions.

As to the necessity for defendant's appearance in order to convict him on an information before a magistrate, see *post*, **Conviction**, Vol. I.

On appeals.

As to the necessity for the appellant and respondent's appearance on an appeal, *see ante*, 146; on a *certiorari*, *post*, **Certiorari**, Vol. I.

Right of attorney to be present.

As to the right of an attorney or counsel to be present on summary proceedings before magistrates, see *Daubney* v. *Cooper*, 10 *B. & Cres.* 237; **Conviction**, Vol. I.

Arraignment.

As to the arraignment of prisoners, see *post*, **Arraignment**, Vol. I.

Apples and Pears.

THE 1 Ann. st. 1, c. 15. s. 1, 2, relating to the Measures for Apples and Pears, is repealed by the 5 Geo. IV. c. 74, s. 23. See *post*, **Weights and Measures**, Vol. V.

Appraiser. *See* Auction, Vol. I.

Apprehension of Offenders. *See* Arrest, Vol. I.

Apprentices. (a)

Definition

THE term "*Apprentice*" is derived from the French word *apprendre*, to learn. In *R.* v. *Eccleston*, 2 *East*, 298, Lord Ellenborough said, that where the contract was that the master should *teach* the other a trade, and the latter was to do nothing ulterior to the employment in that trade, it was a contract *apprendre* in the true sense of the word, and constituted an apprenticeship. And see *R.* v. *Rainham*, 1 *East*, 531; *R* v. *St. Margaret's, Lynn*, 4 *D. & R. M. C.* 260; *R.* v. *Combe*, 8 *B. & Cres.* 82; *R.* v. *Tipton*, 9 *B. & Cres.* 888, *post*, 160, 161.

Impolicy of laws.

The policy of the apprentice laws has been always much questioned, and thought injurious to the community. See *Chit. Appr. L.* 1 to 22. And the legislature, by the 54 Geo. III. c. 96, in repealing some of the provisions of the 5 Eliz. c. 4, abolished the necessity of apprenticeships for the purposes of exercising *trades*, except in those corporate towns where there are immemorial customs imposing some particular restraints as to apprenticeships.

When necessary.

Apprenticeships, therefore, are now, in general, *absolutely* requisite only for the purpose of obtaining *settlements* under the poor laws, or exercising trades under some immemorial custom requiring an apprenticeship.

Division of subject.

We will divide our considerations on the law of apprentices as follows:

APPRENTICES IN GENERAL.

I. *Who may take Apprentices*, p. 156.

By Statute, p. 156.—*By Common Law*, p. 157.

[14 & 15 *Hen VIII. c.* 2; 5 *Eliz. c.* 4, *s.* 25, 26, 28, 30, 40; 54 *Geo. III. c.* 96, *s.* 2, 4.]

II. *Who are capable of being bound*, p. 157.

By Statute, p. 157.—*By Common Law*, p. 157.

[5 *Eliz. c.* 4; 54 *Geo. III. c.* 96.]

III. *The Number allowed*, p. 158.

[5 *Eliz. c.* 4, *s.* 33, 39, 40; 1 *Jac. I. c.* 17; 13 & 14 *Car. II. c.* 5, *s.* 18.]

IV. *Who are compellable to be bound*, p. 158.

[5 *Eliz. c.* 4, *s.* 35, 36; 54 *Geo. III. c.* 96, *s.* 2.]

V. *How to be bound*, p. 159.

(1.) *Description of Instrument*, p. 159.—(2.) *Contents of Instrument*, p. 159.—(3.) *Execution of Instrument*, p. 162.—(4.) *Approval by Justices*, p. 162.—(5.) *Stamps on*, p. 164.—(6.) *Memorandum to be printed on Indenture*, p. 169.—(7.) *Enrolment of Indenture*, p. 170.—(8.) *Registering of Apprentices*, p. 170.

[5 *Eliz. c.* 5, *s.* 12; 8 *Ann. c.* 9. *s.* 35, 36, 37, 38, 39, 43; 18 *Geo. II. c.* 22, *s.* 23, 24; 20 *Geo. II. c.* 45, *s.* 5, 6, 7, 8; 5 *Geo. III. c.* 46, *s.* 18, 19, 41; 54 *Geo. III. c.* 96, *s.* 2; 55 *Geo. III. c.* 184; 56 *Geo. III. c.* 139, *s.* 11.]

(a) As to apprentices in general, see Chitty's Law of Apprentices; Bac. Ab. *Apprentice.*

VI. *Rights and Liabilities of Parties*, p. 171 *to* 177.
(1.) *Rights of Master for Breach of Contract*, p. 171.—(2.) *Of Parent for Breach of Contract*, p. 173.—(3.) *Of Apprentice for Breach of Contract*, p. 173.—(4.) *Of Master to Services and Earnings of Apprentice*, p. 174.—(5.) *Of Master in case of enticing away and harbouring Apprentice*, p. 175.—(6.) *Of Master to controul and protect Apprentice*, p. 175.—(7.) *Liabilities of Master for misusing Apprentice*, p. 176.—(8.) *Crimes of Apprentice*, p. 177.
[5 *Eliz.* c. 4; 20 *Geo. II.* c. 19; 4 *Geo. IV.* c. 29.]

VII. *Assigning and turning over Apprentices*, p. 177.

VIII. *Dissolution of Apprenticeship*, p. 177 to 183.
(1.) *By consent*, p. 178.—(2.) *By effluxion of Time, or by coming of Age*, p. 180.—(3.) *By Death*, p. 181.—(4.) *By Bankruptcy or Insolvency*, p. 182.—(5.) *By Misconduct*, p. 182.—(6.) *By interference of Justices, &c.* p. 183.
[55 *Geo. III.* c. 184; 6 *Geo. IV.* c. 16, s. 49.]

IX. *Jurisdiction of Justices and Sessions in Disputes*, p. 183 to 193.
(1.) *Apprentices in general*, p. 183.—(2.) *Apprentices where not more than 25l. Premium paid*, p. 188.
[5 *Eliz.* c. 4, s. 35, 47; 20 *Geo. II.* c. 19, s. 3, 4, 5, 6; 24 *Geo. II.* c. 55, s. 1; 6 *Geo. III.* c. 25, s. 1, 5, 6; 33 *Geo. III.* c. 55; 4 *Geo. IV.* c. 29, s. 1, 2, 3, 4, 5, 6.]

X. *Setting up Trades*, p. 193.
[54 *Geo. III.* c. 96; 56 *Geo. III.* c. 67.]

XI. *Obtaining Freedom under a Bye-Law*, p. 195.
[12 *Geo. III.* c. 21.]

XII. *Forms, see List of, post*, p. 229.

PARISH APPRENTICES.

I. *Statutes, &c. as to Binding of, in general*, p. 196 *to* 203.
[43 *Eliz.* c. 2, s. 5; 8 & 9 *Will. III.* c. 30, s. 5; 32 *Geo. III.* c. 57; 51 *Geo. III.* c. 80; 54 *Geo. III.* c. 107; 56 *Geo. III.* c. 139; 1 & 2 *Geo. IV.* c. 32.]

II. *Who compellable to be Bound*, p. 203.

III. *Who compellable to take, and how*, p. 203.

IV. *How to be Bound, Approval by Justices, &c.* p. 205.

V. *Assignment, Discharge, and settling Disputes as to*, p. 210 *to* 217.
[32 *Geo. III.* c. 57; 56 *Geo. III.* c. 139, s. 8, 9, 10, 12, 13, 14.]

VI. *Registry of*, p. 217.
[42 *Geo. III.* c. 46.]

VII. *Forms, see List of, post*, p. 229.

INCORPORATED DISTRICT APPRENTICES, p. 218.
[20 *Geo. III.* c. 36.]

PUBLIC CHARITY APPRENTICES, p. 220.
[7 *Jac. I.* c. 3.]

WHO MAY TAKE.

SEA SERVICE APPRENTICES, p. 221.
[5 *Eliz. c.* 5, *s.* 12; 2 & 3 *Ann. c.* 6; 4 *Ann. c.* 19, *s.* 16; 2 *Geo. III. c.* 15; 4 *Geo. IV. c.* 25; 6 *Geo. IV. c.* 107, *s.* 138.]

Forms, see List of, p. 230.

CHIMNEY SWEEPS' APPRENTICES, p. 225.
[28 *Geo. III. c.* 48; 56 *Geo. III. c.* 139.]

Forms, see List of, p. 230.

As to the Enlistment of Apprentices, see *post*, Military Law, Vol. III.
As to the Settlement of, see *post*, Poor, Vol. IV.

APPRENTICES IN GENERAL.

I. Who may take Apprentices in General.

Old statutory provisions of 5 Eliz. c. 4, as to who may take. Husbandmen.

Previous to the 54 Geo. III. c. 96, s. 2, it was enacted by stat. 5 Eliz. c. 4, s. 25, that every person being a householder, and having and using half a plough-land in tillage, might take an apprentice above the age of ten years, and under eighteen, to serve in husbandry till twenty-one at the least, or till twenty-four, as the parties could agree.

Tradesmen in towns corporate.

By sect. 26 of 5 Eliz. c. 4, every person being a householder, and twenty-four years old at the least, dwelling in any city or town corporate, and exercising any art, mystery, or manual occupation there, might retain the son of a freeman, not occupying husbandry, nor being a labourer and inhabiting in the same, or in any other city or town corporate, to serve and be bound as an apprentice, after the custom and order of the city of London, for seven years at the least, so as such apprenticeship did not expire before the apprentice shall be twenty-four years of age.

Sect. 40. The citizens of London and Norwich might take and have apprentices as before that act.

Tradesmen in market towns not corporate.

Sect. 28. Every person being a householder, and twenty-four years old at the least, and not occupying husbandry, nor being a labourer, dwelling in any market town not corporate, and exercising any art, mystery, or manual occupation, might have to apprentice the child or children of any other artificer, not occupying husbandry, nor being a labourer, inhabiting in the same or any other such market town in the same shire.

Particular trades in any place.

Sect. 30. Any person using the art of a smith, wheelright, ploughwright, millwright, carpenter, rough-mason, plaisterer, sawyer, lime-burner, brick-maker, bricklayer, tyler, slater, helier, tyle-maker, linen-weaver, turner, cooper, miller, earthern-potter, woollen-weaver, weaving household cloth only, fuller, otherwise called tucker or walker, burner of oare and woad-ashes, thatcher or shingler, wheresoever he should dwell, might take the son of any person as apprentice, albeit his parents had no land.

Repeal of part of the above provisions. 54 Geo. 3, c. 96.

But now, by stat. 54 Geo. III. c. 96, s. 2, reciting, "whereas by the 5 Eliz. c. 4, *viz.* 25—30, 41, divers rules and regulations were enacted respecting the qualifications of persons entitled to take and become apprentices, and the term of years for which such apprentices should be bound, and as to the mode of binding such apprentices; and it was also enacted by the said statute, that all indentures, covenants, promises, and bargains of and for the having, taking, or keeping of any apprentice, otherwise thereafter to be made or taken, than is by the said statute limited, ordained, and appointed, should be clearly void in law to all intents and purposes; and that every person that should from thenceforth take or newly retain any apprentice contrary to the tenor and true meaning of the said act, should forfeit and lose for every apprentice so by him taken the sum of 10*l.* And whereas it is expedient that so much of the said recited act should be repealed;" it is enacted, "that so much of the said recited act shall be, and the same is hereby repealed, and that it shall and may be lawful *for any person to take or retain or become an*

Any person may now take.

WHO MAY TAKE.

apprentice, though not according to the provisions of the said act; and that *indentures, deeds, and agreements in writing*, entered into for that purpose, which would be otherwise valid and effectual, shall be valid and effectual in law, the repeal of so much of the said act, as is herein last above recited, notwithstanding." (*a*)

Sect. 4. "Provided always, and be it further enacted, that this act, or any thing herein contained, shall not extend, or be construed to extend, to defeat, alter, or prejudice the custom and order of the city of London concerning apprentices, or the ancient custom, usages, privileges, or franchises of the said city, or of any other city, town, corporation, or company, lawfully constituted, or the citizens and freemen thereof; or any bye-law or regulation of any corporation or company lawfully constituted."

Any person, therefore, may now take an apprentice, notwithstanding the statute of Elizabeth.

Aliens.

The 14 & 15 Hen. VIII. c. 2, however, prohibits any *alien* or *denizen* from taking an apprentice upon pain of forfeiting 10*l.*, half to the King and half to the informer; but this does not seem to invalidate the indenture. See Moore, 411; *Chit. App.* 24.

Sea apprentices. Chimney sweepers.

As to who may take Sea Apprentices, see, *post*, p. 221; Chimney Sweepers' Apprentices, *post*, 225.

At common law. As to who may take.

At Common Law]—At common law any person capable of making a contract may take an apprentice.

Infants.

It seems the master may be an infant. *Rex* v. *St. Petrox*, 4 *Term R.* 196; 2 *Bott*, 377, S. C.; *Cald.* 444. But a master under twenty-four years of age, and not a housekeeper, could not, before the 54 Geo. III. maintain an action for harbouring his apprentice. *Gye* v. *Felton*, 4 *Taunt.* 876; 3 *M. & S.* 189.

Feme covert.

The binding of an apprentice to a *feme covert* is void. *R.* v. *Guildford*, 2 *Chit. R.* 284.

Condition of master immaterial.

If the binding be *bonâ fide*, the condition of the master is immaterial. *R.* v. *St. Margaret's, Lincoln*, 1 *Bott*, 610. See 3 *M. & S.* 613.

II. Who are capable of being bound in general.

By statute.

By Statute]—We have already seen, *ante*, 156, the provisions of the 5 Eliz. c. 4, which pointed out what persons might be bound apprentices, and that these are in effect repealed by the 54 Geo. III. c. 96, s. 2, which allows any person to become an apprentice, though not according to the statute of Eliz.

In *Smedley* v. *Gooden*, 3 *M. & S.* 189, it was held that the 5 Eliz. c. 4, related only to such persons who bound themselves as apprentices as were under age, and not to adults.

Who compellable to be bound.

As to who may be *compelled* to become Apprentices in General, see *post*, 158, and Parish Apprentices, *post*, 196.

By common law.

By Common Law]—By common law any person may bind himself an apprentice.

Infants.

An infant, even without his parent's consent, *may voluntarily* bind himself, an indenture of apprenticeship being considered for his benefit, and he will be subject to the jurisdiction of the magistrates, under the 5 Eliz. c. 4, s. 43. *Newberry* v. *St. Mary's, Reading*, 2 *Bott*, 363; *R.* v. *Joltern*, 1 *Bott*, 613; *Foley*, 154; 6 *T. R.* 556, 652; *Rex* v. *Annesley*, 3 *B. & A.* 584.

But no action can be brought at common law against an infant apprentice on his covenant to serve; *Cro. Car.* 179; *Com. Dig. Justice of Peace, B.* 55; 8 *East*, 26; nor can he be sued in equity; 1 *Equ. Ca. Ab.* 6; and though the statute 5 Eliz. c. 4, s. 42, 43, expresly enacts that the apprentice shall be bound as if he had been of full age, yet it has been held that this only

(*a*) It seems evident from the words of this act that the whole of the 25, 30 & 41, sections of the 5 Eliz. c. 4, are repealed thereby.

WHO CAPABLE OF BEING BOUND.

subjects him to the jurisdiction of the magistrates, in case of misbehaviour, &c., and not to an action for the breach of his covenant. *Gilbert* v. *Hitche*, *Cro. Car.* 179; 1 *Bott*, 527.

But in London there is a custom that an infant shall be bound by his indenture, and he is liable to be sued on his covenant in any court. *Moore*, 135; *Bac. Ab. Master and Servant, (B.)*

An adult may legally bind himself as an apprentice, in order to enable himself to set up in trade, and may thereby gain a settlement, but in this case he must execute the indenture himself, or he cannot be deemed an apprentice. 9 *East*, 295; see *Smedley* v. *Gooden*, 3 *M. & S.* 189, *ante*, 157.

An infant apprentice may be sued for a *tort* unconnected with a contract, 8 *T. R.* 335, and *semble*, *assumpsit* lies against him for money he has embezzled. *Bristowe* v. *Eastman*, *Peake's N. P. C.* 223; 1 *Esp.* 172, S. C.; *sed quære.*

III. Number allowed in general.

Number restrained in certain cases.

By stat. 5 Eliz. c. 4, s. 33, 39, 45, every person that shall have three apprentices in any the crafts of a clothmaker, fuller, sheerman, weaver, tailor, or shoemaker, shall keep one journeyman; and for every other apprentice above three, one other journeyman, on pain of 10*l.*; half to the King, and half to him that shall sue in the sessions or other court of record; or if it is in a town corporate, then to be applied as by the charter.

Hatmakers.

By stat. 1 Jac. c. 17, s. 3, 5, no hatmaker shall have above two apprentices at one time, nor those for any less term than seven years, on pain of 5*l.* a month; half to the King, and half to him that shall sue in any court of record: but this not to extend to his own son, in his own house, so as he be bound by indenture for seven years, and his term not to expire before he be twenty-two years of age.

Weavers of stuffs in Norfolk, &c.

By stat. 13 & 14 Car. II. c. 5, s. 18, weavers of stuffs in Norfolk and Norwich, that shall employ two apprentices, shall also employ two journeymen; and no master shall have above two apprentices, or any week boy to weave in the said trade, on pain of 5*l.* a month to the King.

As to the number allowed for sweeps, see, *post*, 227.

IV. Who are compellable to be bound in general.

In general.

By the 5 Eliz. c. 4, s. 35, it is enacted, "that if any person shall be required by any householder, having and using half a plough-land at the least in tillage, to be an apprentice, and to serve in husbandry, or in any other kind of art, mystery or science before expressed, and shall refuse so to do, that then upon the complaint of such housekeeper made to one justice of the peace of the county wherein the said refusal is or shall be made, or of such householder inhabiting in any city, town corporate or market-town, to the mayor, bailiffs or head officer of the said city, town corporate or market-town, if any such refusal shall there be, they shall have full power and authority by virtue hereof, to send for the same person so refusing: and if the said justice, or the said mayor or head officer shall think the said person meet and convenient to serve as an apprentice in that art, labour, science or mystery, wherein he shall be so then required to serve, that then the said justice, or the said mayor or head officer, shall have power and authority by virtue hereof, if the said person refuse to be bound as an apprentice, to commit him unto ward, there to remain until he be contented, and will be bounden to serve as an apprentice should serve, according to the true intent and meaning of this present act."

At what age.

By sect. 36 it is provided, "that no person shall by force or colour of this statute be bounden to enter into any apprenticeship, other than such as be under the age of twenty-one years."

But now since the 54 Geo. III. c. 96, s. 2, the above directions about the value of the parent's estate, and such like, are immaterial.

As to compelling the binding of *parish* apprentices, see *post*, 196.

FORM OF INSTRUMENT.

V. Apprentices, how to be bound in general.

Herein of—1st, The Description of the Instrument;—2d, The Contents of it;—3d, The Execution of it;—4th, The Approval of the Justices;—5th, The Stamp:—6th, The Memorandum to be printed on the Indenture;—7th, The Enrolment of the Indenture;—and 8th, The Registering of Apprentices.

(1.) Description of Instrument.

At common law.

At common law, no particular description of instrument is requisite to create an agreement of apprenticeship between the contracting parties.

By statute.

The statute of 5 Eliz. c. 4, required the binding of an apprentice to be by *indenture* for the purpose of exercising *trades*.

Need not now be by Indenture to exercise a trade.

But now by the 54 Geo. III. (*a*), c. 96, s. 2, this appears no longer absolutely necessary for that purpose, the latter act enacting that it shall be lawful for any person to take or retain, or become an apprentice, though not according to the 25th, 30th, and 41st sections of the statute of Elizabeth, and that indentures, deeds, and *agreements in writing*, entered into for that purpose, which would be otherwise valid and effectual, shall be valid and effectual in law.

But though by the operation of this statute, the binding need not be by *deed*, for the purpose of exercising a trade, it is nevertheless in most cases advisable it should be so.

To gain a settlement.

Previous to the 54 Geo. III. c. 96, s. 2, it was held, that in order to gain a *settlement*, the instrument of apprenticeship should be by *deed*, though it need not be *indented;* see *R.* v. *Ditchingham*, 4 *T. R.* 770; 31 Geo. II. c. 11. The same law would still apply, and to constitute an apprenticeship to gain a settlement the binding must be by deed; and no *parol binding* would be sufficient. See *R.* v. *Mawman*, *Burr. S. C.* 290; 1 *Bott*, 531; *R.* v. *Ditchingham*, 4 *T. R.* 769; *R.* v *Shipton*, 8 *B. & Cres.* 88.(*a*)

Statute of Frauds.

If the binding be, as is usual, for more than a year, by the 4th section of the *Statute of Frauds*, 29 Car. II. c. 3, no action can be maintained on it unless it be in writing, signed by the party to be charged therewith, or his agent, the same being a contract not to be performed within a year.

(2.) Contents of Instrument.

Date of instrument.

Date]—The date is immaterial, but if the binding be by deed, the 35th section of the stat. 8 Anne, c. 9, directs that the indenture shall be *dated* on the day of execution; but the 45th section does not appear to *invalidate* an indenture on account of the non-observance of this regulation. The indenture should not be antedated, but the parties will not be precluded from showing that the deed was executed on a day different to that on which it is dated. 4 *East*, 477.

Statement of parties to.

Statement of Parties to]—We have already seen who may take and who may become bound apprentices, *ante*, 156, 158.

Formerly it was necessary to describe the apprentice in the instrument of

(*a*) Before the passing of this act of 54 Geo. III. it was held, under the stat. Eliz. that no one could be bound an apprentice, so as to render the apprenticeship available, without *deed; Int. Parish Caston and Aicles*, 1 *Salk.* 68; 2 *Ld. Raym.* 1117; 3 *Esp.* 189; and such deed must have been by *indenture*, (except to gain a settlement, 31 Geo. II. c. 11,) and a *deed-poll* was not sufficient, although it contained the words "this indenture witnesseth." *Smith* v. *Birch*, 1 *Sess. Ca.* 284; 1 *Bott*, 528, S. C. And a mere *agreement to execute* an indenture was unavailable; *R.* v. *Stratton*, *Burr.* 272; *Bott*, 530, S. C.; as a memorandum written in the leaf of a parish book; *R.* v. *Ditchingham*, *Nol.* 169; 4 *T. R.* 769, S. C.; and this, though a service of seven years had been performed under it. *Id.*

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binding expressly as such; *Cald.* 367; 2 *Bott*, 222; 2 *Salk.* 479; but this is not now necessary; *R.* v. *Laindon*, 8 *T. R.* 379; *R.* v. *Rainham*, 1 *East*, 531; 2 *East*, 298; and this notwithstanding the 54 Geo. III. c. 96. In some cases, however, from the non-insertion of the word "apprentice," the instrument might be construed to be a hiring as a servant, and not an apprenticeship, and it is therefore always best to insert that word. *R.* v. *Coltishall*, *Nol. Rep.* 214. See *infra*.

The apprentice and master must be named as parties to the instrument. Service under the deed by the infant is not such an adoption of the deed as will cure the omission. See *R.* v. *Cromford*, *infra*.

Statement of consideration.

Statement of Consideration]—As to the consequences of not stating the true consideration as provided for by the stamp acts, see *post*, 166, 167.

Term of binding.

Statement of Term of Binding]—As we have already seen, *ante*, p. 156, that part of the statute of Elizabeth which requires seven years' apprenticeship previous to setting up in trade, is repealed by the 54 Geo. III. c. 96, and no term of apprenticeship is now, in general, necessary to set up a trade, except in particular towns, where a custom requires it to be otherwise.

Previous to this act of 54 Geo. III. an indenture for less than seven years was voidable, at the election of the parties; *Guppy* v. *Jennings*, 1 *Anst.* 256; though a binding for a less time would confer a settlement; 1 *Bott*, 530, 541, 2 *id.* 370. The deed was never considered absolutely *void*. *R.* v. *St. Nicholas*, *Norwich*, *Burr.* 91; 2 *Stra.* 1066; *Gray* v. *Cookson*, 16 *East*, 13, 207; 4 *Taunt.* 876; but see *infra*, note (*a*).

An apprenticeship to two masters, to serve them consecutively in two distinct trades, is valid, and will confer a settlement. *R.* v. *Louth*, 1 *M.* & *R. Mag. Ca.* 238; 8 *B.* & *Cres.* 247, S. C.

What stipulations make a contract of apprenticeship.

What Stipulations make a Contract of Apprenticeship]—It is necessary for the purposes of settlement, that the master and apprentice should be *named as parties* to the deed, and that the former stipulate to *instruct* and the latter to *learn*; 2 *Salk.* 479; 8 *East*, 26; and if there be no stipulation to serve, there will be no apprenticeship; and therefore in the case of *R.* v. *Cromford*, 8 *East*, 25, where the master and father of a boy agreed, under seal, that the master should teach the son, but there was no engagement that the latter should serve, it was held no apprenticeship in point of law, and that consequently the boy did not gain a settlement by his service under it. And Lord *Ellenborough* said, "Here is neither a binding of the son himself an apprentice, nor (if I may say so) of his parent for him; for there is no contract for his serving his master, nothing to bind the son to serve. He might serve in fact, but was under no obligation to do so; he only continued to be taught as long as he pleased, but was not obliged to stay; this was no apprenticeship." And *Lawrence*, J. asked, "How any action could have been brought against any person for harbouring the boy as an apprentice, or how he himself could have been proceeded against under any of the statutes for regulating apprentices?" On the same principle, it was held, that where a gentleman placed his servant under the instruction of a barber, and the servant was no party to the deed, he could not be deemed an apprentice, so as to gain a settlement. 2 *Salk.* 479.

(*a*) But this doctrine appears very questionable. The 41st section of the 5 Eliz. declares the indenture to be void in law to all intents and purposes; and where similar words have been used in other statutes, the instruments have been adjudged to be ABSOLUTELY VOID. One statute (56 Geo. III. c. 139) enacted that no indenture shall be valid and effectual; another (28 Geo. III. c. 4) that all indentures should be absolutely void in law; and another (8 Ann. c. 9, s. 32) that all deeds should be void and not available for any purpose, unless certain provisions were complied with. Under each of these statutes it has been decided that no settlement ever can be gained under instruments thus declared void. *R.* v. *Stoke Damerel*, 7 *B.* & *C.* 563, *post*, 163; *R.* v. *Heppiswell*, 8 *B.* & *C.* 466; *R.* v. *Chipping Norton*, 5 *B.* & *A.* 412.

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If from the whole instrument it appears that the parties contemplated the relation of master and servant, although it contains terms of a contract of apprenticeship, it will not be a perfect contract of apprenticeship, so as to confer a settlement by apprenticeship. The latest important case upon this subject is that of *R. v. Tipton*, 9 *B. & Cres.* 888. In that case, upon appeal against an order of two justices, whereby *James Smith*, his wife and children, were removed from the parish of *Birmingham*, in the county of *Warwick*, to the parish of *Tipton*, in the county of *Stafford*; the sessions confirmed the order, subject to the opinion of the Court of King's Bench on the following case:—*James Smith*, the pauper, gained a settlement by hiring and service in the parish of *Tipton*, in the year 1820. About two years afterwards he entered into the following agreement, in writing, with *John Tompson*, of *King's Morton*, in the county of *Worcester*. "An agreement, made the 4th day of *October*, 1822, between *J. T.* of *King's Morton*, in the county of *Worcester*, plumber, glazier, and painter, of the one part, and *J. S.*, aged about twenty-eight years, one of the sons of *J. S.* of the parish of *Solihall*, in the county of *Warwick*, of the other part. The said *J. S.* and *J. S.* do severally promise and agree, that the said *J. S.* shall and will serve the said *J. T.* as an *articled servant*, for the term of four years, to commence from the 4th of October, 1822, to *learn his art or trade* of plumber, glazier, and painter, at the wages of 6*s.* a week for the first year, and 7*s.* a week for the second year, 8*s.* for the third year, and 9*s.* a week for the fourth year; and it is agreed that the said J. S. shall be considered as an *out apprentice*, and the said *J. S.* and *J. S.*(*a*) shall and will find and provide for the said *J. S.* sufficient meat, drink, washing, lodging, and clothing, and all other necessaries, during the said term; and the said *J. S.* shall and will do and perform gardening, or any other work his master shall set him about during the said term. And in case the said *J. S.* shall be ill, and unable to work, or shall absent himself from his master's business, or lose any time during the said term, that the said master shall not pay him any wages during the time he shall be ill or lose any time as aforesaid. And that the said *J. S.* shall and will faithfully serve his said master in all lawful business during the said term, and shall and will behave himself honestly, orderly, and obediently during the said term; and the said *J. T.* doth promise and agree that he will *teach and instruct* the said *J. S.* in the art and mystery of a plumber, glazier, and painter, during the said term, in the best manner that he can, and that he will pay the wages above set forth to the said *J. S.* during the said term; and the said parties do hereby severally bind themselves for the true and faithful performance of all the agreements above set forth, at all times during the said term." This agreement was signed by the parties, and attested by two witnesses, but it was not sealed or stamped. The pauper served *T.* under this agreement for more than a year, and boarded and lodged during that time at *T.*'s house, in the parish of *King's Morton*.

Bayley, J., delivered the judgment of the court as follows:—"In this case, the pauper entered into an agreement that he would serve one *T.* as an articled servant, for four years, to learn his art or trade of a plumber, at certain weekly wages therein mentioned, and it was agreed that the pauper should be considered as an out-door apprentice. In this instrument the character in which the pauper was to act is described both as that of an articled servant and of an apprentice. We must therefore look to the whole of the instrument to learn whether the parties contemplated the relation of master and servant, or that of master and apprentice. Now first, it is not usual for a father to be a party to a contract, whereby his son (of full age) contracts to serve. The fact of the pauper having contracted to do gardening, or any other work, does not necessarily show that the parties contemplated a mere hiring. In *R. v. Coombe*, 8 *B. & C.* 82, the pauper was to do any other work, as well as that of a carpenter, and yet the contract was considered to be an imperfect contract of apprenticeship. So the stipulation to pay wages does not necessarily imply that the parties contemplated the relation of master

(*a*) *Query*, if it was not the master who so contracted.

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and servant. Here the master undertook to teach his trade to the pauper, learning the trade therefore was one great object of the parties to the contract. There is a provision in the instrument, that if the pauper should be ill, the master should not pay him any wages during the time of his illness. That is not an improper stipulation in a bargain for an apprenticeship, but the law imposes on the master that obligation of providing for a servant during illness. (*a*) There are some circumstances in this case tending to show that the parties contemplated a contract of apprenticeship, and others that they contemplated a contract of hiring. But on the whole, as it appears that the main object of the parties was that the pauper should learn the trade of plumber, and as the Court of Quarter Sessions may probably have thought the wages too low for a mere servant, we think that though the case admits of great doubt, this contract was an imperfect contract of apprenticeship. The order of sessions must therefore be confirmed:" and it was so. *R.* v. *Tipton*, 9 *B. & Cres.* 888.

Exemptions.

Besides this case there are various others, as *R.* v. *St. Margaret's, King's Lynn*, 6 *B. & Cres.* 97, and *R.* v. *Coombe*, 8 *B. & Cres.* 82, showing that where the parties appear from the instrument to have contemplated, above all other things, a contract of master and *apprentice*, the contract must be deemed to be one of apprenticeship. In those cases there were no wages paid. See also *R.* v. *Rainham*, 1 *East*, 239, and further, *post*, Poor, Vol. IV.

Form of covenant.

Form of Covenants]—It is not necessary that the covenants of the parent or friend should be introduced into the deed by any particular form of words. The covenant of the apprentice, as well as that of his parent or friend, may be created by any words which import a stipulation that he shall serve, *Moore*, 135; and the usual concluding words, "and for the true performance of all and every of the said covenants, each of the said parties bindeth himself to the other," amount to a covenant by all the parties who execute the indenture, for the due performance of those covenants which may be applicable to their respective situations. *Dougl.* 518.

(3.) Execution of the Instrument.

Execution of the instrument.

In order to bind a party, so as to proceed against him for a breach of the instrument of apprenticeship, he must have executed the same.

And before the 54 Geo. III. c. 96, for the purposes of trade, to make a valid apprenticeship, the *apprentice* himself, whether an infant or an adult, must have executed the indenture. See *R.* v. *Cromford*, 8 *East*, 25; *R.* v. *Chesterfield*, 1 *Bott.* 527; *R* v. *Ripon*, 9 *East*, 295. But this is no longer necessary for that purpose, though it is in order to gain a settlement. *R.* v. *Arnesby*, 3 *B. & A.* 584.

The execution of the indenture by the *master* was never necessary, either for the purposes of trade or settlement; see *R.* v. *Fleet*, *Cald.* 31; 2 *Bott*, 371; *Burr.* 272; but it is necessary in order to sue him for a breach thereof.

An execution of a counterpart is not necessary; *R.* v. *Fleet*, *Cald.* 31; 2 *Bott*, 371; in practice, however, it is best to have a counterpart, or else two originals.

As to the requisites of the execution of instruments of apprenticeship, in the case of *parish* apprentices, *post*, (Parish Apprentices.)

(4.) Sanction of Justices, where a Voluntary Binding at Parish Expense.

Sanction of justices, where a voluntary binding at parish expense.

Where the binding is *voluntary*, if any expense be incurred out of the parochial funds, and the parish officers do not join in the indenture, the indenture must, by the 56 Geo. III. c. 139, s. 11, be allowed under the hands and seals of two justices. The following is the enactment of that statute:—

(*a*) The master is so liable as regards an *apprentice*, *post*, 173. *Sed vide* as to *servants*, Servants, Vol. V.

SANCTION OF JUSTICES, WHERE BINDING AT PARISH EXPENSE.

56 Geo. 3, c. 139, s. 11.

"And whereas the salutary provisions enacted by an act passed in the 43d year of the reign of her Majesty Queen Elizabeth, intituled an act for the relief of the poor, are frequently evaded in the binding out of poor children, and the premium of apprenticeship, or a part thereof, is *clandestinely* provided by parish officers, who are thus enabled to bind out such poor children without the sanction of justices of the peace; be it further enacted, that after the said 1st day of October, no indenture of apprenticeship, by reason of which any expense whatever shall at any time be incurred by the public parochial funds, shall be valid and effectual, unless approved of by two justices of the peace, under their hands and seals, according to the provisions of the said act and of this act." See a form, *post*, (No. 22).

This provision does not apply to *parish* apprenticeships, where the parish officers are *not parties* to the indenture. *R.* v. *St. Paul's, Exeter*, 10 *B. & Cres.* 12. Further noticed, *post*, (Parish Apprentices.)

Approval under hands and seals of justices.

It is *absolutely requisite*, under the above provision, where any part of the expenses of the binding of an apprentice is paid out of the *parochial funds*, and the parish officers are not parties to the indenture, that the indenture should be approved of by two justices, under their *hands and seals*, or it will be void *ab initio*, and service under it will confer no settlement; *R.* v. *Stoke Damerel*, 1 *M. & R.* 458; 7 *B. & Cres.* 563; 1 *M. & R. Mag. Ca.* 155, S. C.; and *Bayley*, J., there said, "This is a case in which expense has been incurred by the public parochial funds, and therefore it is within the spirit and the words of the act; and the indenture not having been approved of by two justices, under their hands and seals, is not valid and effectual. The words 'according to the provisions of the said act and of this act,' *redendo singula singulis*, mean that there shall be such approbation by the justices as the 43 Eliz. and the 56 Geo. III. c. 139, require. Now the latter statute requires that the indenture shall be approved of by the justices under their *seals*. I cannot tell why the legislature required that the indenture should be approved of under their seals, but they have so required it in express terms, and I cannot say that they did not mean that which they have so expressed. It has been contended that the words *not valid and effectual* are to be construed so as to make the indentures not absolutely void, but voidable only at the option of either party, and that therefore the indentures will not be valid and effectual if either party dissent during the period of apprenticeship, but that if there be no such dissent, they will be valid and effectual. I think it was the intention of the legislature, that there should be such an allowance by the justices in the first instance, as to make the indenture binding *ab initio*, and not voidable at the option of either party. For otherwise it would be at the option of the master or of the apprentice to determine the indentures at any period within the seven years. The master might therefore, after six years and three quarters service, at his own election, deprive the apprentice of the benefit of his indentures; or the apprentice, on the other hand, might, after he had received instruction sufficient to enable him to set for himself, also determine the indentures to the prejudice of his master. *I think* that that would be an unreasonable construction to be put on those words, and that the true construction of them is, that the indentures shall be void *ab initio*, unless they have the approbation of the justices under their hands and seals." See also *R.* v. *St. Paul's, Exeter*, 10 *B. & Cres.* 12.

What a binding at parish expense.

With respect to what is an expense incurred by the parochial funds, as binding a poor apprentice, so as to render it necessary to have the justices assent to the binding, within the above provision of 56 Geo. III. c. 139, s. 11: in a case where, before the execution of an indenture, the master said that the intended apprentice should have better clothes; the apprentice then applied to the parish officers, who agreed to give him 2*l.* on the execution of the indenture, for the purpose of buying clothes, which they did accordingly; it was held, that the money paid by the parish officers was an expense incurred by reason of an indenture of apprenticeship, within the meaning of the 56 Geo. III. c. 139, s. 11, and therefore that the indenture required the assent of two justices. *Et per Bayley*, J. "It seems to me that the order of sessions is right. The enacting part of the 11th section of the 56 Geo. III. c. 139, goes beyond the recital. If it had not, I could not have said that the money

SANCTION OF JUSTICES, WHERE BINDING AT PARISH EXPENSE.

was paid as a premium. But the master, before the execution of the indenture, requires that the boy should have better clothes, and the pauper then applied to the parish officers, and they supplied him with 2*l.*, and agreed to give him 2*l.* more. It has been said, that it does not appear that the money was paid out of the parish funds. If that was not so, it might easily have been proved. The sessions have found that it was paid by the parish officers. That *primâ facie* implies that it was paid by them out of funds belonging to them in that character. We may assume, therefore, that the sessions had premises whereon to find that the money was contributed by the parish officers, not out of their private funds, but out of the parish funds. If the fact be so, then we must look to the words of the stat. 56 Geo. III. c. 139, s. 11. It recites that the salutary provisions of the 43 Eliz. are frequently evaded in the binding out *poor* children apprentices, and the premium of apprenticeship, or a part thereof, is clandestinely provided by parish officers, who are thus enabled to bind out such poor children without the sanction of justices of the peace, and then enacts, "that no indenture of apprenticeship, by reason of which *any expense whatever* shall at any time be incurred by the public parochial fund, shall be valid and effectual, unless approved of by two justices," &c. Here the money was paid because the master objected to taking the apprentice unless he had clothes. It was therefore an expense incurred by the parish, by reason of the indenture, within the very words of the act of parliament. The indenture ought, therefore, to have been approved of by two justices. That not having been done, the indenture is void, and the service under it did not confer any settlement." *R.* v. *Mattishall*, 8 *B. & Cres.* 733; 2 *M. & R.* S. C.

(5.) Stamp on Instrument.

Stamp duties.

The 55 Geo. III. c. 184, repeals the 48 Geo. III. c. 149, and by the schedule of the former act, part I. the following stamp duties are payable upon indentures of apprenticeship:—(*a*)

Amount of.	£.	s.	d
If the sum of money, or the value of any other matter or thing which shall be paid, given, assigned, or conveyed, or be secured to be paid, given, assigned, or conveyed, to or for the use or benefit of the master or mistress, with or in respect of such apprentice, clerk, or servant, or both the money and value of such other matter or thing shall not amount to 30*l.*	1	0	0
If the same shall amount to 30*l.* and not amount to 50*l.*	2	0	0
50*l.* . . . . . 100*l.*	3	0	0
100*l.* . . . . . 200*l.*	6	0	0
200*l.* . . . . . 300*l.*	12	0	0
300*l.* . . . . . 400*l.*	20	0	0
400*l.* . . . . . 500*l.*	25	0	0
500*l.* . . . . . 600*l.*	30	0	0
600*l.* . . . . . 800*l.*	40	0	0
800*l.* . . . . . 1000*l.*	50	0	0
1000*l.* or upwards	60	0	0
And where there shall be no such consideration as aforesaid, moving to the master or mistress; if the indenture or other instrument shall not contain more than 1080 words	1	0	0
And if the same shall contain more than that quantity	1	15	0

For the stamps on *assigning and turning over* apprentices, see *post*, 178.

(*a*) The prior repealed acts as to stamp duties on indentures of apprenticeship are the 5 & 6 Will. c. 21, s. 3; 9 & 10 Will. c. 25, s. 30; 12 An. st. 2, c. 9, s. 21; 30 Geo. II. c. 19, s. 1; 16 Geo. III. c. 34, s. 5; 17 Geo. III. c. 50, s. 16; 23 Geo. III. c. 58, s. 1; 35 Geo. III. c. 30, s. 1; 37 Geo. III. c. 90, s. 1; c. 111, s. 1; 44 Geo. III. c. 98; 48 Geo. III. c. 149.

The 44 Geo. III. c. 98, took effect from and after 10th October, 1804; the 48 Geo. III. c. 149, took effect from and after 10th October, 1808; the 55 Geo. III. c. 184, took effect from and after 31st August, 1815. These acts and dates are inserted, for indentures even earlier than 1804 are often produced.

STAMP.

Exemptions]—The exemptions are, "of indentures or other instruments placing out *poor* children apprentices, by or at the sole charge of any parish or township, or by or at the sole charge of any public *charity*, or pursuant to the 32 Geo. III. c. 57, for the further regulation of parish apprentices; Exemptions.

"And all assignments of such poor apprentices; provided there shall be no such valuable consideration as aforesaid given to the new master or mistress, other than what may have been or shall be given by any parish or township, or by any public charity."

By 7 & 8 Geo. IV. c. 56, a 2*s.* stamp is sufficient on sea apprenticeship indentures. See *post*, (**Sea Apprentices.**)

By the terms of the act a stamp duty is only required where the money or other thing is given or contracted for with or in respect of the apprentice for the use or *benefit of the master*. See *Parish of Ovingdon* v. *Northoram*, 2 *Stra.* 1132; 1 *Bott*, 528. When no consideration therefore is given with the apprentice the indenture is not within the statute and need not be stamped. *R.* v. *St. Peter's*, 1 *Bott*, 544. What is for "master's benefit."

It has been held that meat, drink, &c. found by the father, the master allowing an equivalent; (*R.* v. *Portsea*, *Burr.* 834;) or the apprentice finding his own meat, &c.; (*R.* v. *Walton*, 3 *T. R.* 515; *R.* v. *Portsea*, 1 *Bott*, 551; sed vid. 1 *Bott*, 551, n. c.;) or even meat, &c. found without a stipulation for an equivalent; (*R.* v. *Leighton*, 4 *T. R.* 732;) or taking part of the earnings of the apprentice; (*R.* v. *Wantage*, 1 *East*, 601;) or weekly deductions out of an apprentice's wages on certain specified conditions, (*R.* v. *Bradford*, 1 *M. & S.* 151, &c.), are not for the "master's benefit," within the stamp act. See a clear rule at the end of Lord *Kenyon's* judgment in *R.* v. Leighton, 4 *T. R.* 732.

No duty is payable when the consideration is under 20*s.* *Barter* v. *Fairlam*, 1 *Wils.* 129; *Burr.* 379. Other points and decisions on act.

An apprenticeship to two masters to serve them consecutively in distinct trades requires only one stamp. *R.* v. *Louth*, 1 *M. & R. Mag. Ca.* 238; 8 *B. & Cre.* 247, S. C.

If the proper duty be not paid the relation of master and apprentice will not exist. *Aldridge* v. *Ewen*, 3 *Esp. Rep.* 188.

The duty must be *actually paid*, and where it was not done the indenture was held void, though the apprentice had served three years. 1 *Bott*, 545; 2 *Stra.* 903, S. C.

The duty must be paid by the *master* and not by the parent; *Keele* v. *Parsons*, *Manning's Index*, 271; 2 *Stark.* 506, nom. *Keene* v. *Parsons*, S. C.; and where the master has refused to pay it, he cannot recover on an agreement to put the son as an apprentice, nor can he establish a demand for board and lodging although the youth may have resided with him a considerable time. *Id.* And see *Jackson* v. *Warwick*, 7 *T. R.* 121.

The indenture is not avoided by the duty being paid on a larger sum than the master receives. *R.* v. *Keynsham*, 5 *East*, 309, *post*, 166; 2 *M. & S.* 338. And actually reducing the premium given with an apprentice to avoid the additional stamp duty does not avoid the indenture. *Shepherd* v. *Hall*, 3 *Camp.* 180; *King* v. *Low*, 3 *C. & P.* 620; S. P. 1 *M. & S.* 151. See *post*, 166, as to the statement of the premium in indenture.

After a considerable lapse of time, such as thirty years, and if the indenture be lost, it will be presumed to have been duly stamped, though contrary evidence be adduced by the deputy registrar and controller of apprentice deeds. *R.* v. *Long Buckby*, 7 *East*, 45; 3 *Smith*, 92, S. C.

As to what shall be deemed a *public charity*, it is decided that money given by the parish officers (in the case of a voluntary binding), as the consideration for taking an apprentice, is not liable to the duty imposed, for it comes within the exception, as being at the public charge of the parish. *R.* v. *St. Petrox*, *Dartmouth*, 4 *T. R.* 196; 1 *Bott*, 554. What cases are within exemptions.

So a voluntary yearly contribution of divers inhabitants of a parish, for the purpose of apprenticing poor children educated at a public charity school in the parish, is a charity within the stat. 7 J. c. 3, and therefore the indenture is exempted from the duty imposed. *R.* v. *St. Matthew, Bethnal Green*, *Burr. Set. C.* 574; 1 *Bott*, 641.

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Exemptions.

So also a bequest of money to put out such children apprentices as t testator's brother shall think fit, is a public charity, and within the exem tion. *R.* v. *Clifton upon Dunsmore*, *Burr. S. C.* 697; 1 *Bott*, 641.

A placing out an apprentice with the consent of trustees of certain fun bequeathed for the binding out of poor apprentices, though the trustees not execute the indenture, is exempt from the duty. *R.* v. *Quainto* 2 *M. & S.* 338.

Where an unstamped indenture of apprenticeship recited that a premiu had been paid with the apprentice, but added that it was paid out of a ch ritable fund belonging to the parish, the master also proved that the premiu had been paid by the parish officers, who informed him at the time that came out of such fund; it was holden, that the fact of payment being prove the recital in the indenture and the declaration of the parish officers cou not be admitted in evidence so as to bring the case within the exemptio and that the indenture being unstamped was void. *R.* v. *Skeffington* 3 *B. & Ald.* 382. But it seems that a charitable donation fund belongin to a parish is a public charity within the exemption. *Id.*

Regulations of 8 Anne, c, 9.

Full consideration paid to be inserted in indenture.

Regulations by statute of 8 *Anne*, *c.* 9]—Although the stamp duties are thu regulated by the 55 Geo. III. there are various other regulations made by th statute of 8 Anne. Thus section 35 of the latter act enacts, "that from an after the said first day of May, one thousand seven hundred and ten, th full sum or sums of money received, or in any wise directly or indirectl given, paid, agreed, or contracted for, during the term aforesaid, with o in relation to every such clerk, apprentice, and servant as aforesaid, sha be truly inserted and written in words at length, in some indenture o other writing, which shall contain the covenants, articles, contracts, o agreements, relating to the service of such clerk, apprentice, or servant a aforesaid, and shall bear date upon the day of the signing, sealing, or othe execution of the same; upon pain, that every master or mistress, to o with whom, or to whose use, any sum of money whatsoever shall be given paid, secured, or contracted, for or in respect of any such clerk, apprentice or servant as aforesaid, which shall not be truly and fully so inserted and specified in some such indenture or other writing, shall, for every such offence forfeit double the sum so given, paid, secured, or contracted for; the one moiety of which forfeitures shall be to her Majesty, her heirs or successors and the other moiety, with full costs, to any person or persons who shall inform and sue for the same, by action of debt, bill, plaint, or information, in any court of record at Westminster, or in the Exchequer of Scotland, at any time after the executing, making, or signing of any such indenture or writing, or making any such contract or agreement, and within one year after the time limited or appointed for the service of any such clerk, apprentice, or servant, to or with such master or mistress, shall be expired."

It suffices to insert in the indenture the specific sum contracted to be paid, and which the parent by virtue of such contract was bound to pay. In a late case, where a married woman, on binding her son, an illegitimate child, an apprentice, agreed with the intended master that 10*l.* should be the premium inserted in the indenture, but that he should receive something more, the husband of the mother of the apprentice paid the 10*l.* and the mother without her husband's knowledge paid the master a further sum of two guineas and a half; it was held, that there being no valid contract to pay more than the sum of 10*l.*, the full sum "given, paid, agreed, or contracted for" at the time of the execution of the indenture, was inserted within the meaning of the above provision of 8 Anne; that it was valid; and that a settlement was gained under it. *R.* v. *Bourton upon Dunsmore*, 9 *B. & Cres.* 872.

Inserting more in the indenture than the real sum paid will not invalidate it. *R.* v. *Keynsham*, 5 *East*, 309; 1 *Bott*, 560. In this case, five guineas were agreed to be paid by the father to the master as a premium, and this sum was inserted in the indenture; the only sum paid was the sum of four guineas, which was paid at the time of dating and executing the

indenture. The sessions considered this as void under 8 Anne, c. 9. *Per Curiam*:—"By requiring the *full sum* to be inserted, it meant that *not less* than the sum upon which duty was really payable should be inserted; here in truth more than that sum has been inserted, and the duty paid upon it." The order of sessions was quashed. STAMP.

In a case where the plaintiff executed an indenture of apprenticeship (to which was appended the printed notice required by stat. 5 Geo. III. c. 46, s. 19, *post*, 169, for the insertion of the premium, &c.) and thereby bound her son apprentice to the defendant, and paid a premium, the indenture did not contain any statement respecting the premium, and was not stamped. The indenture being void for want of such statement, and not having been stamped within time, plaintiff brought *assumpsit* for the premium: it was held, that plaintiff having executed the indenture without the insertion of the premium, notwithstanding the notice before her eyes to that effect, was not an innocent party, but in *pari delicto* with the master, and could not recover the premium from the defendant, though paid without consideration, the indenture being void. *Stokes* v. *Twitchen*, 8 *Taunt.* 492; 2 *Moore*, 538. S.C.

Where an indenture of apprenticeship is offered in evidence, it may be presumed that the premium stated to have been given was the sum actually paid, and the court will not oblige the party producing it on the trial to prove the payment on oath as required by the statute of Anne; *Stewart* v. *Lawton*, 1 *Bing.* 374; and the court there thought that the oath required was the oath made before the commissioners; and *Park*, J. said, the affidavit should have been produced. *Burrough*, J. said, as the stamp corresponded with the statute, the making of the affidavit might be presumed. This evidence is only in *suits* brought by the *parties*.

Oath that the true sum is inserted.

And stat. 8 Anne, c. 9, s. 43, enacts, "that no indenture or writing required by this act to be stamped as aforesaid, shall be given or admitted in evidence in any suit to be brought by any of the parties thereunto, unless such party, on whose behalf the same shall be given or admitted in evidence, do first make oath that to the best of his or her knowledge the sum or sums therein for that purpose inserted or mentioned was or were really and truly all that was directly or indirectly given, paid, secured, or contracted for, on behalf or in respect of such clerk, apprentice, or servant, to or for the benefit of the master or mistress to or with whom such clerk, apprentice, or servant was put or placed."

Sect. 36 enacts, "that the said commissioners for managing the said duties on stampt vellum, parchment, and paper, shall before the said first day of May, one thousand seven hundred and ten, provide two new stamps to be used in pursuance of this act, (over and besides the stamps heretofore requisite for or in respect of such indenture or other writing, by virtue of the statutes in that case made); the one of which new stamps shall denote the said duty of sixpence in the pound, and the other of the said new stamps shall denote the said duty of one shilling in the pound; and that all such indentures, or other writings, containing the sums truly given, paid, agreed, or contracted for as aforesaid, which shall, within or during the said term of five years, be entered into, executed, or signed, within the cities of London or Westminster, or within the limits of the bills of mortality, shall be brought to the head office for stamping or marking of vellum, parchment, and paper, and the duties hereby charged and payable for the sums therein to be inserted as aforesaid, shall be paid to the receiver-general for the time being of the said duties on stampt vellum, parchment, and paper; and upon such payment thereof, the same shall be stamped with one of the said new stamps as the case shall require, within one month after the respective dates thereof."

Stamping and indorsement.

Sect. 37 enacts, "that all the said indentures, and other writings, which shall or ought to contain the whole sum truly given, paid, agreed, or contracted for as aforesaid, which shall, within or during the said term of five years, be entered into, executed or signed, in any part of Great Britain, (not being within the limits of the said weekly bills of mortality,) shall (at

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Anne, c. 8.

the option of the party concerned) be brought or sent, either to the head office within the limits of the said weekly bills, or else to some of the collectors appointed or to be appointed for her Majesty's duties upon stampt vellum, parchment, and paper, who shall reside within the limits of the said weekly bills in England, Wales, or the town of Berwick-upon-Tweed, or to some of the officers to be appointed for the duties by this act granted in Scotland, within two months after the date, execution, or signing of every such indenture or writing respectively; and upon producing of every such indenture or writing, either at the said head office, or to such collector or other officer as aforesaid, her Majesty's duties hereby granted shall be paid, either to the said receiver-general at the said head office, or to such collector or other officer as aforesaid; and in case the said payment shall be made to the immediate hands of the receiver-general in the said head office, for her Majesty's use, then the indenture or writing, for which such payment shall be made, shall be forthwith stamped with one of the said new stamps, as the case shall require; and in case such payment shall be made to the hands of such collector or other officer without the limits of the said weekly bills, the same collector or other officer is hereby required to indorse on such indenture or other writing, a receipt for the monies so paid, in words at length, bearing date the day on which such payment shall be made, and to subscribe his name thereto, (to the intent that he may thereby be charged with every sum so paid to him,) and forthwith deliver back the said indenture or writing so indorsed to the bringer thereof."

Within what time indenture to be stamped.

Sect. 38 enacts, "that every such indenture or writing so indorsed (in case the same be entered into, executed, or signed within the space of fifty miles, to be computed from the limits of the said weekly bills of mortality) shall, within three months after the date or making thereof, and if the same be entered into, executed, or signed in any part of Great Britain, at a greater distance from the limits aforesaid, shall, within six months after the date or making thereof, be brought or sent to the said head office, where the same (being produced with the said receipt indorsed) shall be immediately stamped with one of the said new stamps, as the case shall require, by the officer appointed or to be appointed for that purpose."

In the case of *Rex* v. *Chipping Norton*, 5 *B. & A.* 412, where by stat. 8 Anne, c. 9, s. 32, a premium stamp was imposed on indentures of apprenticeship, which, by sections 36, 37, 38, were required to be stamped within a prescribed time, and for want thereof were declared to be void; it was held that where an indenture, dated 30th October, 1794, was not so stamped, the pauper gained no settlement.

If these requisites not complied with indentures void.

Sect. 39 enacts, "that all such indentures or writing as aforesaid, wherein shall not be truly inserted and written the full sum and sums of money received, or in any wise directly or indirectly given, paid, secured, or contracted for, with or in relation to such clerk, apprentice, or servant as aforesaid, or whereupon the duties payable by this act shall not be duly paid, or lawfully tendered, or which shall not be stamped, or lawfully tendered to be stamped, according to the tenor and true meaning of this act, within the respective times herein for that purpose severally and respectively limited, shall be void, and not available in any court or place, or to any purpose whatsoever, and the clerk, apprentice, or servant, whom the same shall concern or relate to, shall in such case be utterly incapable of being free of any city, town, corporation, or company, and of following or exercising the intended profession, trade, or employment, any charter, law, or custom to the contrary notwithstanding."

Premium need not be inserted in a parish indenture.

Although this 39th section in terms requires the full sum paid with the apprentice to be inserted in the indenture, yet that is only for the purpose of raising a duty thereon. When, therefore, the 40th clause exempts *parish* indentures from the payment of these duties, it entirely supersedes the necessity of inserting the sum paid in the indenture, and therefore the reason for the provision ceasing, the provision itself ceases to be necessary. *R.* v. *Oadby*, 1 *B. & A.* 477; per *Bayley*, J.

Penalty on non-payment of duties.

Sect. 66. If the master shall neglect to pay the duties within the time

limited, he shall forfeit £50, half to the King, and half, with full costs, to him who shall sue. And by stat. 18 Geo. II. c. 22, s. 23, 24, if he shall neglect to pay the same as aforesaid, he shall, besides all other penalties, forfeit double duty. HOW TO BE BOUND.

By stat. 20 Geo. II. c. 45, s. 5, if any master having forfeited the double duty shall pay the same, and tender the indenture to be stamped within two years after the determination of the apprenticeship, and before suit hath been commenced for the penalties, the indenture shall be valid, and the penalties discharged. Indemnity acts; 20 Geo. 2, c. 45.

Sect. 6. And if after the master shall have forfeited the double duty, the apprentice shall, in the presence of or by writing under his hand signed in the presence of one witness, require his master to pay the same; and if the master shall not do it in three months, and such apprentice shall at any time within two years after the determination of his apprenticeship pay the double duty, he may in three months after such payment demand of his master double the sum contracted for in the indenture, and if not paid in three months after, may recover the same by action at law with full costs. And the apprentice immediately after payment of the said double duties, (if his apprenticeship shall not be then expired,) and signifying by writing under his hand that he desires to be discharged from his apprenticeship, shall be discharged accordingly, and shall have the same benefit of the time he hath served as he would have had in case he had been assigned or turned over to a new master. Recovery by apprentice of a penalty from master.

Sect. 8. And where any prosecution shall be commenced against the master for the penalties, if the apprentice shall pay the double duty at any time in two years after the end of his apprenticeship, he may thereupon exercise his trade, and the indenture shall be valid, and may be given in evidence.

There is usually a clause of indemnity passed in some statutes against the effects of not stamping the indenture of apprenticeship. See 4 *Burr.* 2460; 50 Geo. *III.* c. 4.

Although the want of a stamp is a fatal objection, and while it continues renders the indenture void and unavailable, either in an action or for the purpose of gaining a settlement; yet the defect may be cured by getting the instrument properly stamped, which may be done on paying a penalty of £5 and the amount of the duty. See stat. 6 & 7 Will. III. c. 12, s. 7. But indentures executed before the passing of stat. 44 Geo. III. c. 98, which before that act would require to be enrolled, cannot now be made valid on payment of any penalty, the time for enrolling such indentures on payment of double duties having expired. See stats. 18 Geo. II. c. 22, s. 24; 20 Geo. II. c. 45, s. 4; 42 Geo. III. c. 23, s. 7; and *R* v. *Chipping Norton*, 5 *B. & A.* 412, *ante*, 168. Stamping indentures after execution.

(6.) Memorandum to be Printed on Printed Indenture.

By the 5 Geo. III. c. 46, s. 19, all printed indentures shall have the following memorandum printed under the same, viz. "the indenture, covenant, article, or contract, must bear date the day it is executed; and what money or other thing is given or contracted for with the clerk or apprentice must be inserted in words at length; and the duty paid to the stamp office if in London, or within the weekly bills of mortality, within one month after the execution, and if in the country and out of the said bills of mortality, within two months, to a distributor of the stamps or his substitute; otherwise the indenture will be void, the master or mistress forfeit £50 and another penalty, and the apprentice be disabled to follow his trade or to be made free." And if any printer, stationer, or other person shall sell or cause to be sold any such indenture without such memorandum being printed under the same, he shall forfeit £10 in like manner. Memorandum to be printed under all printed indentures. Penalty for omission.

But since the 55 Geo. III. c. 184, as the stamp duty is paid before the execution of the indenture, this memorandum is no longer in use or observed.

ENROLMENT OF INDENTURE.

(7.) Enrolment of Indenture.

Enrolment of indentures in London.

By the custom of London and other corporate places, the indenture of apprenticeship ought to be enrolled. In London it should be enrolled before chamberlain within a year, and if it be not so enrolled, upon a petition to the mayor and aldermen a *scire facias* may be issued to the master to show cause why the indenture has not been enrolled; and if it was through the master's default, the apprentice may sue out his indenture and be discharged; but it is otherwise if it was through the default of the apprentice, as if he could not come to present himself before the chamberlain, &c., for they cannot be enrolled unless the apprentice be in court and acknowledge them. *Bac. Ab. Master and Servant,* (A. 2); *Roll. Rep.* 305; *Com. Dig. London,* (N. 2); *Chit. App.* 60. However, it is said, that if the apprentice refuse to appear to have the indenture enrolled, the master may record the indenture, which will be tantamount. *Priv. Lond.* 305; *Com. Dig. London,* (N. 2).

If the indenture be enrolled, then in an action by the master against the apprentice, it will not be necessary to prove the execution of the deed by the defendant, but otherwise it will. *Skin.* 579. But in no case the omission to enrol can be taken advantage of by the defendant in an action by a third person; 6 *Mod.* 69; and it has been held, that the custom of London, that an infant who binds himself apprentice shall be liable to be sued, does not extend to an infant bound to a waterman, because the Company of Watermen are but a voluntary society, and being free of that does not make one free of London. 6 *Mod.* 69.

Apprentices in sea service.

The 5 Eliz. c. 5, s. 12, directs, that where persons bind themselves apprentice to masters in the seafaring line, their indenture shall be enrolled in the next corporate town. 3 *Lev.* 389; *post,* (**Sea Apprentices.**)

When, by the constitution of a corporation, the indenture ought by custom to be enrolled within a specified time from the date, the Court of King's Bench will, by *mandamus,* compel the proper officer to enrol it, unless it appear that the apprentice was not bound according to the constitution of the corporation. *R.* v. *Marshall,* 2 *T. R.* 2; *Peake's Cas.* 159.

A bye-law of a corporation requiring the indentures to be enrolled, is so far complied with as not to deprive the apprentice of the benefits accruing from his service where it is only marked by the town clerk as registered, and is not actually enrolled. *R.* v. *Mayor of Cambridge,* 2 *Chit. Rep.* 144.

(8.) Registering of Apprentices.

Registry of apprentices.

For the purpose of securing the due payment of the duties on apprentices' deeds, it is enacted by stat. 5 Geo. III. c. 46, s. 18, that every chamberlain and other proper officer of every city and corporate town and company within the kingdom of Great Britain, where any clerk or apprentice or servant obtains his freedom by servitude, shall fairly write and enter in some book or books to be kept for that purpose the names of all such clerks, apprentices, and servants as shall be put or placed out within the jurisdiction of such city or town corporate, and also the names and places of abode of the masters or mistresses, and the sums of money given, paid, contracted or agreed for, with, or in relation to such clerks, apprentices, or servants, and the profession, trade, or employment which they are respectively to learn; and the dates of the indentures, covenants, articles, or contracts, by which such clerks, apprentices, or servants, are respectively put and placed out; and if any chamberlain or other proper officer shall neglect or refuse to make any such entry in manner as above set forth, he shall for every such offence forfeit the sum of £20. See *supra,* cases as to the enrolment.

RIGHTS OF MASTER FOR BREACH OF CONTRACT.

VI. Rights and Liabilities of Master and Parent.

And herein of the Rights, 1st. Of the Master for Breach of the Contract; 2d. Of the Parent for Breach of Contract; 3d. Of the Apprentice for Breach of Contract; 4th. Of the Master to the Services and Earnings of the Apprentice; 5th. Of the Master in case of Harbouring or Enticing away the Apprentice; 6th. Of the Master to control and protect the Apprentice; 7th. Of the Liabilities of the Master for Misusing the Apprentice; and, lastly, Concerning the Crimes of an Apprentice.

(1.) Master's Rights for Breach of Contract.

For breach of contract.

If the apprentice absent himself or neglect his duty, or commit any other breach of the stipulations agreed to be performed by him, the master may support an action against the parent or other person who has by the instrument of apprenticeship agreed for the due performance of such stipulations. *Dougl.* 518; 8 *Mod.* 190; 3 *Barn. & A.* 59; 6 *B. & Cres.* 686.

But there is no remedy by action against the apprentice himself if he be an infant, *Cro. Car.* 179, *ante*, 157: though, indeed, by the custom of London, an infant is liable to be sued in any court for a breach of his covenant. *Moore*, 135. In ordinary cases the only course is to resort to the magistrates to compel the performance of his duty as hereafter stated.

Parish officers are not in general liable for the breaches of covenant in parish indentures, as they do not in general covenant.

Covenant lies against the father, for the apprentice not accounting. *Elwes* v. *Vaughan*, 1 *Lutw.* 386. And in such an action, a request to account need not be stated. The breach in a joint action against a father and son may be assigned against the latter only. *Whitley* v. *Loftus*, 8 *Mod.* 190; 1 *Bott*, 528, S. C. In this latter case, in the indenture of apprenticeship, the father covenanted to pay the apprenticeship-money; the son covenanted to account for his master's goods; and in the conclusion, the father and son each bound themselves for the true performance of all covenants and agreements therein. *Per Curiam*: The end of binding the father was to answer the wrong which might be done by his son, and he must answer for *any*; and the covenant that each did bind himself must be so, where the son is bound to perform the thing for which the covenant was made; and this clause is usually inserted that the covenants may be taken distributively, to wit, that each of the covenantors should perform his part; and this makes the covenant of the son bind the father, who covenanted for him as well as for himself.

So in the case of *Branch* v. *Ewington*, *Dougl.* 518, 1 *Bott*, 535, S. C., which was an action of covenant by the master against the father of the apprentice: the indenture was in the common form of the statute, and for the true performance of all and every the covenants each of the said parties bound himself to the other. The breach assigned was, that the apprentice had absented himself from the service. Lord *Mansfield*, C. J. said, nothing was clearer than that the father was bound for the performance of the covenants by the son.

So the refusal of the infant on coming of age to fulfil the term of apprenticeship is no answer to an action against the parent or other contracting party for him. Thus, in *Cuming* v. *Hill*, 3 *B. & A.* 59, which was an action of covenant on the indenture of apprenticeship, in the common form, by the master against the father of the apprentice. The breach assigned was, that the apprentice had absented himself from the service. Plea, that the apprentice, at the time of making the indenture, was an infant, of the age of seventeen years; and that on the 20th October, 1818, he attained his full age of twenty-one years, until which time he faithfully served the plaintiff, according to the meaning of the indenture; and after he had attained

RIGHTS OF MASTER FOR BREACH OF CONTRACT.

the age of twenty-one years, he, on the 21st October, 1818, made void the indenture, and quitted the service of the plaintiff, as it was lawful to do under the statute 5 Elizabeth. To this plea there was a general demurrer. *Abraham*, in support of the demurrer, cited *Branch* v. *Ewington*, 2 *Dougl.* 518, *ante*, p. 171; and *Bayley*, *contrá*, being then called upon by the court, admitted that he could not support the plea. *Abbott*, C. J. "I am of opinion that the father is liable to this action; he covenants that the son shall faithfully serve; the avoidance of the apprenticeship by the son during the term cannot discharge the father's covenant. The indenture of apprenticeship has existed in this form for more than a century, and has been in universal use. A construction has been put upon the instrument in a court of law, in the case cited from Douglas. I do not see any reason to doubt the propriety of that decision, and I think, therefore, upon principle as well as upon authority, that the defendant is answerable in this action." *Bayley*, J. "I may bind myself that A. B. shall do an act, although it is in his option whether he will do it or not. The father here binds himself that the son shall serve seven years. It is no answer, to an action brought against the father, for the breach of that covenant, for him to say, that it was in the option of the son whether he would serve or not. If the son does not choose to do that which the father covenanted he should do, the covenant is then broken, and the father is liable." The other judges concurred. Judgment for plaintiff.

The covenants of the master and father or apprentice are independent covenants, and the performance of the one does not form a condition precedent to the performance of the other, therefore it is no answer to an action by the master against the parent, that the master neglected to perform some other part of the indenture, which did not prevent the son or parent's performance of the covenant, the breach of which is complained of. See *Winston* v. *Linn*, 1 *B. & C.* 460; 2 *D. & R.* 465, S. C.; *Hughes* v. *Humphreys*, 6 *B. & C.* 680, *post*, p. 173.

Where an apprentice ran away and enlisted, the master, though refusing to receive him, was held not compellable to return any part of the premium. Thus in *Cuff* v. *Brown and others*, 5 *Price*, 297, where a bill for 100*l.*, payable at the end of three years, was given upon entering into an agreement for the articling of an apprentice for the term of five years at the end of three years, and the deed was executed immediately for a term of eight years; but before the end of the three years, the apprentice of his own accord, and without any misconduct on the part of the master, ran away and enlisted for a soldier. Upon his return, after some time, and offering to renew his services, the master was at first inclined to do so, but on hearing of some other of his misconduct refused to receive him, and upon the bill being put in suit by a *boná fide* holder, the court refused to grant an injunction: the premium was a consideration applying to and extending over the whole term of eight years; and as the master performed his contract until it was put an end to by the apprentice, he was entitled to the money arising from the note, as much as if the premium had been paid in money. Upon the objection that the deed was not according to the agreement, the court held, that there was no contradiction between them.

If the indenture be void or voidable there is no remedy by action against any party thereto; 1 *Anstr.* 256; 6 *Esp. Rep.* 8; though the magistrates would have jurisdiction over the apprentice himself if he surreptitiously and without previous notice absconded from the service. *Cald.* 26; 1 *Bott*, 530; 6 *T. R.* 652.

If the contract of apprenticeship has been put an end to, that would form an answer to any alleged breach subsequent to that time. See *post*, 179 to 193, as to what is a termination of the apprenticeship. A parol license to quit the service will not absolutely put an end to a deed of apprenticeship, and the master is at liberty to recall that license, within a reasonable time after, during the term. See *post*, 179.

What an unlawful absenting.

With respect to what is a sufficient *unlawful absenting* to constitute a breach of the contract, it is not every little occasional absence, (though they may be the subject of reprehension,) that will constitute an *unlawful absenting*.

Therefore, it has been held, that the apprentice's staying on a Sunday evening half-an-hour beyond the time allowed him, was not such an unlawful absenting as would enable his master to sue for a breach of the covenant. *Wright* v. *Gibon*, 3 *C. & P.* 583.

RIGHTS OF PARENT FOR BREACH OF CONTRACT.

(2.) Parent's Rights for Breach of Contract.

Rights of parent for master's breach of contract.

If the master be guilty of the non-observance of any of the duties pointed out by the contract of apprenticeship, he is liable to an action thereon, at the suit of the infant, or parent or party with whom he contracts. The master does not covenant that the apprentice shall *stay* and *learn*, and is not liable for his not doing so. See *Hughes* v. *Humphreys*, 6 *B. & C.* 687, *infra*.

We have already seen that the covenants of the master and father and son are mutual and independent of each other, and that the performance of the one does not form a condition precedent to the performance of the other; and in illustration of this rule, the following cases may be referred to.

In an action on an indenture of apprenticeship, the master pleaded that the apprentice refused to obey his orders, and left his house, saying, he would not return again. To which plea, it was replied, that afterwards the apprentice *returned* and *offered* to obey his commands, but the master *would not take him*. The court held, that if the apprentice had under those circumstances stopped away an *unreasonable time*, which ought to have been stated in the rejoinder, the master would have been justified in not taking him back, but that he was not at liberty to turn away, or to refuse to admit his apprentice into his house, for misconduct and absenting himself for a few days, but should have sued him by cross action on his covenants. *Winston* v. *Linn*, 1 *B. & Cres.* 460; 2 *D. & R.* 465, S. C.; and see 5 *Price*, 297, *ante*, p. 172.

So in an action of covenant by the father against the master for not teaching and providing for the apprentice. Plea, that up to a certain time defendant did teach, &c. and that then the apprentice, without leave, &c. quitted the defendant's service, and never returned. Replication, that on, &c. defendant refused then or at any other time to receive back the apprentice, and therefore discharged him from his service. Rejoinder, that the apprentice enlisted as a soldier, and that plaintiff never requested defendant to receive back the apprentice when he was able to return to the service. Sur-rejoinder, that soon after the apprentice enlisted, defendant refused then or at any other time to take him back, and wholly discharged him from his service. It was held, on demurrer, that the sur-rejoinder was bad, not being a sufficient answer to the rejoinder, and that the plea was good, as it disclosed sufficient excuse for the non-performance of the defendant's covenant. *Hughes* v. *Humphreys*, 6 *B. & Cres.* 680.

If the apprentice be unwell, and there be any probability of his recovery, so as to be able at all to attend to his employment, the master must provide for him, for the master takes him for better for worse, and is to provide for him in sickness and in health; 1 *Stra.* 99; 1 *Bott*, 574; *aliter*, if the apprentice be an idiot and incapable of learning. *Id.*

The master is not liable on the indenture, if he has not executed or if it be not duly stamped. See *Aldridge* v. *Ewen*, 3 *Esp.* 188.

(3.) Rights of Apprentice for Breach of Contract.

Rights of apprentice on breach of contract.

The rights of an apprentice for a breach of the contract of apprenticeship may be collected from the previous observations as to the rights of the master and parent. He has a right to sue his master in case of non-observance of any of the covenants expressed in the deed.

The apprentice is not, as we have seen, *ante*, 157, 158, liable to any action for the non-performance of any stipulations in the indenture whilst he continues

RIGHT TO SERVICES, &c. OF APPRENTICE.

an infant, nor afterwards if he disaffirms the contract on coming of age, unless by the custom of London.

As to his rights in case of ill usage, see *post*, 166.

(4.) Rights of Master to Services and Earnings of Apprentice.

Rights to services and earnings of apprentices.

As an incident to the right of the master to the service of his apprentice he is entitled to all the earnings and gains which an apprentice may acquire by his labour either in the service of another or in an employment on his own account. 12 *Mod.* 415; 1 *Stra.* 582.

It is not material to such right of the master whether the apprentice be legally an apprentice or not, it is sufficient to maintain an action if he be so *de facto*. Thus in the case of *Barber* v. *Dennis*, 1 *Salk.* 98; 6 *Mod.* 69; the widow of a waterman, who, as was said, by the usage of Watermens' Hall may take an apprentice, had her apprentice taken from her and put on board a Queen's ship, where he earned two tickets, which came to the defendant's hands, and for which the mistress brought trover; it was argued, that the action would well lie if the apprentice were a legal apprentice, for his possession would be that of his master, and whatever he earned would go to his master. But it was objected, that this supposed apprentice was no legal apprentice pursuant to the act of Elizabeth, and if he were not a legal apprentice the plaintiff had no title. But Ld. Ch. J. *Holt* said, he would understand him an apprentice or servant *de facto*, and that would suffice against their being wrong-doers. In the report in Salkeld the word "servant" is not mentioned. And indeed an action could not have been brought for a servant's wages, either on board or elsewhere, for a master cannot bring an *action*, (*Co. Lit.* 117 a,) for the wages of his servant; though for those of an apprentice he may, because the time of the apprentice is the time of his master, and what is earned by the apprentice is considered as belonging to the master; *per* Lord *Hardwick*. 1 *Burr. Set. C.* 91.

In the case of *Thompson* v. *Havelock*, 1 *Campb.* 527, it was held, that if the master of a ship gave a part of his personal services to one who is not the owner, for a stipulated sum, and the latter pay this into the hands of the owner, the master cannot recover it from him. And Lord *Ellenborough* said, "Is it to be contended that a servant, who has engaged to devote the whole of his time and his attention to my concerns, may hire out his services or part of them to another? It would have been a different thing if the owner had been suing for this money, but I am clearly of opinion that, at all events, the present plaintiff has no right to it. Under this contract he must have been taken from superintending the defendant's ship, and I do not know how far it might go if such earnings were recoverable in a court of justice. No man should be allowed to have an interest against his duty. I will assume that the plaintiff obtained as high a freight as possible for his owners, and that his services to government were meritorious, still there would be no security in any department of life or business if servants could legally let themselves out in whole or in part. My opinion on the subject is quite decisive; if it be doubted, I beg that a bill of exceptions may be tendered. Whatever difficulty there might be in the master's recovering the earnings of his servants, it seems established that he may retain them when once paid into his hands, as he is equitably entitled to them, and his right can least of all be controverted by his servant." 1 *Campb.* 529, n.

Where the property acquired by the apprentice is some specific chattel, the remedy for it is *trover*. Where it is money, *assumpsit* for money had and received will lie; *Skin.* 579; and where wages or other remuneration are claimed for the personal services of the apprentice, the form of action may be *assumpsit* for work and labour. *Lightly* v. *Clouston*, 1 *Taunt.* 112; *Foster* v. *Stewart*, 3 *M. & S.* 191.

In either of these actions the execution of the indenture must be proved, or that it was enrolled. *Skin.* 579.

A court of equity will not in general relieve against the claim of the master

RIGHT OF MASTER TO SERVICES, &c. OF APPRENTICE.

for prize-money, however large, acquired by an apprentice who has deserted his service; but Lord *Hardwicke* said, that if a case came before him in equity where the master, instead of instructing his apprentice in the particular business his parents intended, encouraged and induced him to go to sea and to a different course of life, he should incline to relieve the apprentice against the master's legal right. 1 *Ves.* 48.

It is observed by Mr. *Hargreave*, *Co. Litt.* 117 a, *n.* 1, that in the 31 Geo. II. c. 10, one object of which is to regulate the pay of seamen in the royal navy, there is a provision that in particular cases the master shall not be entitled to the wages of his apprentice; and that from the 17th section of the 2 & 3 Ann. c. 6, it seems as if the framers of that law doubted whether the master of an apprentice who goes into the royal navy, would be entitled to his wages without an express provision.

In cases of impressment of apprentices it is sufficient notice to the captain of the vessel (to render him liable to the master for the wages of the apprentice in case of his subsequent detention) that the apprentice told him that he was such. *Eades* v. *Vandeput*, 5 *East*, 39, n. a.

(5.) Rights of Master in case of Enticing away and Harbouring an Apprentice.

Enticing away apprentices.

An action on the case lies by the master for *enticing away* his servant or apprentice; *R.* v. *Daniel*, 6 *Mod.* 182; *Reevely* v. *Mainwaring*, 3 *Burr.* 1306; *Gunter* v. *Astor*, 4 *Moore*, 12; but an indictment does not lie, *id.*; nor does trespass, unless indeed the taking were by force, *id.*; 1 *Salk.* 380; 3 *Salk.* 391; *Holt*, 346.

If there be no valid and binding contract of service or *apprenticeship* between the master and apprentice, at the time of the enticing and harbouring, it would seem the action would not lie, though indeed the particular decisions on this head, prior to the 54 Geo. III. c. 96, which repeals part of the 5 Eliz. c. 4, will not now be applicable; see *F. N. B.* 168; 7 *T. R.* 310, 314; 2 *H. Bla.* 511. An apprenticeship *de facto* would always suffice as against a wrongdoer, though there were no legal apprenticeship. *Barber* v. *Dennis*, 6 *Mod.* 69; 1 *Salk.* 68. See *ante*, 174.

An action lies for *harbouring* a servant or apprentice without any evidence of the defendant's having *enticed* him away; see *Ashcroft* v. *Bertles*, 6 *T. R.* 652. In such action, however, plaintiff must be prepared to show that the defendant harboured the servant or apprentice after the regular notice of the service or apprenticeship, and a requisition to the defendant to deliver him up, or not to harbour him any longer; see *Fawcett* v. *Blaires*, 2 *Lev.* 63; *Peake*, C. *N. P.* 55; *Willes*, 582. What is a sufficient notice; *Eades* v. *Vandeput*, 5 *East*, 39, *supra*.

As to when the master may waive the *tort* and sue in *assumpsit*, see *ante*, p. 174.

There must be some damage, *per quod servitium amisit*, proved. 5 *East*, 39; *Burr.* 1352. The measure of damages is not to be ascertained at the actual loss plaintiff sustained at the time, but for the injury done by causing the apprentice to leave plaintiff's employment. *Gunter* v. *Astor*, 4 *Moore*, 12.

(6.) Rights of Master to controul and protect the Apprentice.

Right to correct apprentice.

To Correct Apprentice]—The master has more authority over an apprentice than over a common servant, for he may legally correct his apprentice for negligence or other misbehaviour, provided it be done with moderation; whereas if the master or his wife beat any other servant, it is a good cause for departure and action(*a*); 1 *Bla. Com.* 428; *F. N. B.* 168; 1 *Hawk.* c. 176.

(*a*) See Servants, Vol. V.

RIGHT TO CONTROL AND PROTECT APPRENTICE.

But in cases of gross misconduct, it is better for the master to apply to a justice of the peace or the sessions, to discharge or punish the apprentice, than to take the law into his own hands. The master cannot delegate this authority to another. 9 *Co.* 76.

Where a master in correcting his apprentice happens to occasion his death, it shall be deemed homicide by misadventure; yet if in his correction he be so barbarous as to exceed all bounds of moderation and thereby occasion the apprentice's death, it is manslaughter at least; and if he make use of an instrument improper for correction, and apparently endangering the apprentice's life, it is murder. 1 *Hawk.* c. 29, s. 5. See **Homicide**, Vol. III.

Right to turn him away.

To turn away Apprentice]—By the custom of London a freeman may turn away an apprentice for gaming; 2 *Vern.* 291; but if an apprentice marries without the privity of his master, yet that will not justify his turning him away, but he must take his remedy on the covenant; 2 *Vern.* 492; nor can he turn him away on account of his having been absent for a short time, or other breach of covenant; *Winston* v. *Linn*, 1 *B. & Cres.* 460; 2 *D. & R.* 465, S. C.; 6 *B. & Cres.* 680, *ante*, p. 172, 173; nor on account of his being sick or so lame as to be unable to work. 1 *Stra.* 99, *post*, 185.

In any case he cannot send or take the apprentice out of the kingdom; *Hob.* 139; *Bac. Abr. Mast. & Serv.* (E.); or to a different part of the kingdom to serve another master. *R.* v. *St. Paul, Bedford*, 6 *T. R.* 454, *post*, 184.

Right to custody of his person.

To Custody of Person of Apprentice]—It does not appear that the master is entitled to the custody of the person of his apprentice. If the apprentice has been voluntarily impressed, the master is not entitled to a *habeas corpus* to bring up his body; *Exparte Landsdowne*, 5 *East*, 38; *R.* v. *Edwards*, 7 *T. R.* 745; and if an apprentice leaves his master and enters into the service of another, the first master cannot sue out a *habeas corpus* though the apprentice may; *R.* v. *Reynolds*, 6 *T. R.* 497; or the chief justice may issue his warrant to bring the apprentice before him. 1 *Leach, C. L.* 233; *R.* v. *Edwards*, 7 *T. R.* 745.

If the apprentice depart out of his master's service and the master happen after to lay hold of him, yet the master may not in this case beat or forcibly compel his apprentice against his will to return or tarry with him, or to do his service, but either he must complain to the justices of the departure or he may bring an action against the parent on his covenant. *Dalt.* c. 121, p. 281, 282.

To defend his person.

To defend Person of Apprentice]—As incident to the right of the master to the service of his apprentice, he may justify a battery in his defence. *Roll. Abr.* 546, D. pl. 2; *Bac. Abr. Mast. & Serv.* (P.), *post*, **Assault**, Vol. I.

(7.) Liability of Master for Misusing Apprentice.

Misusing apprentice.

We have already seen how far the master will be liable for a breach of his contract, *ante*, p. 173, or for improperly correcting his apprentice, *supra*.

5 Eliz. c. 4. 20 Geo. 2, c. 19.

Under the provisions of the 5 Eliz. c. 4, and 20 Geo. 2, c. 19, if the master neglect to instruct, or shall misuse or evil treat his apprentice, or the apprentice shall have just cause to complain, the justices at sessions may discharge the apprentice, and have a power of ordering a restitution of the premium; see further, *post*, p. 183, 188, and 1 *Saund.* 313, n.

And by 20 Geo. II. c. 19, two justices of the peace are authorised, in the case of a parish apprentice, or any other, where more than 5*l.* (increased to 25*l.* by 4 Geo. IV. c. 29) has not been paid as a premium, to discharge the apprentice in case the master has been guilty of any misusage, refusal of necessary provisions, cruelty, or other illtreatment towards his apprentice. See further, *post*, p. 188, 191.

But the justices cannot administer *punishment* to *masters* for their faults, but only discharge their apprentices. 1 *Saund.* 316. LIABILITY FOR MISUSING APPRENTICE.

Independently of the terms of the indenture, and of the power of the magistrates, if the master, without cause, beat or ill use his apprentice, an action may be supported against him; and an indictment at common law may be supported against a master for not providing sufficient food for an apprentice or servant of tender years and under his dominion or controul, whereby the infant becomes sick. *R.* v. *Ridley*, 2 *Campb.* 650; *Russ. & R. C. C.* 20; see forms of indictment, *post*, (No. 16, 17).

In the indictment against Elizabeth Ridley, 2 *Campb.* 650, there was no averment that the child was of tender years, and under the controul of the defendant; and as no evidence could be given of actual ill-usage, by exposure to the weather or otherwise, the prosecutor consented to an acquittal; for Mr. Justice *Lawrence* held, that unless the servant was of tender years, and under the controul of the party, the neglect to supply her with food would be a mere breach of contract; and, as she might leave the service, remonstrate, or complain to a magistrate, no indictment could be supported; but he thought that if the infant be of tender years, and so under the dominion of the defendant as to be unable to take any steps to relieve herself, a *non-feasance* respecting her would be an indictable offence. And this would appear from the case in which it has been holden murder in a master, if his apprentice die for want of food. 1 *Leach*, 137. And in the case of *R.* v. *Friend and Wife*, *Russ. & Ry. C. C.* 20, it was held an indictable offence to neglect to supply necessaries to a child, servant, or apprentice, whom a person is bound by duty or contract to provide for, if such child, &c. be of tender years, and unable to provide for itself. The allegation, therefore, of the child, &c. being of tender years, and of inability to provide for himself, is material. *Id.* And see Children, Vol. I.; Homicide, Vol. III.

(8.) Crimes of Apprentices.

At common law, an apprentice, without any regard to age, might be guilty of *felony*, in feloniously taking away the goods of his master, though they were goods under his charge, as a shepherd, &c.; and may, at this day, for any such offence, be indicted as for a felony at common law; 1 *Hale's P. C.* 505, 666; 2 *East's P. C.* 562; but at common law, if a man had delivered goods to his apprentice to keep or carry for him, and he carried them away *animo furandi*, this was considered only a breach of trust, and not felony. This, however, was altered by some subsequent statutes, as to apprentices above eighteen years old, and by others of above fifteen. See 21 Hen. VIII. c. 7; 27 Hen. VIII. c. 17; 12 Ann. c. 7; these are repealed by 7 & 8 Geo. IV. c. 27; but the 7 & 8 Geo. IV. c. 29, still makes the offence a felony. See *post*, Larceny, Vol. III. Crimes of apprentices.

If an apprentice, representing himself not to be one, enlist in the army and obtain money on that account, he may be indicted as a cheat. 2 *East's P. C.* 822; *post*, Cheat, Vol. I.

Although an infant is not liable for money received by him for the plaintiff's use under a contract express or implied, yet where he wrongfully embezzles money, he may sometimes be sued for money had and received. *Bristowe* v. *Eastman*, 1 *Esp. Rep.* 172; *Peake*, *N. P. C.* 223, *ante*, 158.

VII. Assigning and turning over Apprentices in General.

The apprenticeship is a *personal* trust and confidence imposed on the master, so that the master cannot of his own will, either at law or equity, assign it over to another. *Hob.* 134; *Bac. Abr. Master and Servant*, (E.) Moreover, the person of a man is not, in strict law, assignable; *Baxter* v. *Burfield*, 2 *Stra.* 1266; 1 *Bott*, 581; *R.* v. *East Bridgeford*, *Burr.* 133; 1 *Bott*, Cannot be assigned in general.

DISSOLUTION BY CONSENT.

Where an agreement had been entered into by the mother of the apprentice and the master to separate, but the indenture remained in the hands of a third party, and was never delivered up or applied for; it was held, that such agreement was not sufficient to put an end to the first apprenticeship. *R.* v. *Skeffington*, 3 *B.* & *A.* 382; and see 1 *T. R.* 139; 4 *M.* & *S.* 383.

An agreement between a master and a parish apprentice, that the apprentice shall work when he pleases on his own account, and pay the master so much a week in satisfaction of his service, is not a dissolution of the indentures; *R.* v. *Offerton*, 1 *Bott*, 611; nor are the indentures of a parish apprentice cancelled by being delivered up by the son of the master to whom he was bound; *R.* v. *Notton*, 1 *Bott*, 609; and although the master, after three years' service, tell the apprentice to go about his business and work for himself, and he accordingly works with other persons for the remainder of the term, and applies the money he earns to his own use without his master's requiring him to account, or knowing where he was; yet if the indentures are neither cancelled or delivered up, there is no dissolution of the apprenticeship. *R.* v. *St. Luke's*, *Burr.* 542; 1 *Bott*, 608, S.C.

(2.) By Effluxion of Time, or by Apprentice coming of Age.

By effluxion of time.

It is scarcely necessary to observe, that on the expiration of the term of the apprenticeship agreed on by the indenture, the same is dissolved.

By infant's coming of age.

We have already seen, that no action lies against an infant for a breach of the indenture of apprenticeship during his infancy, *ante*, 157, 158; besides this, the apprentice has the power, in some cases, of determining the contract on his coming of age. By some regulations relative to parish apprentices, they are not bound to serve after they are of age, *post*, 196. In other cases, also of voluntary bindings, though the apprentice himself may have executed the indenture, it has been considered that he is free from all liability to serve the instant he comes of age: and in the case of *Ex parte Davis*, 5 *T. R.* 715 Lord *Kenyon* said, "it is clear that the apprentice must be discharged: every indenture of an infant is voidable at his election, and in such cases the master trusts to the covenant of those who engaged for the infant. Where the binding is under the authority of an act of parliament, that does away the power of electing to vacate the indenture. But I know of no act which prohibits the party, in a case like the present, to make such election upon coming of age. According to the argument of the counsel against the rule an infant, who improvidently bound himself to the age of fifty or upwards would be bound to serve till that time, but it is impossible to support such a proposition. This apprentice ought not to have been bound longer than till he was twenty-one, and we ought now to discharge her." The other judges concurred.

By the 5 Eliz. c. 4, s. 36, however, it is enacted, "that no person who shall be of full age shall be compellable to enter into any apprenticeship:" yet the 26th and 28th sections appear to require that the apprenticeship shall not determine till the age of twenty-four; and the 13th section enacts "that apprentices shall be bound for the years in the indenture contained;" and the 18 Geo. III. c. 47, which enacts, "that no *parish* apprentices shall be bound to serve after they are of age," does not extend to any other description of apprentices.

How disaffirmation by infant to be made.

It has been held, that the apprentice, when he intends dissolving the contract on his coming of age, ought regularly to declare his intention to dissolve it, and not to absent himself in a surreptitious manner; 1 *Nolan* 348; *Ashcroft* v. *Bertles*, 6 *T. R.* 652; *Cald.* 26; and see 8 *Taunt.* 355 5 *Barn.* & *A.* 147; *sed vide Exparte Gill*, 7 *East*, 376, where the court observed, that if an apprentice, when brought before a magistrate, shows that he is of age, and that, therefore, he absented himself from his master's service, and they disregard such defence and commit him, he has his remedy against them.

As an adult is bound by his contract with an infant, (2 *Stra.* 937,) the master himself cannot, without the concurrence of the apprentice, put an end to the apprenticeship on account of the apprentice having come of age: and if a person of full age bind himself apprentice for a term, he could not legally vacate his contract. *R.* v. *Ripon*, 9 *East*, 295; *Williams* v. *Brown*, 3 *B. & P.* 69. BY APPRENTICE COMING OF AGE.

(3.) By Death.

It hath been said that if the master die, the apprentice goes to the executor or administrator to be maintained, if there be assets; but the executor or administrator may bind him to another master for the remaining part of his time. By death of master covenant to instruct dissolved.

But in the case of *R.* v. *Peck*, 1 *Salk.* 68, *ante*, p. 177, *Eyre*, J., held that an apprenticeship is a personal trust between the master and servant, and determines by the death of either of them; and by the death of either of them the end and design of the apprenticeship cannot be obtained, and it may be the executor is of another trade. He admitted that covenant would lie against the executor; but in that there is no inconvenience, because the executor may make his defence by pleading no assets, or debts of a higher nature. *Holt*, C. J., said, that by the custom of London, the executor shall put the apprentice to another master of the same trade; and that in other places it would be very hard to construe the death of a master to be a discharge of the covenants; he said, it had been held that the covenant for instruction failed, but that he still continues an apprentice with the executor as to maintenance.

For the interest of a master in his apprentice is a mere personal trust: and the indentures not being assignable in his lifetime, except by custom, and with the consent of the apprentice, the master's executors cannot claim his services, neither can they maintain debt on a bond for performance of the covenant of the indenture, unless his executors be named; and see *Barter* v. *Barfield*, 1 *Bott*, 581; 2 *Str.* 1266, S. C. (*a*)

If the master has also covenanted to find him in meat, drink, and clothes, and other necessaries during the time, it has been held, that his death does not dispense with this condition, but his executors are at common law bound to perform it, as far as they have assets. *Sid.* 216; *Keb.* 761, 820; *Lev.* 177. But not covenant to provide necessaries.

By the custom of London, it is said, that in case of the master's dying, the executor must put the apprentice to another master of the same trade. *Salk.* 66, 204; *March.* 3; *Keb.* 250; *Bohun, Priv. London*, 339. In London.

And for the purposes of settlement it has been held, that the executor, or even a widow, before taking out administration, may continue the relation of master and apprentice. 1 *Nolan*, 350; 2 *Stra.* 1115; *Cald.* 62. Settlement.

As to the effect of the death of the master in the case of a *parish* apprentice, see *post*, p. 210, in the case of *Sea Service*, *post*, p. 226. Parish or sea apprentice.

In some cases the Court of Chancery have interfered to compel the executors of the master to return a part of the premium. Thus in *Soam* v. *Bowden and Eyles*, M. 30 Geo. II., *Canc. Finch. Rep.* 396, the master received with the apprentice 250*l.* and died within two years, the apprentice having for that time been employed only in inferior affairs. It was decreed, after debts on specialties paid, that the executors repay the 250*l.* as a debt due on simple contract, deducting after the rate of 20*l.* a year, for the maintenance of the apprentice during the time he lived with his master; and see 1 *Bott*, 563; 1 *Vern.* 460; *Bac. Abr. Mast. & Serv.* (E.) See *post*, 186, 187. Return of premium.

(*a*) The words in *Cro. Eliz.* 553, are these: Covenant lies against an executor in every case, although he be not named; unless it be on such a covenant as is to be performed by the person of the testator, which they cannot perform. *Hyde* v. *Dean of Windsor*, *Cro Elis.* 553.

DISSOLUTION BY BANKRUPTCY.

(4.) By Bankruptcy or Insolvency.

By bankruptcy of master.

The bankruptcy or insolvency of the master did not formerly, it seems, release him from his obligation to instruct and maintain the apprentice, or justify the apprentice in misbehaving or absenting himself; *Inhabitants of Buckington* v. *Inhabitants of St. Michael, Lebington*, 2 *Ld. Raym.* 1352; 1 *Stra.* 582, S. C.; 8 *Mod.* 235; and formerly an apprentice who had paid a premium, and whose master became bankrupt before the apprenticeship expired, could only come in as a creditor, and prove for a proportionate part of his apprentice fee; *Exparte Sandley*, 1 *Atk.* 149; although the commissioners instead of this usually recommended it to the creditors to allow him a gross sum out of the estate, in order to apprentice him to another master. *Barwell* v. *Ward*, 1 *Atk.* 259.

Return of premium. 6 Geo. 4, c. 16, s. 49.

But now by stat. 6 Geo. IV. c. 16, s. 49, "where any person shall be an apprentice to a bankrupt at the time of issuing of the commission against him, the issuing of such commission shall be and enure as a complete discharge of the indenture or indentures whereby such apprentice was bound to such bankrupt; and if any sum shall have been really and *bonâ fide* paid by or on the behalf of such apprentice to the bankrupt, as an apprentice fee, it shall be lawful for the commissioners, upon proof thereof, to order any sum to be paid to or for the use of such apprentice which they shall think reasonable, regard being had in estimating such sum to the amount of the sum so paid by or on behalf of such apprentice to the bankrupt, and to the time during which such apprentice shall have resided with the bankrupt previous to the issuing of the commission."

Where the apprentice fee was paid under an agreement for the apprenticeship, but from mere inattention no indenture had in fact been executed, it was held to be a case within the section of the statute. *Exparte Haynes*, 2 *Glyn & J.* 122.

Allowance for salary.

And by sect. 48 of the same statute, "where any bankrupt shall have been indebted at the time of issuing the commission against him, to any servant or clerk of such bankrupt, in respect of the wages or salary of such servant or clerk, it shall be lawful for the commissioners, upon proof thereof, to order so much as shall be so due as aforesaid, not exceeding six months' wages or salary, to be paid to such servant or clerk out of the estate of such bankrupt, and such servant or clerk shall be at liberty to prove under the commission for any sum not exceeding such last mentioned amount."

By discharge under Insolvent Act.

There are not, it appears, any provisions in the Insolvent Act which discharge an apprenticeship contract.

The 32 Geo. III. c. 57, s. 8, authorising the discharge, &c. of apprentices, where the master becomes insolvent, &c. only relates to *parish* apprentices. See *post*, 213.

(5.) By Misconduct.

By misconduct of master.

The misconduct of the *master* cannot of itself avoid an indenture of apprenticeship, and the only remedy at common law is by action on the indenture. We shall, however, hereafter see that it will be a ground for a magistrate's ordering it to be cancelled, *post*, sect. IX.

Of apprentice or parent.

It has been indeed said, that the misconduct of the apprentice or parent is a ground for the master's dissolving the indenture of apprenticeship; *Shepherd* v. *Maidstone*, 10 *Mod.* 144; but inasmuch as the covenants of each party are independent covenants, this doctrine seems very questionable, and cannot be supported. See *Winston* v. *Linn*, 1 *B & C.* 460; 2 *D. & R.* 465, S. C. *ante*, p. 172; also *Gray* v. *Cookson*, 16 *East*, 13; 1 *Roll. Ab.* 124; *Stra.* 227; 2 *Burr.* 773; 6 *B. & Cres.* 680.

It is clear that an apprentice cannot avoid his indenture by his own delinquency; *Gray* v. *Cookson*, 16 *East*, 13; which was an action of trespass against two justices, for committing an apprentice to the house of correction

under the authority of 20 Geo. II., *post*, 191, for running away. The indenture was for less than four years, and it was now insisted that it was a void indenture; but the Court of King's Bench were clearly of opinion, that such indentures were only voidable and not void, that under the circumstances of the case the apprentice attempted to avoid them only by taking advantage of his own misconduct, which misconduct was the subject of this *exparte* punishment. BY MISCONDUCT.

(6.) By Award or by Justices, &c.

By Award]—An apprenticeship may also be put an end to by means of a reference and award, as appears from the case of *Green* v. *Waring*, 1 *Bla. Rep.* 475. By award.

By Justices]—The contract may be determined by the magistrates, in consequence of an application to one of them, founded on gross misconduct on the part of the master or of the apprentice; but as this is only a part of the general jurisdiction of justices of the peace over apprentices, given to them by statute, it will be considered in the next section. By justices.

The Court of King's Bench cannot discharge the Indentures]—An apprentice had at the age of eighteen bound himself till twenty-five; after he was twenty-one years of age, he had, at the suit of his master, been committed upon a conviction before two magistrates, on 20 Geo. II. c. 19, for absenting himself from his service. The case of *M. A. Davis* was cited in support of a motion for a *habeas corpus* to bring up the apprentice. Upon the return to the writ, the conviction was set out, and upon the face of it there appeared no objection to have been made by the apprentice when before the magistrates, on the ground of his right of election to continue after he came of age. The court remanded him, the conviction appearing regular; and said that the Court of King's Bench had no authority to direct the discharge of the apprentice from his indentures, and that in *R.* v. *Davis* the report was mistaken in that respect. *Lawrence*, J. observed, that he did not know of a *habeas corpus* to discharge an apprentice from indentures, and he asked, how could this court undertake to discharge men from their covenants upon a *habeas corpus?* *Exparte Gill*, 7 *East*, 376; 1 *Bott*, 718. Jurisdiction of King's Bench.

It is to be observed, that in *Davis's case*, she was in the care or custody of some person, and that the *habeas corpus* was to bring her up to be discharged. 3 *Smith's Rep.* 372.

IX. Jurisdiction of Justices and Sessions in Disputes between Masters and Apprentices.

And herein of the Jurisdiction of Justices, 1st. In Apprenticeships in General; 2d. In Apprenticeships where not more than 25*l.* premium is paid. Justices jurisdiction in disputes.

(1.) Apprenticeships in General.

By the 5 Eliz. c. 4, s. 35, a single magistrate is constituted a *mediator* between the disputing parties; and if they submit to his decision, it will be binding; but if the *master* will not, the magistrate cannot settle the dispute, but must take a bond from the master to appear at the next sessions, at which four at least of the justices shall, if they think meet, discharge the apprentice from his apprenticeship, or punish the apprentice. So that the single magistrate has merely an authority to endeavour to settle the matter amicably between the parties; but in case of a disagreement by the master, the parties must resort to the sessions, who indeed may be applied to in the first instance. See 1 *Saund.* 316, n. As to apprenticeships in general.

The following is the enactment of the stat. 5 Eliz. c. 4, s. 35:—"If any such master shall misuse or evil intreat his apprentice, or that the said appren- Differences to be heard by one justice.

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the justice, if he see cause, may, by *consent* of the master, discharge the apprentice from his apprenticeship: but this must not be by a verbal discharge; for the apprentice being bound by deed, cannot be discharged but by deed, that is, by order under the hand and seal of the justice. *Dalt.* c. 58; 6 *Mod.* 182; 2 *Ld. Raym.* 1116, *ante*, 179.

Order of justice for discharge of apprentice must be by deed.

If for want of good Conformity in the Master]—The justice is a mere arbitrator, and if the *master* be dissatisfied, he may have the matter transferred to the sessions: but the like option is not given to the apprentice.

Appearance at sessions.

On his Appearance at Sessions]—The sessions may discharge the apprentice although the master does not appear, but not unless the master was summoned. *W. Ditton's case*, 2 *Salk.* 490. It was moved to quash an order made for the discharge of an apprentice. The question arose upon the clause of the statute which directs, that upon appearance of the master the apprentice may be discharged by four justices, after one justice out of sessions hath endeavoured to compose the matter in difference. And in this case it was objected that *Ditton* the master was bound over to appear, and did not; and the justices have but a limited jurisdiction, and it is expressly directed by the act that the discharge is to be made on the appearance of the master; besides, there is another remedy, to proceed on the recognizance which is forfeited by not appearing. By the court—The act must have a reasonable construction, so as not to permit the master to take advantage of his own obstinacy; and it would be very hard, that, supposing the master is profligate and runs away, the apprentice shall never be discharged.

Proceeding on recognizance for not appearing.

An order of sessions for discharging an apprentice has been quashed because it did not set forth that the master was summoned, or that he appeared. *R.* v. *Gill*, 1 *Stra.* 143; *R.* v. *Easman*, 2 *Stra.* 1013.

Discharge of apprenticeship at sessions.

Discharge of Apprenticeship at Sessions]—We have already seen, *ante*, 185, that an original jurisdiction is vested in the sessions, and that no previous complaint need have been made to a magistrate.

We have also seen, *ante*, 184, 185, the sessions have jurisdiction over the place where the master lives, although the apprentice is bound elsewhere.

The powers of the act can only be amended by a general and not a private sessions. *Anon. Skin.* 98; 1 *Bott*, 578, S. C.

As to the cause of discharge, see *ante*, 184, 185.

The intention of the act is, that as the justices may discharge the apprentice from his master for ill usage, so also they may discharge the master from the apprentice for evil and disorderly behaviour in the apprentice. *Hawksworth* v. *Hillary*, 1 *Saund.* 313, 314; *R.* v. *Duhammel*, *Skin.* 108.

Return of premium.

In *R.* v. *Johnson*, 1 *Salk.* 68, exception was taken to an order for discharging the apprentice that the justices had ordered money to be returned; but the court held the order good. And *Holt*, C. J. said he never doubted of that matter, for it is a power consequential upon their jurisdiction to discharge. The contrary was held in *R.* v. *Vandeleer*, 1 *Stra.* 69.

Nevertheless this doctrine of refunding seemeth now to be established, as founded on great reason, though not expressly mentioned in the act; for the justices being authorised to discharge according to their discretions, when the end of the apprenticeship cannot be attained with one person, it is but justice that the master should return part of the money he has received with his apprentice to place him out with a new master. 4 *Bac. Abr.* tit *Master and Servant*, 566, 567.

And in the case of *R.* v. *Amies* it was holden, that an order for the master to return money is good, though it be not averred that he had any with the apprentice; for the order being to return money is a necessary proof of the receipt of it; and the justices in their orders are not obliged to set forth all the steps they take in their proceedings, there being nothing in the act which makes it necessary; and there is a known and established distinction between orders and convictions. *R.* v. *Amies*, 4 *Bac. Abr.* 567; 2 *Barnard.* 244, 296; 1 *Bott*, 574; *et vide* 1 *Saund.* 313 a. n. (3.)

As to relief in equity, see 1 *Vern.* 460; 2 *Id.* 64; *Finch. Rep.* 396, *ante*, 181.

As to relief in case of bankruptcy, *ante*, 182.

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Hale v. *Webb*, T. 26 Geo. III., 2 *Bro.* 78, the plaintiff was bound apprentice to the defendant, with £200 premium. About a year after, the mother wished to have him discharged; which being consented to, and it being necessary the same authority should discharge which bound him, they went before the chamberlain, where an end was put to the contract. The bill prayed a return of part of the premium; but *Lloyd Kenyon*, Master of the Rolls, dismissed the bill. Suppose the discharge had been in consequence of gross misconduct, and the master had agreed to the dissolution, it would be a forfeiture of the premium.

Assigning over apprentice.

The justices have no power to assign over the apprentice to another. *R.* v. *Barnes*, 1 *Str.* 48; *Bac. Ab. Master & Servant*, (E.)

Order to receive apprentice.

The justices may order the master to *receive* the apprentice. *R.* v. *Barney*, *Comb.* 405.

Form and enrolment of orders.

Form of Order of Discharge]—The order made in session must be under the hands and seals of at least four of the justices. *R.* v. *Cateley*, *Carth.* 198.

The order must be according to the act enrolled with the clerk of the peace; and in a case where it was not so enrolled, it was held bad. *R.* v. *Hales Owen*, 1 *Stra.* 99.

Where the master is complained against, the order must set forth either that he appeared or that he was summoned and made default, or it will be quashed for the defect. *Ante*, p. 186.

The cause for the order must be duly set forth therein. 1 *Bott*, 577; 2 Stra. 1013. As to the grounds of the discharge, see *ante*, p. 184, 185.

Order, how far conclusive.

No case has occurred in which the settlement has depended upon the validity of such an order of discharge; the power of a quarter sessions over it when trying a question of settlement is therefore undecided; but it may perhaps be concluded from analogy to the proceedings of ecclesiastical courts, (4 *Co.* 29; *Carth.* 225; 11 *St. Trials*, 218, 222, 285); and admiralty courts, (3 *Bos. & Pul.* 499; 5 *East*, 155); that being a direct judgment upon the fact by a court not only of competent but exclusive jurisdiction, it is conclusive of the question between contending parishes, although they are not immediately parties to the sentence, unless it has been obtained by fraud, (*Amb.* 762); or appears altogether void. *Sir T. Raym.* 405; 8 *Term Rep.* 268; *Case of the Flud Oyen*, *ib.* 270, *n.* a; 1 *Rob. Adm. Rep.* 135.

On this ground, in the case *Ex parte Gill*, 7 *East*, 376, where upon a *habeas corpus* to bring up the body of an apprentice, the keeper of the house of correction returned, with the body of the party, a regular conviction of him by two magistrates, on the statute 20 Geo. II. c. 19, s. 10, *post*. 191, for a misdemeanor in absenting himself as an apprentice from his master's service; it was held to be no answer, to show by affidavit that the party had bound himself when an infant to serve till twenty-five, and that when he came of age he elected to avoid the indentures, after which the offence imputed had been committed; for this was proper matter to be shown to the magistrates below, who, if the matter shown were true, acted at their own peril in committing the party, but that the court had no power to discharge an apprentice from his indentures, and were bound, by the return of a regular conviction, where the objection did not appear on the face of the return, to remand the party. *Post*, Order, Vol. III.

Correction and punishment of apprentices.

Sessions shall cause due Correction and Punishment to be administered]—This being left indefinite, it seemeth most apposite that the justices commit the apprentice to the house of correction for a time to be kept to hard labour, or otherwise corrected as the nature of the offence may require.

This clause, however, does not restrain, but enlarges the power of magistrates (over apprentices) beyond the power given them over the masters; and the magistrates may inflict corporal punishment on or imprison the apprentice with hard labour in the house of correction, or else discharge him, at their discretion. *Hawkesworth* v. *Hillary*, 1 *Saund.* 313, 314.

Justices, &c. may issue a *capias* to

By 5 Eliz. c. 4, s. 47, "if any servant or apprentice of husbandry, or of any art, science, or occupation aforesaid, unlawfully depart (see *R.* v. *Ed-*

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apprehend an apprentice who shall run away from his master, and may imprison him until he give security for his good behaviour.

wards, 7 *T. R.* 745,) or flee into any other shire, it shall be lawful to the said justices of peace, and to the said mayors, bailiffs, and other head officers of cities and towns corporate, for the time being justices of peace there, to make and grant writs of *capias*, so many and such as shall be needful, to be directed to the sheriffs of the counties, or to other head officers of the places whither such servants or apprentices shall so depart or flee, to take their bodies, returnable before them at what time shall please them; so that if they come by such process, that they be put in prison till they shall find sufficient surety well and honestly to serve their masters, mistresses, or dames, from whom they so departed or fled, according to the order of the law." *Post*, Servants, Vol. V.

24 Geo. 2, c. 55.

And by 24 Geo. II. c. 55, s. 1, if a justice of any county, riding, &c. or place, shall issue a warrant against any person, and he shall escape into another county, riding, &c. any justice of such other county, riding, &c. shall upon proof on oath of the handwriting of such justice, granting the warrant, indorse his name thereon; and the constable or other person, on having the warrant so indorsed, may arrest him there, and carry him before a justice in such other county, &c. if the offence be bailable, to find bail, or else shall carry him back before a justice in the shire from whence the warrant did first issue. See *post*, Warrant, Vol. V.

By the same act, if a justice shall issue a warrant against such person and he shall escape into another shire, the constable or other person, on having the warrant indorsed by a justice of such other shire, may arrest him there, and carry him before a justice of such other shire, if the offence is bailable, to find bail, or else shall carry him back to a justice in the shire from whence the warrant did first issue.

(2.) Apprenticeship, where not more than Twenty-five pounds premium paid.

On complaint by apprentice, justices to summon master.

20 Geo. 2, c. 19;

1st. *Complaints against Masters*]—By stat. 20 Geo. II. c. 19, s. 3, it is enacted, "that it shall and may be lawful to and for any two or more such justices (*a*), upon any complaint (*b*) or application by any apprentice, put out by the parish, or any other apprentice, upon whose binding out no larger sum than 5*l.* [extended to 25*l.* by 4 Geo. 4, c. 29, s. 1,] of lawful British money was paid, touching or concerning any misusage, refusal of necessary provision, cruelty, or other ill-treatment of or toward such apprentice, by his or her master or mistress, to summon (*c*) such master or mistress to appear before such justices at a reasonable time to be named in such summons; and such justices shall and may examine into the matter of such complaint; and upon proof thereof made, upon oath, to their satisfaction, (whether the master or mistress be present or not, if service of the summons be also upon oath proved,) the said justices *may discharge* (*d*) *such apprentice*, by warrant or certificate under their hands and seals; for which warrant or certificate no fees shall be paid."

And may discharge apprentice.

Appeal.

Sect. 5 provides, "that if any person or persons shall think himself, herself, or themselves, aggrieved by such determination, order, or warrant of such justice or justices as aforesaid (save and except any order of commitment), he, she, or they may appeal to the next general quarter sessions of the peace to be held for the county, riding, liberty, city, town corporate, or place where such determination or order shall be made; which said next general quarter sessions is hereby empowered to hear and finally determine the same, and to give and award such costs to any of the respective persons, appellant or respondent, as the said sessions shall judge reasonable, not exceeding forty shillings; the same to be levied by distress and sale in manner before mentioned."

Certiorari.

Sect. 6 provides "that no writ of *certiorari*, or other process, shall issue or be issuable to remove any proceedings whatsoever, had in pursuance of this act, into any of his Majesty's courts of record at Westminster."

(*a*) See form, (No. 7), *post*.
(*b*) See form, (No. 7), *post*.
(*c*) See form, (No. 8), *post*.
(*d*) See form, (No. 9), *post*.

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By 33 Geo. III. c. 55, it is enacted, "that it shall and may be lawful for any two or more of his Majesty's justices of the peace, assembled at any special or petty sessions of the peace, upon complaint being made upon oath before them of any neglect of duty, or of any disobedience of any lawful warrant or order of any justice or justices of the peace by any constable, overseer of the poor, or other peace or parish officer, or upon complaint made to such two or more justices upon oath, by or on the behalf of any apprentice to any trade or business whatsoever, whether bound apprentice by any parish or township or otherwise, provided that not more than the sum of 10*l.* be paid upon the binding of such apprentice, against his or her master or mistress, of any ill-usage of such apprentice by such master or mistress, (such constable, overseer, or other officer, master or mistress, having been duly summoned to appear and answer such charge or complaint,) to impose upon conviction any reasonable fine or fines, not exceeding the sum of 40*s.*, upon such constable, overseer, or other officer, master or mistress respectively, as a punishment for such disobedience, neglect of duty, or ill-usage, and by warrant under the hands and seals of any two or more of such justices assembled, at any such special or petty sessions as aforesaid, to direct such fine or fines, if not paid, to be levied by distress and sale of the goods and chattels of the person or persons so offending, rendering the overplus (if any) after deducting the amount of such fine or fines, and the charges of such distress and sale, to such offender or offenders; and such fine or fines which may be imposed upon any such constable, overseer, or other officer as aforesaid, shall be applied and disposed of for the relief of the poor of the parish, township, or place, where the offenders shall respectively reside, at the discretion of the justices imposing the same, and such fine or fines, which may be imposed upon any such master or mistress, shall, at the discretion of the justices imposing the same, be either so applied and disposed of as aforesaid, or be otherwise paid and applied to or for the use and benefit of such apprentice, for or towards a recompense or compensation for the injury which may have been by him or her sustained by reason of such ill usage as aforesaid; and if any person shall be aggrieved by the imposition of such fine or fines as aforesaid, or by any order or warrant of distress for raising and levying the same, or by the judgment or determination of the said justices, or by any act to be done in the execution of such warrant of distress, such person or persons so aggrieved shall and may appeal to the next general or quarter-sessions of the peace to be held for the county, riding, or division, within which such person shall reside, of which appeal ten days' notice at the least shall be given; and for want of such distress, such person or persons shall be committed to the house of correction for any space of time not exceeding ten days."

Fine upon master for ill-usage. 33 Geo. 3, c. 55.

Appeal.

Sect. 2 provides, "that no person acting under any such warrant of distress as aforesaid shall be deemed a trespasser *ab initio*, by reason of any irregularity or informality in such warrant, or in any proceedings thereon, but any person aggrieved by the issuing or execution of such warrant may recover the special damages thereby by him or her sustained, in an action of trespass, or on the case, in any of his Majesty's courts of record."

Justices may order premium to be refunded. 4 Geo. 4, c. 29.

Stat. 4 Geo. IV. c. 29, intituled "An Act to increase the power of magistrates, in case of apprenticeships," sect. 2 enacts, "that from and after the 1st August, 1823, it shall and may be lawful for any two or more of his Majesty's justices of the peace, in any case where they shall direct any apprentice or apprentices to be discharged under and by virtue of the said recited acts, [stats. 20 Geo. II. c 19, and 33 Geo. III. c. 55,] or of this act, to take into consideration the circumstances under which such apprentice or apprentices shall be so discharged, and to make an order upon the master or mistress of such apprentice or apprentices to refund all or any part of the premium or premiums which may have been or shall be paid upon the binding or placing out of such apprentice or apprentices, as such justices in their discretion shall see fit; and in case any sum or sums of money which shall be so ordered to be refunded by such master or mistress, shall be neglected to be paid to the person or persons directed in any such order to receive the same, it shall and may be lawful for such two or more justices, in petty sessions, by warrant

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Distress.

under their hands and seals, to levy the same upon the goods and chattels of such master or mistress, with the costs and charges of levying such distress, rendering the overplus of the sale of such goods and chattels, upon demand, to such master or mistress; and in case there shall not be sufficient goods and chattels whereon to levy the same, then it shall and may be lawful for such justices to commit such offender or offenders to the house of correction, for any time not exceeding two months, unless the sum or sums ordered to be refunded, with all costs, shall be sooner paid and satisfied." And see 5 Geo. IV. c. 18; *post*, tit. Distress, Vol. I.

Recited acts to continue in force, except as herein altered.

Sect. 3 enacts "that the said recited acts and all and every the powers and provisions thereof (save and except such parts thereof as are varied, altered, or repealed), shall be as good, valid, and effectual for carrying this act into execution, as if the same had been repeated in this act."

Justices may order payment of wages to apprentices, provided the sum in question does not exceed 10*l.*
4 Geo. 4. c. 34.

By 4 Geo. IV. c. 34, s. 2, all complaints, differences, and disputes which shall arise between masters or mistresses and their apprentices, within the meaning of the said before recited acts, [20 Geo. II. c. 19, 6 Geo. III. c. 25, and 4 Geo. IV. c. 29,] or any of them, touching or concerning any wages which may be due to such apprentices, shall and may be determined by one or more justice or justices of the peace of the county or place where such apprentice or apprentices shall be employed, which said justice or justices is and are hereby empowered to examine on oath any such master or mistress, apprentice or apprentices, or any witness or witnesses, touching any such complaint, difference, or dispute, and to summon such master or mistress to appear before such justice or justices at a reasonable time, to be named in such summons, and to make such order for payment of so much wages to such apprentice or apprentices, as according to the terms of his, her, or their indentures of apprenticeship shall appear to such justice or justices, under all the circumstances of the case, to be justly due, (provided that the sum in question do not exceed 10*l.*), the amount of such wages to be paid within such period as the said justice or justices shall think proper, and shall order the same to be paid; and in case of refusal or nonpayment thereof, such justice and justices shall and may issue forth his and their warrant, to levy the same by distress and sale of goods and chattels of such master or mistress, rendering the overplus to the owners, after payment of the charges of such distress and sale.

How servants in husbandry, artificers, &c. shall recover their wages, in cases of absence of masters, &c. (a)

By sect. 4. "Whereas it frequently happens that such masters, mistresses, or employers reside at considerable distances from the parishes or places where their business is carried on, or are occasionally absent for long periods of time, either beyond the seas, or at considerable distances from such parishes or places, and during such residence or occasional absences entrust their business to the management and superintendence of stewards, agents, bailiffs, foremen, or managers, whereby such servants in husbandry, artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, labourers, or other persons and apprentices, are and may be subjected to great difficulties and hardships, and put to great expense in recovering their wages; be it therefore enacted, that in either of the said cases, it shall be lawful to and for any justice or justices of the county or place where such servant in husbandry, &c. or apprentice shall be employed, upon the complaint of any such servant, &c. concerning the nonpayment of his or her wages, to summon such steward, &c. to be and appear before him or them at a reasonable time, to be named in such summons, and to hear and determine the matter of the complaint in such and the like manner as complaints of the like nature against any master, mistress, or employer are directed to be heard and determined in and by this and the before recited acts, and also to make an order for the payment by such steward, &c. to such servant, &c. of so much wages as to such justice or justices shall appear to be justly due; provided that the sum in question do not exceed the sum of 10*l.*; and in case of refusal or nonpayment of any sum so ordered to be paid by such steward, agent, foreman, bailiff, or manager, for the space of twenty-one days from the date of such order, such justice or justices as aforesaid shall and may issue forth his

(a) See further, tit. Servants, Vol. V

or their warrant to levy the same by distress and sale of goods and chattels of such master, mistress, or employer, rendering the overplus to the owner or owners, or to such steward, &c. for the use of such master, mistress, or employer, after payment of the charges of such distresses and sale." And see stat. 5 Geo. IV. c. 19; *post*, **Distress**, Vol. I.; **Servants**, Vol. V.

WHERE PREMIUM NOT MORE THAN 25*l.*

Sect. 5 enacts, "that every justice or justices of the peace, before whom any complaint shall be made, in pursuance of the said stats. 20 Geo. II. c. 19, or 31 Geo. II. c. 11, shall and may order the amount of the wages that shall appear due to any servant in husbandry, artificers, labourers, or other person named in the said acts, or either of them, to be paid to the person entitled thereto, within such period as the said justice or justices shall think proper; and in case of refusal or nonpayment thereof, shall and may levy the same by distress and sale, in manner directed by the said first-mentioned act; and every order or determination of such justice or justices made under this act shall be final and conclusive, any thing in either of said acts contained to the contrary in anywise notwithstanding."

Justices may order payment of wages within such time as they may think fit.

By sect. 6, "nothing in this act contained shall extend to impeach or lessen the jurisdiction of the chamberlain of the city of London, or of any other court within the said city, touching apprentices."

Saving for jurisdictions in London.

2dly. *Complaints by the Master*]—By stat. 20 Geo. II. c. 19, s. 4, "it shall and may be lawful to and for such justices, upon application or complaint made (*a*) upon oath, by any master or mistress, against any such apprentice, [viz. against any apprentice put out by the parish, or any other apprentice upon whose binding out no larger sum than 5*l.* [extended to 25*l.* by stat. 4 Geo. IV. c. 29, s. 1,] was paid, [see s. 3, *ante*, p. 188,] touching or concerning any misdemeanor, miscarriage, or ill behaviour, in such his or her service, (which oath such justices are hereby empowered to administer,) to hear, examine, and determine (*b*) the same, and to punish the offender by commitment (*c*) to the house of correction, there to remain and be corrected, and held to hard labour for a reasonable time, not exceeding one calendar month, or otherwise by discharging (*d*) such apprentice in manner and form before-mentioned."

Complaints by masters.

As to appeals under this act, ante, 188.

The complaint must be made by the master, but it may be verified upon the oath of any other person, who knows the fact complained of. *Finley* v. *Jowle*, 12 *East's Rep.* 248. The plaintiff was an apprentice within the description of the stat. 20 Geo. II. c. 19, against whom his master, the defendant, had preferred a complaint in writing before two magistrates of the county of York; which complaint was verified *by the oath of a witness who spoke to the fact*, but *not* by the oath of the *master himself*: and the magistrates having discharged the defendant of his apprentice, the latter brought an action upon the indentures against his master, who justified under the magistrates' discharge: and at the trial, it was objected that the magistrates had no jurisdiction by the words of the act, the complaint not having been verified upon the oath of the master. But this was over-ruled, and there was a verdict for the defendant. Upon a motion for a new trial, *Lord Ellenborough*, C. J. said, the words of the act must be understood with reference to the subject-matter. The application or complaint must be made to the magistrates *by the master or mistress*, because they alone have an interest in preferring it: and it must be verified *upon oath*, but it need not be upon the oath of the master or mistress, who may know nothing of the fact themselves: the complaint may be well founded upon some cause which happened in their absence. But it is sufficient that the master makes the complaint and verifies it by the oath of the person who knows the fact; otherwise unless the fault were committed in the presence of the master, he would be without the remedy intended to be given by the legislature. *Per curiam*, Rule refused.

(*a*) See form, (No. 11), *post*.
(*b*) *Id.*
(*c*) See form, (No. 13), *post*.
(*d*) See form, (No. 14), *post*.

WHERE PREMIUM NOT MORE THAN 25*l.*

By stat. 4 Geo. IV. c. 34, intituled, "An Act to enlarge the powers of justices in determining complaints between masters and servants, and between masters, apprentices, artificers, and others," s. 1, after reciting the titles of stats. 20 Geo. II. c. 19, 6 Geo. III. c. 25, 4 Geo. IV. c. 29, and that it is expedient to extend the powers of the said acts, enacts, "that it shall be lawful, not only for any master or mistress, but also for his or her steward, manager, or agent, to make complaint upon oath against any apprentice, within the meaning of the said acts, to any justice of the peace of the county or place where such apprentice shall be employed, of or for any misdemeanor, misconduct, or ill behaviour of any such apprentice; or if such apprentice shall have absconded, it shall be lawful for any justice of peace of the county or place where such apprentice shall be found, or shall have been employed, and on complaint thereof made on oath by such master, mistress, steward, manager, or agent, which oath the said justice is hereby empowered to administer, to issue his warrant for apprehending every such apprentice; and further, to hear and determine the same complaint, and to punish the offender by abating the whole or any part of his or her wages, or otherwise by commitment to the house of correction, there to remain and be held to hard labour for a reasonable time not exceeding three months." See *post*, **Servants**, Vol. V.

Masters or their steward or agent may make complaint against apprentices. 4 Geo. 4, c. 34.

Justice may abate wages, or commit to house of correction.

Apprentice to serve beyond his term, for the time that he absented. 6 Geo. 3, c. 25.

By stat. 6 Geo. III. c. 25, s. 1, "if any apprentice (*a*) shall absent himself from his master's service before the term of his apprenticeship shall be expired, every such apprentice shall, at any time or times thereafter, whenever he shall be found," (so it be within seven years after the expiration of his term, s. 3), "be compelled to serve his said master for so long a time as he shall have so absented himself from such service, unless he shall make satisfaction to his master for the loss he shall have sustained by his absence from his service, and so from time to time, as often as any such apprentice shall, without leave of his master, absent himself from his service before the term of his contract shall be fulfilled: and in case any such apprentice shall refuse to serve as hereby required, or to make such satisfaction to his master, such master may complain upon oath to any justice of the peace of the county or place where he shall reside, which oath such justice is hereby empowered to administer, and to issue a warrant under his hand and seal for apprehending any such apprentice; and such justice, upon hearing the complaint, may determine what satisfaction shall be made to such master by such apprentice. And in case such apprentice shall not give security to make satisfaction according to such determination, it shall and may be lawful for such justice to commit every such apprentice to the house of correction for any time not exceeding three months."

Appeal.

By sect. 5, persons aggrieved by such determination, order, or warrant of the justice (except an order of commitment) may appeal to the next sessions, giving six days' notice to the justice and to the parties, of his intention of bringing such appeal, and of the cause and manner thereof, and entering into recognizance, within three days after such notice, before a justice, with sufficient surety, to try the appeal at and to abide the order or judgment of and pay such costs as shall be awarded by the justices at such sessions; which said justices, at their said sessions, on proof of such notice given, and of entering into such recognizance, shall hear and determine the appeal, and give such relief and costs to either party, as they shall adjudge reasonable. And their judgments and orders shall be final and conclusive to all parties concerned.

Exceptions.

Sect. 6. Provided that nothing herein shall extend to the stannaries in Devon or Cornwall; or to impeach or lessen the jurisdiction of the chamberlain of London, or of any other court within the said city, touching apprentices; sect. 2, nor to any apprentice, whose master shall have received with him the sum of 10*l.*

Remedy is cumulative.

The remedy given by sect. 1 of this latter statute of the 6 Geo. III. c. 25, which empowers the justices to oblige apprentices absenting themselves before the expiration of their apprenticeships, to serve for such time as they

(*a*) See exceptions, *infra*, section 6.

shall be absent, or to make satisfaction for their absence, or in default of giving security for such satisfaction, to commit them, is cumulative, and does not repeal the penal provision of stat. 20 Geo. II. c. 19, s. 4, as applied to the misdemeanor. *Gray* v. *Cookson and Clayton*, 16 *East*, 13, *ante*, p. 182, 183.

SETTING UP TRADES, &c.

(3.) Parish Apprentices.

As to the power of magistrates to settle differences as to parish apprentices, see *post*, 210 to 217.

X. Setting up Trades, &c.

By the common law no man may be prohibited to work in any lawful trade, or to use more trades than one, at his pleasure. *Ipswich Taylors' case*, 11 *Rep.* 53 b.

No one prohibited at common law.

And he may do so in any place unless there be a *custom* to the contrary; and if there be such a custom then a bye-law in restraint of trade, warranted by such a custom, will be good; but if there be no such custom a bye-law in restraint of trade will be bad. See *Clark* v. *Le Cren*, 9 *B. & C.* 52, and cases there cited.

By stat. 5 Eliz. c. 4, s. 31, every person was restrained from setting up, occupying, using, or exercising any craft, mystery, or occupation, then used or occupied within England or Wales, except he should have been brought up therein seven years at least as an apprentice, on pain of 40s. a month.

But were so by 5 Eliz. c. 4.

But by stat. 54 Geo. III. c. 96, intituled, "An Act to amend an act passed in the fifth year of Queen Elizabeth, intituled 'An Act containing divers orders for artificers, labourers, servants of husbandry, and apprentices,'" reciting that "whereas by an act passed in the fifth year of the reign of her late Majesty Queen Elizabeth, intituled, 'An Act containing divers orders for artificers, labourers, servants of husbandry, and apprentices,' it was enacted, that from and after the first day of May then next coming, it should not be lawful to any person or persons, other than such as did then lawfully use or exercise any art, mystery, or manual occupation, to set up, occupy, use, or exercise any craft, mystery, or occupation, then used or occupied within the realm of England or Wales, except he shall have been brought up therein seven years at least as an apprentice; nor to set any person on work in such mystery, art, or occupation, being not a workman at that day, except he shall have been apprentice as aforesaid, or else having served as an apprentice as aforesaid, shall become a journeyman, or hired by the year, upon pain that every person willingly offending, or doing the contrary, shall forfeit and lose for every default 40s. for every month: and whereas it is expedient that so much of the said act should be repealed;" it is "enacted, that so much of the said recited act shall be, and the same is hereby repealed, and declared to be null and void to all intents and purposes whatsoever."

That act repealed by 54 G. 3, c. 96.

Sect. 4. "Provided always, and be it further enacted, that this act, or any thing herein contained, shall not extend, or be construed to extend, to defeat, alter, or prejudice the custom and order of the city of London concerning apprentices, or the ancient custom, usages, privileges, or franchises of the said city, or of any other city, town, corporation, or company lawfully constituted, or the citizens and freemen thereof; or any bye-law or regulation of any corporation or company lawfully constituted."

Customs of London, &c. in respect to apprentices, not to be affected.

By this act of 54 Geo. III. it will be seen that the necessity for a party's serving an apprenticeship to a trade before exercising a trade, as required by the 5 Eliz. c. 4, no longer exists as to the kingdom in general, and must be governed merely by the local customs and bye-laws of the particular corporated towns and other places wherein the party proposes to set up his trade. See the various decisions as to what trades were within the repealed provisions of the statute of Eliz.; what was a using of a trade within it; what kind of service was sufficient; what was an illegal appointment of a journeyman;

SETTING UP TRADES, &c.

and the modes of proceeding for penalties; *Chit. Law App.* 112 to 138. They may be useful in ascertaining what is a breach of a local custom.

Silk throwers. 13 & 14 Car. 2, c. 15.

By the 13 & 14 Car. II. c. 15, s. 2, which seems still in force, (*post*, Silks, Vol. V.) an apprenticeship of seven years must be served before a party can exercise the trade of a silk thrower.

Soldiers, mariners, &c. enabled to exercise trades. 56 Geo. 3, c. 67.

Soldiers, &c.]—By stat. 56 Geo. III. c. 67, intituled, "An act to enable such officers, mariners, and soldiers, as have been in the land or sea service, or in the marines, or in the militia, or any corps of fencible men, since the forty-second year of his present Majesty's reign, to exercise trades," after reciting, that "whereas there have been and are divers officers, mariners, soldiers, and marines, who have served his Majesty in the late wars by sea and land, some of whom are men that used trades, others that were apprentices to trades, who have not served out their times, and others who, by their own industry, have made themselves apt and fit for trades; many of whom, the wars being now ended, would willingly employ themselves in those trades which they were formerly accustomed to, or which they are apt or able to follow and make use of for getting their living by their own labour, but are or may be hindered from exercising those trades in certain cities and corporations, and other places within this kingdom, because of certain bye-laws and customs of those places;" it is enacted, "that all such officers, mariners, soldiers, and marines, as have been at any time employed in the service of his Majesty since the 22d June, 1802, and have not since deserted the said service, and also the wives and children of such officers, &c. may set up and exercise such trades as they are apt and able for in any city, town, or place within this kingdom, without any let, suit, or molestation of any person or persons whatsoever, for or by reason of the using of such trade, nor shall such officers, &c. or their wives or children, during the time they shall exercise such trades, be removable from such respective place or places, to his, her, or their last legal place of settlement by virtue of any law now in being relative to the settlement of the poor, until such person or persons shall become actually chargeable to such parish or place; and if any such officer, &c. or the wife or any child of any such officer, &c. shall be sued, impleaded, or indicted in any court soever within this kingdom for using or exercising any such trades as aforesaid, then the said officer, &c. or the wife or child of any such officer, &c. making it appear to the same court where they are so sued, impleaded, or indicted, that they have served his Majesty as aforesaid, or that he, she, or they is or are the wife or wives, child or children of such officer, &c. who shall have so served his Majesty, shall, upon the general issue pleaded, be found not guilty in any plaint, bill, information, or indictment exhibited against them; and such person or persons who, notwithstanding this act, shall prosecute the said suit by bill, plaint, information, or indictment, and shall have a verdict passed against him or them, or become nonsuit therein, or discontinue his or their said suit, shall pay unto such officer, &c. or the wife or child of such officer, &c. respectively, double costs of suit, to be recovered as any other costs at common law may be recovered; and all judges and jurors before whom any such suit, information, or indictment shall be brought, and all other persons whatsoever, are to take notice of this present act, and shall conform themselves thereto; any statute, &c. to the contrary in anywise notwithstanding.

Officers, mariners, soldiers, and marines, who have been employed in his Majesty's service since June 22d, 1802, and have not since deserted, and also the wives and children of such, may set up and exercise trades in any part of this kingdom, and shall not be liable to removal from thence to their last legal settlement, till they become actually chargeable to the parish;

and if sued, on pleading the general issue, they shall be acquitted, and be paid double costs of suit.

When any two justices shall summon such persons to give evidence as to the place of settlement, they shall make oath accordingly; an attested copy whereof shall be given them.

By sect. 2, it is further enacted, "that it shall be lawful for any two or more justices of peace for the county, city, town, or place where any such officer, &c. shall set up and exercise any trade as aforesaid, to cause such mariner, soldier, or marine, to be summoned before them in the city, town, or place where such officer, &c. shall set up and exercise such trade as aforesaid, in order to make oath of the place of his last legal settlement, which oath the said justices are hereby empowered to administer, and such officer, &c. is hereby directed to obey such summons, and to make oath accordingly; and such justices are hereby required to give an attested copy of such affidavit so made before them to the person making the same, in order that he may produce it when required; which attested copy shall at any time be

admitted as evidence as to such last legal settlement before any of his Majesty's justices at any general or quarter sessions of the peace: provided always, that in case any such officer, &c. shall be again summoned to make oath as aforesaid, then on such attested copy of the oath by him formerly taken being produced by him, or by any other person on his behalf, such officer, &c. shall not be obliged to take any other or further oath with regard to his legal settlement, but shall leave a copy of such attested copy of his examination, if required."

This act extends to militia men and fencibles who have served five years.

Sect. 3 enacts, "that this act, and every part thereof, shall extend to all officers and soldiers who have personally served in the militia, or any of the fencible regiments, from the said 22d June, 1802, for the term of five years, and have been honourably discharged."

Privileges of the two Universities reserved.

Sect. 4. "Provided always, that this act shall not be in anywise prejudicial to the privileges of the Universities of Cambridge and Oxford, or either of them, or extend to give liberty to any person to set up the trade of a vintner, or to sell any wine or other liquors within the said Universities, without license first had and obtained from the vice-chancellor of the same respectively."

XI. Of obtaining a Freedom under a Bye-Law.

Freedom of a town corporate.

Wherever, by the *custom* of any town, borough, &c. the serving an apprenticeship entitles the party to his *freedom*, the proper officer refusing to admit him, without sufficient cause, may be compelled to do so by a *mandamus*; *Townsend's Case*, 1 *Lev.* 91; 1 *Sid.* 107, S. C.; 2 *Show.* 154; and by the 12 Geo. III. c. 21, it is enacted, "that where any person entitled to his freedom shall apply to the mayor, &c. to be admitted, giving notice, and specifying the nature of his claim, and such officer shall not admit him within a month afterwards, a *mandamus* shall go, and if he be admitted, such officer shall pay costs."

12 Geo. 3, c. 21.

Where to a *mandamus* to the mayor of Oxford, to admit a person to be free of that city, who had served seven years apprenticeship, it was returned, that he put himself apprentice seven years, according to the custom, and that he covenanted to serve seven years, and not to marry within the time; and that within the first two years he married, and so broke his covenant; and that his master accepted of him to serve for the residue of the time; which he did, but not as an apprentice, but rather as a journeyman; though it was urged, that by his breach of covenant he lost his right of freedom, yet the court held the contrary; and that though an action of covenant might lie, yet that it was no loss of his freedom, and therefore awarded a peremptory *mandamus* to admit him. 1 *Lev.* 91; *Sid.* 107.

So, where a *mandamus* to the mayor of Lincoln, to admit A. to his freedom, he having served an apprenticeship there, the mayor returned, that A. (being a quaker,) refused to take the usual oath, according to the custom of the said city, but offered to make the solemn affirmation and declaration required by the statute, the court held this sufficient to entitle him to his freedom, within the statute 7 & 8 Will. III. c. 34; *R.* v. *Mayor of Lincoln*, 5 *Mod.* 403; *Carth.* 448; 12 *Mod.* 190; but it should seem, that if, by the custom of the corporation, a party is not entitled to his freedom, unless he has served as an apprentice to a freeman, resident in the borough, the non-compliance with such custom would be a sufficient return to a *mandamus*. *Rex* v. *Marshall*, 2 *T. R.* 2.

In general, freemen of corporate towns, who take apprentices, covenant to make their apprentices free at the end of their time, which they must perform accordingly.

The title of a freeman is not conferred under a bye-law of a corporation by the party's serving an apprenticeship at another place, unless the trade was subservient to the trade of the town in which the master resided. *Rex* v. *Mayor of Cambridge*, 2 *Chit. R.* 144.

An articled clerk to an attorney is not such an apprentice as to entitle him

OBTAINING FREEDOM.

to the freedom of a corporation, as by *apprenticeship* to a freeman, being a *trader*. *R.* v. *Mayor, &c. Doncaster*, 1 *M. & R. Mag. Ca.* 213.

When an apprentice bound for seven years to A. served him in his house between five and six years, and afterwards, for the remainder of the term, resided in his mother's house, having agreed with his master that he should be at liberty to work for whom he pleased, he paying 2*s.* per week to his master. The master also, during this time, occasionally gave him work, for which he was not paid. Held, that this was not a continuance of the service to A. for seven years under the indenture. *R.* v. *Inman*, 4 *B. & A.* 55.

We have already seen that by common law any person may carry on any trade in any place unless there be a custom to the contrary, and if there be such a custom, then a bye-law in restraint of trade, warranted by such custom, will be good; but if there be no such custom, a bye-law in restraint of trade will be bad. *Clark* v. *Le Cren*, 9 *B. & Cres.* 52; *Harrison* v. *Goodman*, 1 *Burr.* 12; *R.* v. *Harrison*, 3 *Burr.* 1322; 1 *Stra.* 675; *Clarke* v. *Compton*, 7 *D. & R.* 597; and see 4 *B. & Cres.* 438; *ante*, 193.

A bye-law for *the regulation* of trade is good. *Id.*

PARISH APPRENTICES.

Object of parish apprenticeships.

In the establishment of parish apprentices the legislature does not appear even to have had in view the instruction of youth or to fit them for any trade or useful occupation; it is a misapplication of terms to call the parties bound an "apprentice;" there is not even a direction to or covenant by the master to afford the party bound any instruction; the whole of that part of the system is literally a mere parochial billet of youth, compelling clergymen, gentlemen, farmers and traders to quarter and support a part of the poor, and to receive under their own roofs persons, however obnoxious to them, in aid of the parish funds. See the legislative declaration in 32 Geo. III. c. 57, s. 7, *Chit. App.* 21; *sed vid.* Lord *Kenyon's* observations in 2 *T. R.* 726; 3 *T. R.* 380; in favour of the stat. 43 Eliz. c. 2.

The statute of Eliz. was certainly never passed with a view to *settlements*.

We will consider the law relative to *parish* apprentices:—

Division of subject.

1*st.* *As respects the Binding of them in general, and the Statutes relating thereto*, 196 to 203.

2*d.* *Who are to be bound*, 203.

3*d.* *Who compellable to take and how compellable*, 203 to 205.

4*th.* *The Term and Mode of Binding*, 205 to 210.

5*th.* *The Assignment and Discharge of, and Settling Disputes as to them*, 210 *to* 217.

6*th.* *The Registry of*, 217.

I. Binding of Parish Apprentices, Statutes as to.

Power to bind. 43 Eliz. c. 2.

By stat. 43 Eliz. c. 2, s. 5, the churchwardens and overseers, or the greater part of them, by the assent of two justices, one of whom must be of the quorum (*a*), may bind any such children, whose parents they shall judge not able to maintain them, to be apprentices where they shall see convenient, till

Who to be bound.

such man child shall come to the age of 24, [now by 18 Geo. III. c. 47, to 21 years,] and such woman child to the age of 21 or marriage; the same to be as effectual to all purposes as if such child were of full age, and by indenture of covenant bound him or herself.

By 56 Geo. III. c. 139, s. 7, *post*, 199, the infant must have attained 9 years.

8 & 9 Wil. c. 30.

By stat. 8 & 9 Wil. III. c. 30, s. 5, reciting stat. 43 Eliz. c. 2, s. 5, "but there being doubts whether the persons to whom such children are to be

(*a*) *R.* v. *Woolstanton*, 2 *Stra.* 1110; *post*, 206, 207.

BINDING OF, STATUTES AS TO.

bound, are compellable to receive such children as apprentices, that law hath failed of its due execution;" it is enacted and declared, "That where any poor children shall be appointed to be bound apprentices pursuant to the said act, the person or persons, to whom they are so appointed to be bound, shall receive and provide for them, according to the indenture signed and confirmed by the two justices of the peace, and also execute the other part of the said indentures; and if he or she shall refuse so to do (*a*), oath being thereof made by one of the churchwardens or overseers of the poor, before any two of the justices of the peace for that county, liberty, or riding (*b*), he or she for every such offence shall forfeit the sum of £10, to be levied by distress and sale of the goods of any such offender, by warrant (*c*) under the hands and seals of the said justices, the same to be applied to the use of the poor of that parish or place where such offence was committed; saving always to the person, to whom any poor child shall be appointed to be bound an apprentice as aforesaid, if he or she shall think themselves aggrieved thereby, his or her appeal to the next general or quarter sessions of the peace for that county or riding, whose order therein shall be final, and conclude all parties."

Poor children bound apprentices pursuant to 43 Eliz. c. 2, master to provide for them according to indenture signed by justices, &c.

Penalty for refusal.

Masters may appeal.

The annual Mutiny Act usually enacts, that no officer of his Majesty's forces, residing in barracks or elsewhere under military law, shall be deemed liable to have any parish poor child bound apprentice to him; but that every such officer shall be wholly exempt from taking or receiving, or from having bound to him any such child as an apprentice, any law, statute or usage to the contrary notwithstanding.

Military officers not liable to have parish poor apprenticed to them.

By stat. 32 Geo. III. c. 57, s. 12, "where any parish apprentice shall have been so discharged from any master or mistress as aforesaid under and by virtue of the said last mentioned act, and such master and mistress shall have been convicted of such offence, in consequence of such prosecution by indictment as aforesaid, or shall have been found guilty thereof in any action brought at the suit of the party injured, it shall not be lawful for the churchwardens and overseers of the poor of any parish or place, or the major part of them, to bind any other apprentice upon such person; but that whenever such person ought or would be compellable to take a parish apprentice, it shall and may be lawful for any two justices of the peace of the county, city, town, riding, division or place where such person shall reside, upon application made to them by the churchwardens and overseers of the poor of such parish or place, to order and direct that such person shall pay into the hands of such churchwardens and overseers of the poor, some or one of them, a sum not exceeding the sum of 10*l.* nor less than 5*l.* for the purpose of binding out the child (intended to be bound) an apprentice, with the approbation of such two justices; and in case such person shall refuse to pay such sum as aforesaid, then that it shall and may be lawful for such two justices, by warrant under their hands and seals, to levy the same by distress and sale of the goods and chattels of such person, together with the reasonable expenses of such distress."

Master having been convicted of misusing his apprentice, not to have another put upon him, but to pay not exceeding 10*l.* nor less than 5*l.* 32 Geo. 3, c. 57.

By stat. 56 Geo. III. c. 139, passed to regulate the binding of *parish* apprentices, [7 *B. & Cres.* 569, 10 *Id.* 12], intituled "An Act to regulate the *binding of* Parish Apprentices," after reciting, s. 1, that "whereas many grievances have arisen from the binding of poor children as apprentices by parish officers to improper persons, and to persons residing at a distance from the parishes to which such poor children belong, whereby the said parish officers and the parents of such children are deprived of the opportunity of knowing the manner in which such children are treated, and the parents and children have in many instances become estranged from each other; and also from the permission given to apprentices, by the persons to whom such apprentices have been bound, to serve others without a formal assignment, whereby the discretion to be exercised by magistrates in placing out apprentices to suitable

How parish apprentices to be bound. 56 Geo. 3, c. 139.

(*a*) As to the liability, if the party take another apprentice when it comes to his turn again, after having paid the penalty, for a refusal under this act, see *post*, 205.

(*b*) See form, (No. 25), *post*.

(*c*) See form, (No. 26), *post*.

BINDING OF, STATUTES AS TO.

56 Geo. 3. c. 139. Child to be first carried before two justices of peace;

who are to enquire whether intended master resides within a reasonable distance; and into other circumstances.

persons is frequently rendered of no avail; for remedy whereof it is enacted, that from and after the 1st day of October, 1816, before any child shall be bound apprentice by the overseers of the poor of any parish, township, or place, such child shall be carried before two justices of the peace of the county, riding, division, or place wherein such parish, township, or place shall be situate, who shall inquire into the propriety of binding such child apprentice to the person or persons to whom it shall be proposed by such overseers to bind such child; and such justices shall particularly inquire and consider whether such person or persons reside, or have his, her, or their place or places of business within a reasonable distance from the place to which such child shall belong, having regard to the means of communication between such places, or whether any circumstances shall make it fit, in the judgment of such justices, that such child should be placed apprentice at a greater distance; and if the father or mother of such child shall be living, and shall reside in or near the place to which such child shall belong, such justices shall (if they see fit) examine such father or mother, or either of them, and shall particularly inquire as to the distance of the residence or place of business of the person or persons to whom it shall be proposed to place such child, and the means of communication therewith; and such justices shall also inquire into the circumstances and character of such person or persons; and if such justices shall, upon such examination and inquiry, think it proper that such child should be bound apprentice to such person or persons, such justices shall make an order (*a*), declaring that such person or persons is or are fit person or persons to whom such child may be properly bound as apprentice, and shall thereupon order that the overseer or overseers (*b*) of the place, to which such child shall belong, shall be at liberty to bind such child apprentice accordingly; which order shall be delivered to such overseer or overseers as the warrant for binding such child apprentice as aforesaid; and such order shall be referred to by the date thereof, and the names of the said justices, in the indenture of apprenticeship of such child (*c*); and after such order shall have been made, such justices shall sign their allowance of such indenture of apprenticeship, before the same shall be executed by any of the other parties thereto; provided always, that no such child shall be bound apprentice to any person or persons residing or having any establishment in trade, at which it is intended that such child shall be employed, out of the same county, at a greater distance than forty miles from the parish or place to which such child shall belong, unless such child shall belong to some parish or place which shall be more than forty miles from the city of London, in which case it shall be lawful for the justices who shall authorise the apprenticing of such child to make a special order (*d*) for that purpose, in which order such justices shall distinctly specify the grounds on which they shall think fit to allow of the apprenticing of such child to a person or persons residing, or having an establishment in trade, at a greater distance than forty miles from the parish or place to which such child shall belong."

Justices may examine parents as to distance, &c.

Character and circumstances of master.

Justices to make order that overseers may bind, &c.

Order to be referred to in indenture and signed by justices before execution of indenture.

No child to be bound beyond 40 miles out of county, unless child's parish be more than 40 miles from London.

Special grounds for allowing to be stated by justices.

Sect. 2. "In all cases where the residence or establishment of business of the person or persons to whom any child shall be bound, shall be within a different county or jurisdiction of the peace from that within which the place by the officers whereof such child shall be bound shall be situated, and in all other cases where the justices of the peace for the district or place within which the place by the officers whereof such child shall be bound shall be situated, and who shall sign the allowance of the indenture (*e*) by which such child shall be bound, shall not have jurisdiction, every indenture by which such child shall be bound at any time after the said first day of October shall be allowed as well by two justices of the peace for the county or district within which the place by the officers of which such child shall be

Indenture to be allowed by two justices of county or jurisdiction into which apprentice is to be bound, as well by two justices of the county or jurisdiction from which he is bound.

(*a*) See form, (No. 18), *post*.
(*b*) *R.* v. *Fairfax*, 3 *Mod.* 269, *post*, 205.
(*c*) See *R.* v. *Bawbergh*, 2 *B.* & *C.* 222; 3 *D.* & *R.* 338, S.C. *post*, 206.
(*d*) See form, (No. 21), *post*.
(*e*) See form, (No. 22), *post*.

bound shall be situated, as by two justices of the peace for the county or district within which the place shall be situated wherein such child shall be intended to serve (*a*): provided always, that no indenture shall be allowed by any justice of the peace for the county into which such child shall be bound, who shall be engaged in the same business, employment, or manufacture in which the person to whom such child shall be bound is engaged; and notice (*b*) shall be given to the overseers of the poor of the parish or place in which such child shall be intended to serve an apprenticeship before any justice of the peace for the county or district, within which such parish or place shall be, shall allow such indenture; and such notice shall be proved before such justice shall sign such indenture, unless one of such overseers shall attend such justice, and admit such notice."

56 Geo. 3, c. 139.

Notices to overseers.

Sect. 3. Provided, "that the allowance of two justices of the peace for the county within which the place in which such child shall be intended to serve an apprenticeship shall be situated, shall be valid and effectual, although such place may be situated in a town or liberty within which any other justices of the peace may in other respects have an exclusive jurisdiction."

The allowance by county magistrates to be valid in towns and places having exclusive jurisdiction.

Sect. 4. "And whereas there are several cities and boroughs which are counties of themselves, and several districts situated without the limits of the county to which such districts respectively belong, be it enacted, that the distance to which parish apprentices may be bound shall not be construed to be limited to such cities and boroughs being counties, but shall extend to the county in which any such city and borough, and any such district, though belonging to another county, shall be locally situated."

Distance to which apprentices may be bound not to be limited to cities which are counties of themselves.

Sect. 5. "No settlement shall be gained by any child who shall be bound by the officers of any parish, township, or place, by reason of such apprenticeship, unless such order shall be made and such allowances of such indenture of apprenticeship shall be signed as hereinbefore directed." (*c*)

No settlement to be gained unless directions complied with.

Sect. 6. "In case any overseer or overseers shall bind an apprentice to any person or persons without having obtained such order and such allowances as hereinbefore required, and in case any person or persons shall receive any such apprentice as so bound without such order and allowances having been first obtained, the said overseer or overseers, and the said person or persons, shall each respectively forfeit the sum of £10 for each apprentice so bound, to be recovered as the penalties hereinafter given are directed to be recovered."

Penalty on overseers binding apprentices contrary hereto.

Sect. 7. "After the said first day of October it shall not be lawful for any parish officers to bind out any child as parish apprentice until such child shall have attained the age of nine years, any thing in any act or acts of parliament to the contrary notwithstanding."

Children not to be bound until nine years old.

In R. v. *St. Paul's, Exeter*, 10 *B. & Cres.* 12, it was considered that the first ten sections of this act of 54 Geo. III. apply to parish apprenticeships where the parish officers are parties to the indenture, and that the 11th section applies to parish apprentices where the parish officers are not parties to the indenture. See the case fully noticed, *post*, 209, 210.

Sect. 11. "And whereas the salutary provisions enacted by an act passed in the 43d year of the reign of her Majesty Queen Elizabeth, intituled, An Act for the relief of the poor, are frequently evaded in the binding out of poor children, and the premium of apprenticeship, or a part thereof, is clandestinely provided by parish officers, who are thus enabled to bind out such poor children without the sanction of justices of the peace, be it further enacted, that after the said first day of October no indenture of apprenticeship (*d*) by reason of which any expense whatever shall at any time be incurred by the

Indentures not valid unless approved by two justices.

(*a*) See *R.* v. *Shipton*, 8 *B. & C.* 772; *post*, 209.

(*b*) *R.* v. *Newark-upon-Trent*, 3 *B. & C.* 59; *post*, 205, 206.

(*c*) See *post*, 208, 209.

(*d*) In *R.* v. *St. Paul's, Exeter*, 10 *B. & Cres.* 12, it was considered that this cause did not apply to parish apprentices where the parish officers are parties to the indenture, *post*, 209, 210.

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public parochial funds (*a*), shall be valid and effectual, unless approved of b two justices of the peace, under their hands and seals (*b*), according to th provisions of the said act and of this act." (*c*)

56 Geo. 3, c. 139. Penalties may be recovered by information, &c.

Sect. 12. "All penalties and forfeitures hereby imposed for any offenc against this act shall and may be recovered by information before any tw justices of the peace of the county or district where such offence shall b committed."

Justices empowered to dispose of penalties.

Sect. 13. "It shall and may be lawful to and for the justices before whon any such penalty shall be recovered, to direct such penalty, after deductin the necessary costs and charges attending any information and the proceed ings thereon, to be paid, applied, and distributed either to the person o persons giving information of the offence for which such penalty shall b incurred, or to the overseer of the poor of the parish or township in whic such offence shall have been committed, or by the officers whereof such ap prentice shall have been bound, for the use of the poor of such parish o township, or in the binding of the apprentice respecting whom such offenc shall be committed, to any other person, or to be distributed and applied fo any one or more of such purposes as to such justices shall seem meet."

Recovery of penalties.

Sect. 14. "In case of non-payment of any penalty hereby imposed, th same shall be levied by distress and sale of the offender's goods and chattels by warrant under the hands and seals of the justices before whom such of fender shall have been convicted, or of any other two justices of the peace o the same county or district; and for want of such distress, such offende shall be committed to the common gaol or house of correction for any perio not less than one, nor more than six months, to be appointed by the justice before whom such offender shall be convicted."

Form of conviction.

Sect. 15. "The conviction of all offences against this act shall be in th form following." (*d*)

Persons not paying penalty may be imprisoned.

Sect. 16. "In case any person convicted for any offence against this ac shall not pay the penalty imposed by such conviction within one calenda month next after such conviction shall take place, it shall be lawful to an for the justices making such conviction, or for any two other justices of th county or district, to issue their warrant for the apprehending and imprison ing of such offender, notwithstanding such offender may have goods o chattels whereby such penalty might have been levied."

Appeal allowed.

Sect. 17. "Any person or persons who shall be dissatisfied with any ac done by any justice or justices of the peace in the execution of this act, may appeal against the same to any court or general or quarter sessions to be holden for the county within which such act shall have been done, within three calendar months after the fact so complained of, upon giving notice in writing to such justice or justices, and also to the person or persons who shall be interested in such appeal, within twenty-one days next after the act so appealed against shall have taken place; and in case such appeal shall be against any conviction, entering into a recognizance with two sufficient sureties before any justice of the peace of the county or district within which such conviction shall have taken place, to appear at such general or quarter session to abide the judgment of the court upon such appeal, and to pay the costs which may be awarded thereon; and that it shall and may be lawful to and for the justices at such sessions to hear and determine the matter of such appeal, and to award costs therein as they in their discretion shall think fit; and all such appeals shall be to the sessions of the county within which the act appealed against shall have taken place, and not to any district or liberty within the same."

Churchwardens included in meaning of act.

Sect. 18. "The provisions and penalties herein contained respecting overseers of the poor shall be deemed to extend to all churchwardens having the

(*a*) What is a payment out of parish funds, *R.* v. *Mattishall*, 8 *B. & Cres.* 703; and see 7 *B. & Cres.* 563; 1 *M. & R.* 458, S. C.; *ante*, 163.

(*b*) The sealing is requisite or the indenture will be void, see *R.* v. *Stoke Damerel*, 7 *B. & Cres.* 563; 1 *M. & R.* 458, S. C.; 10 *B. & Cres.* 12; *ante*, 163.

(*c*) See form, (No. 20), *post*.

(*d*) See form, (No. 24), *post*.

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power and authority of overseers of the poor; and that all the provisions herein mentioned and contained respecting any parish or place shall extend to any incorporated or other district for the maintenance of the poor; and that the officers of any such district having power to bind apprentices, shall be subject to all the rules, regulations, and penalties herein mentioned and contained respecting overseers of the poor."

Incorporated and other distr.cts. (*a*)

Certain indentures for binding of parish apprentices made valid. 54 Geo. 3, c. 107.

And by stat. 54 Geo. III. c. 107, after reciting stat. 43 Eliz. c. 2, s. 5, respecting the binding of parish apprentices, and stat. 8 & 9 Will. III. c. 30, s. 1, respecting certificates of settlement (*b*). And that "whereas divers parishes contain within themselves several townships, hamlets, or chapelries, each of which separately maintains its own poor: and whereas in such parishes the churchwardens are for the most part sworn into their offices as churchwardens of the whole parish, although in truth and in fact they act as churchwardens of the separate townships, hamlets, or chapelries therein contained: and whereas divers indentures for the binding of parish apprentices have heretofore been signed and executed by a person or persons styling himself or themselves and stated in such indentures to be churchwarden or churchwardens, chapelwarden or chapelwardens, of the township, hamlet, or chapelry, binding such poor apprentices: and whereas such person or persons have not been sworn into the office of churchwarden or chapelwarden of such township, hamlet, or chapelry, but of churchwarden of the parish wherein such township, hamlet, or chapelry, is contained;" it is enacted, "that all indentures for the binding of poor apprentices, which have been heretofore signed and executed, or which shall hereafter be signed and executed by a person or persons, who at the time of his or their signing and executing such indenture, acted as churchwarden or churchwardens, chapelwarden or chapelwardens, of the township, hamlet, or chapelry, binding such poor apprentice, shall be deemed and taken to be as good, valid, and effectual, as if the same had been signed and executed by a person or persons actually sworn into the office of churchwarden or chapelwarden of such township, hamlet, or chapelry: provided always, that such person or persons shall have been duly sworn into the office of churchwarden of the parish wherein the township, hamlet, or chapelry, binding such poor apprentice, be contained, or into the office of churchwarden or chapelwarden of such township, hamlet, or chapelry."

Indentures made valid although the churchwardens, &c. were not sworn in.

Such indentures to be valid if executed by the overseers of the poor of any township, &c.

Sect. 2 enacts, "that all indentures for the binding of poor apprentices, which shall have been heretofore signed and executed, or which may hereafter be signed and executed by the overseers of the poor of any township, hamlet, chapelry, or place, and the churchwarden or churchwardens, chapelwarden or chapelwardens, acting for or appointed in respect of such township, hamlet, chapelry, or place, or the major part of them, shall be deemed and taken to be as good, valid, and effectual, as if the said indentures had been signed and executed by such overseers and the churchwardens of the parish wherein such township, hamlet, chapelry, or place is situate, or the major part of them."

Not to affect settlements.

Sect. 3 provides, "that nothing herein contained shall be construed to alter, impeach, or affect the settlement of any person, for whose removal any order of justices shall have been duly made before the passing of this act."

51 Geo. 3, c. 80, intituled "an act to render valid certain indentures for the binding of parish apprentices," and dated 15 June, 1811.

By stat. 51 Geo. III. c. 80, reciting, that whereas by 43 Eliz. c. 2, "it is enacted, that the churchwardens of every parish, and four, three, or two substantial householders there, as shall be thought meet, having respect to the proportion and greatness of the same parish and parishes, to be nominated yearly in Easter week, or within one month after Easter, in the manner therein directed, shall be overseers of the poor of the same parish; and that it shall be lawful for the said churchwardens and overseers, or the greater part of them, by the assent of two justices of the peace, to bind the children of such parents as shall not by the said churchwardens and overseers, or the greater part of them, be thought able to maintain their children, to be appren-

(*a*) See further as to these, *post*, 208.
(*b*) As to such certificates, see title, Poor, Vol. IV.

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tices: and whereas in divers small parishes, two persons only have been annually appointed to act in the capacity of churchwardens as well as overseers of the poor: and whereas divers indentures for the binding of parish apprentices have been executed and signed by such two persons, purporting to be the churchwardens and overseers of such parishes; but, by reason that the said indentures have not been signed by distinct persons as churchwardens and other distinct persons as overseers, such indentures have been or may be deemed to be void:" it is enacted, "that all indentures for the binding of parish apprentices, which have been heretofore executed and signed by two persons only, acting or purporting to act in the capacity of churchwardens as well as of overseers of the poor, and also all such indentures as shall hereafter be so signed, shall be considered as good, valid, and effectual, as if the same had been executed and signed by distinct persons as churchwardens and distinct persons as overseers of the poor, according to the said recited act."

51 Geo. 3, c. 80.

Indentures and certificates which have heretofore been signed by two persons only acting as churchwardens and overseers to be valid.

Act not to affect any prior decision, &c.

And by sect. 2, "nothing in this act contained shall extend to do away or alter any decision which may have taken place in any court of law, respecting the binding of any parish apprentice, or the settlement of any poor person, before the passing of this act."

1 & 2 Geo. 4, c. 32.

And stat. 1 & 2 Geo. IV. c. 32, after reciting that "whereas in divers parishes, townships, hamlets, chapelries, and places in England, for a long period of time, only one churchwarden or chapelwarden has been annually appointed, where two or more churchwardens or chapelwardens had been formerly appointed for each of such parishes, townships, hamlets, chapelries, or places: and whereas divers indentures for the binding of parish apprentices, which may have been executed and signed by such single churchwarden or chapelwarden, acting in and for a parish, township, hamlet, or place, for which formerly two or more churchwardens or chapelwardens had been appointed, may on that account, if contested in a court of law, be deemed to be null and void: and whereas much litigation has recently arisen between parishes, owing to the discovery of such defect as above mentioned in the appointment of churchwardens and chapelwardens; and it would tend to prevent future litigation, if such indentures as before-mentioned were in certain cases declared to be valid and effectual:" enacts "that from and after the passing of this act, [*viz.* 28th May, 1821,] all indentures for the binding of parish apprentices, which have been previous to the passing of this act executed or signed by one churchwarden or chapelwarden, acting or purporting to act in the capacity of churchwarden or churchwardens, chapelwarden or chapelwardens, for any parish, township, hamlet, chapelry, or place in England, for which two churchwardens or chapelwardens had formerly been appointed, shall be deemed and taken to be as good and effectual to all intents and purposes as if the same indentures had been executed by one or more churchwarden or chapelwarden, churchwardens or chapelwardens, legally appointed; any law, statute usage, or custom to the contrary notwithstanding. (*a*)

Certain indentures executed before 28 May, 1821, declared valid.

Not to affect decisions already made.

By sect. 2 it is provided, enacted and declared, "that nothing in this act contained shall be construed to affect or set aside any decision or judgment made or given in any court of judicature respecting any such indentures, or to alter, impeach, or affect the settlement of any person for whose removal any order of justices shall have been duly made, previous to the passing of this act, or to legalize or make valid any indentures to be signed or executed as herein before mentioned, after the passing of this act."

Proviso to be inserted in indentures, in case the master should die. 32 Geo. 3, c. 57.

By stat. 32 Geo. III. c. 57, after reciting that in indentures of parish apprentices, it hath been usual to insert several agreements and covenants to be done and performed by the several parties thereto, and amongst other things that the master shall, during the term of such apprenticeship, find and allow to such apprentice sufficient meat, drink, apparel, lodging, and all other

(*a*) As to certificates of settlement, see title Poor, Vol. IV.

BINDING OF, STATUTES AS TO.

things needful for an apprentice; it is enacted, "that from and after the 1st day of July, 1792, in case of the death of any master or mistress of any parish apprentice, during the term of such apprenticeship, upon the binding out of which apprentice no larger sum than £5 has been or shall be paid, such covenant as is before mentioned for the maintenance of such apprentice inserted in the indenture of apprenticeship by which such apprentice shall have been or shall be bound, shall not continue and be in force for and during any longer time than for three calendar months next after the death of such master or mistress, and that during such three calendar months such apprentice shall continue to live with and serve as an apprentice the executors and administrators of such master or mistress, some or one of them, or such person or persons as such executors or administrators, some or one of them, shall appoint; and the master or mistress whom such apprentice shall accordingly serve during the said three calendar months, and also such apprentice shall during that time be subject and liable to all the laws which are or shall be in force for the better government and regulation of masters and parish apprentices: and that in all such parish indentures of apprenticeship as aforesaid, which shall be made from and after the 1st day of July, 1792, there shall be annexed to the covenant in such indentures to be entered into on the part of the master or mistress of such apprentice for such maintenance as aforesaid, a proviso, declaring that such covenant shall not be made to continue and be in force for any longer time than for three calendar months next after the death of such master or mistress, in case such master or mistress shall die during the term of such apprenticeship; which proviso may be in the form or to the effect mentioned in the schedule hereunto annexed, marked with the letter A; (*a*) and in case such proviso shall happen to be omitted in any such indenture, the covenant therein contained on the part of the master for the maintenance of the apprentice, shall be deemed and taken to continue and be in force for no longer time than for three calendar months next after the death of such master or mistress, in case such master or mistress shall die during the term of such apprenticeship, any thing in any such covenant to the contrary notwithstanding."

32 Geo. 3, c. 57.

If omitted, covenant of master continues only three calendar months.

II. Who to be bound Parish Apprentices.

Who to be bound.

We have already seen the statutes which point out who is to be bound a parish apprentice, viz. the 43 Eliz. c. 2, s. 5; 18 Geo. III. c. 47, *ante*, 196.

The child to be bound should be of the age of nine years or upwards, and of parents who are not able to maintain it, 56 Geo. III. c. 139, s. 7, *ante*, 196, 197.

It is discretionary in the parish officers to select those children whom they shall think their parents unable to maintain. *R.* v. *Crosse*, *Comb.* 289.

III. Who compellable to take Parish Apprentices, and how compellable.

Who compellable to take.

We have already pointed out the enactments as to who are compellable to take parish apprentices, viz. the 8 & 9 Will. III. c. 30, s. 5, *ante*, 196, 197.

As the churchwardens and overseers have the power to place out poor children, they are the proper judges of persons who are fit to be their masters; and those are, all persons who, by their profession or manner of living, have occasion to keep servants; but the same are to be approved of by the justices, and if such master be dissatisfied, he may appeal to the sessions. *Dalt.* c. 58, p. 143.

Minchamp's case, 2 *Salk.* 491; 1 *Bott*, 605. Two justices bound an apprentice to a *merchant;* he appealed to the sessions, and the order was discharged. And now the Court of King's Bench confirmed the order of sessions; because the act having made persons compellable to take apprentices, and given an appeal to the sessions, it was in the discretion of the justices at sessions to determine whether it was or was not fitting to put an

(*a*) See form (No. 19,) *post.*

WHO COMPELLABLE TO TAKE.

apprentice upon any one; and therefore the court would not disturb what the sessions had done.

Gentlemen of fortune and clergymen are equally liable with others to take parish apprentices. 1 *Bla. Com.* 426.

Occupiers of tithes are liable to take parish apprentices. 2 *Nolan*, 221, citing *R.* v. *Saltern*, *Cald.* 444.

The condition of the master is immaterial. *R.* v. *St. Margaret's, Lincoln*, *Burr.* 728.

Nor is it necessary that the party should reside in the parish. *R.* v. *St. Nicholas*, 2 *T. R.* 726.

Persons *occupying* lands in the parish, but residing out of it, are compellable to receive parish apprentices, but *mere strangers* are not. So ruled in the following case:—The parish officers of Sowton, Devon, having apprenticed S. Helier, a poor child of Sowton, to the defendant, according to the statute, he appealed to the sessions, who confirmed the order, subject to the opinion of the court on the following case:—the apprentice was bound (*prout* the indenture) to the appellant, who resided in the parish of Pinhoe, on an estate which he rented and occupied in the parish of Sowton of £20 per annum, which was divided by the highway from the house in which he lived. There was no house on the estate of which he was the occupier. The indenture, together with the apprentice, was tendered to the appellant in the parish of Sowton, in the highway adjoining to the said estate lying in the parish of Sowton. After hearing *East* in support of the order, and *Fonshaw* and *Clapp contrà*, Lord *Kenyon*, C. J. said, "It is highly fit that this question should not remain any longer undecided. I remember a much older case than those mentioned at the bar in which this question was discussed but not decided. The question arises on 43 Eliz. c. 2, s. 5. The general purview of that statute was to make a provision for the maintenance of the poor; and the first clause, in mentioning those who are to contribute to such maintenance, describes two sorts of persons, namely, *inhabitants* and *occupiers of lands, &c.* Amongst other provisions for the poor, the 5th section gives power to the parish officers, with the assent of two magistrates, to bind poor children apprentices, *where they shall see convenient*. It is true, indeed, that those words cannot be taken so generally as they purport, because they cannot compel mere strangers, who stand in no relation to the parish, to take such apprentices. But I think that the context of the statute furnishes the means of circumscribing the general extent of those words; and that context I take from the first clause, which imposes other burdens of the same nature on *occupiers of lands, &c.* as well as inhabitants. The general object of the act was to compel all those who had any property in the parish to contribute their due proportion towards the maintenance of the poor, and the receiving of apprentices is one mode of contributing to their general relief. In construing these words, I see no reason for confining the power of binding to the *inhabitants* of the parish; they ought to be extended to persons *occupying lands in the parish, though residing out of it*. Then it is said that if this construction be put upon the statute, the party may be doubly charged; in the parish where he lives in respect of his inhabitancy, and in that in which he has lands, in respect of his occupation of them. But if he find himself aggrieved he may appeal to the sessions; and we must take it for granted that the justices will do what is right. They are to adapt the charge to the size of the property, which the person charged possesses; and these are incidental charges which fall on him in respect of that property. I remember it was argued in a former case on this subject, that if this construction of the statute were to prevail, some parishes would disburden themselves of many of their poor by apprenticing out their poor children to persons living out of the parish; but the answer to any such argument is, that at the time when the 43 Eliz. was passed, the stat 13 & 14 Car. II. was not in existence. However, the ground of my decision here is, that this is one of the modes provided for the maintenance of the poor in this statute, which imposes the duty in respect of the property." The other judges concurred. Order of sessions confirmed. *R.* v. *Clapp*, H. 29 Geo. III. 3 *T. R.* 107; and see *Id.* 523; 1 *Bott*, 619.

And in *R.* v. *Barwick*, 7 *T. R.* 33; 1 *Bott*, 624, it was determined, that where several persons hold lands in partnership, some of whom actually reside

upon and occupy the same, and others reside at a distance in another parish, the latter as well as the former are obliged to take parish apprentices, if in other respects they are fit persons to take them. WHO COMPELLABLE TO TAKE.

So the court held under 20 Geo. III. c. 36, that the terms "occupier" and "inhabitant" are synonymous. *R.* v. *Guardians of Tunstead*, 3 *T. R.* 523, *post*, 219; and see further, as to the meaning of these terms, *R.* v. *Adlard*, 4 *B. & Cres.* 772; 7 *D. & R.* 340, S.C.

The master need not be of age. *R.* v. *St. Petrox*, 4 *T. R.* 196.

We have already seen that officers, &c. in the army are exempt by the Annual Mutiny Act, *ante*, 197.

Also that persons having been guilty of misusing their apprentics should not be made masters, *ante*, 197.

It has often been a question whether a person who has paid the 10*l.* under 8 & 9 Wil. III. c. 30, s. 5, (*ante*, 196, 197,) is liable to take another apprentice till his turn comes again, for as the penalty fixed in the one case answers in the amount to that which the legislature has directed to be paid where a master, convicted of misconduct, is not allowed to receive an apprentice, but compelled to pay the stipulated sum,—it has been urged that the coincidence in the amount proves that the payment of the penalty was to be equivalent to the acceptance of the apprentice. But it is obvious that no penalty exacted for an offence can be an apology for the commission of a second offence. The only protection is in the discretion of the two justices, or of the sessions on appeal; not an arbitrary, but such a legal discretion as is noticed in the maxims laid down under title Justices, Vol. III. p. 465, 466. Persons having paid the penalty for not taking.

The statutes, *ante*, 197, &c. point out several modes of enforcing the taking the apprentice, by distress, &c. Independently of this, an indictment lies for disobeying an order of justices, either in not receiving, or receiving and afterwards turning off, or not providing for a parish apprentice; for though an act of parliament prescribe an easier way of proceeding by complaint, yet it does not hinder an indictment. *Reg.* v. *Gould*, 1 *Salk.* 381; 6 *Mod.* 164; 1 *Bott*, 605; 2 *Show.* 193; 1 *Stra.* 76; and see an indictment, *R.* v. *Shipton*, 8 *B. & Cres.* 772; *post*, 209, 395, Order, Vol. III. How compellable.

It seems an indictment for refusing to take the apprentice need not aver the parents are poor. *R.* v. *Crosse*, *Comb.* 289.

But where the officers select an improper person, the party is not indictable. *Minchamp's case*, 2 *Salk.* 491; 1 *Bott*, 605.

IV. The Mode and Term of binding Parish Apprentices.

We have already seen, *ante*, 197 to 199, the 56 Geo. III. c. 139, points out how parish apprentices are to be bound. The following points thereon are here collected. Mode of binding.

Order of Justices]—In *R.* v. *Fairfax*, 3 *Mod.* 269; *Carth.* 94; *Comb.* 164; *it was held*, that an order under the stat. 43 Eliz. to bind out a parish apprentice, *must* state it to be by the churchwardens, and for the omission the order was quashed; and it should seem this case would apply to an order made under the 56 Geo. III. c. 139, the 18th section of that act, *ante*, 200, extending its provisions to churchwardens having the power of overseers. Order of justices.

Notice to Overseers]—A pauper settled in the parish of N. C. in the county of Nottingham, was, pursuant to an order of two justices of the county, bound apprentice by the churchwardens and overseers of that parish, to A. B. of another parish, in a borough situate in the same county, but having justices who had exclusive jurisdiction therein. The indenture was allowed by the two justices, but no notice was given to the overseers of the poor of the parish in the borough of the intention to bind such apprentice, nor did they or any of them attend before the county justices who allowed the indenture and admitted such notice. It was held by three justices, *Abbott, C. J. dissentiente*, that by the 56 Geo. III. c. 139, the indenture was bid for want of such notice, and that the pauper did not gain any settlement Notice to overseers.

MODE, &c. OF BINDING.

by serving under it. *R.* v. *Newark-upon-Trent*, 3 *B. & Cres.* 59; 4 *D. & R.* 745, S. C.

Time of binding.

Time of Binding]—The time for which a male child is to be bound is till he becomes twenty-one years of age; the time for which a female child is to be bound is until she becomes twenty-one years of age or is married. 43 Eliz. c. 2; 18 Geo. III. c. 47, *ante*, 196.

The apprentice may be bound for a shorter time than the statute requires, though not for a longer time. *R.* v. *Chalbury*, 1 *Bott*, 606. A parish indenture not made for any certain time, is not thereby vitiated, the statute in respect of the time being only directory: nor is an indenture binding a poor girl an apprentice void for want of the alternative "or till marriage." *R.* v. *St. Petrox*, 1 *Bott*, 607.

The stat. 43 Eliz. does not apply to voluntary bindings.

The stat. 43 Eliz. c. 2, applies (in respect to the parish officers being parties to indentures of apprenticeship, and as to the assent of the justices,) to apprentices sent out *against their will*, and not to *voluntary* bindings. Such formalities were, therefore, held unnecessary where the apprentice under age, who had been in the workhouse, had executed a deed of apprenticeship, and the parish officers had only paid the premium. *R.* v. *Arundel*, 5 *M. & S.* 257; *R.* v. *St. Mary, Reading*, 1 *Bott*, 609; 2 *Bott*, 365; *sed vide* the 56 Geo. III. c. 139, s. 5, 6, *ante*, 199. The 11th section of the 56 Geo. III. c. 239, applies to *voluntary* bindings, where the parish officers are not parties to the indenture; *ante*, 199; *post*, 209, 210.

The indenture.

The Indenture]—There is no need of a stamp to or a statement of the premium in the indenture, see *ante*, 165, 168.

A master is not compellable to give to his apprentice, forced upon him, wages or clothes at the end of the term.

It was moved to quash an order to compel a person to take an apprentice, because in the close of the indenture it was said, "that the master, at the end of the term, shall give his apprentice two suits of clothes." Upon debate, the court held this to be ill; for the justices during the term of his apprenticeship cannot order him wages, they must only order him a maintenance as an apprentice, and cannot order him any thing after the term is ended; so the order was quashed. *Reg.* v. *Wagstaff, Fol.* 205; 1 *Sess. C.* 48; 1 *Bott*, 605.

Order of justices to be referred to.

The first section of 56 Geo. III. c. 139, *ante*, 197, 198, requiring that the order of magistrates for the binding out parish apprentices shall be referred to in the indenture of the date thereof, is compulsory; and, therefore, an indenture, in which the date of the order is omitted is void, and no settlement is gained by serving under it. *R.* v. *Bawbergh*, 2 *B. & Cres.* 222; 3 *D. & R.* 338, S. C.

Non-execution of, by master.

In the case of a parish apprentice it is not necessary that the master should sign the counterpart. *R.* v. *Fleet*, 1 *Bott*, 601. This was a question of settlement, and it appeared that the pauper, a parish apprentice, was bound by indentures; that the original indenture was properly executed by the parish officers, and allowed by two justices. The counterpart was also allowed by the justices, but neither the indenture nor counterpart was executed by the master. The master accepted the indenture and the pauper, and considered him as his apprentice. And upon this case there arose a question, whether it was necessary, under 8 & 9 Will. III. c. 30, s. 5, (*ante*, 196, 197,) that the master should have executed a counterpart to enable the pauper to gain a settlement. And the court held that the binding was authorised by 43 Eliz. c. 2, s. 5, long before the act requiring a counterpart; that the statute of Will. only compelled persons to receive poor apprentices, but did not in other respects confirm the power of binding, which was already fully established; (*Cald.* 31;) and the court said, that it had been so determined in *R.* v. *St. Peter's on the Hill*, 2 *Bott*, 367; in which last case it was decided, that if the apprentice himself be bound, the execution by the master is not actually necessary, but the indenture shall be valid without it.

By apprentice.

Nor is it necessary that such a deed should be executed by the apprentice, where he has served under the indentures. *R.* v. *St. Nicholas in Nottingham*, 2 *T. R.* 726; 2 *Bott*, 373; *R.* v. *Woolstanton*, 1 *Bott*, 606.

An indenture executed by one churchwarden and one overseer only, was

held sufficient before the 51 Geo. III. c. 80, (*ante*, 201,) as will appear from the following case. A parish indenture ran thus:—"This indenture, made the 2d day of April, 1800, in the 40 Geo. III. &c. witnesseth, that W. S., churchwarden of the hamlet of Attertan, in the parish of Wetherley, in the county of Leicester, and J. G., overseer of the poor of the said hamlet, by and with the consent of his Majesty's justices, &c., by these presents do put and place J. A., aged fourteen years, a poor child of the said parish, apprentice to J. B., of the parish of Hinckley, in the county of Leicester, frame-work knitter, with him to dwell and serve, &c. until the said apprentice shall accomplish his full age of twenty-one years, according to the statute, &c.;" and so it proceeded in the common form, concluding with covenants by J. B. to the said churchwardens and overseers and every of them, &c. and their successors, "to instruct the apprentice in his trade, and so to provide for the said apprentice that he be not a charge to the said hamlet, &c. In witness, &c. (Signed) W. S., J. G., and J. B.;" and the consent of the two justices to the indenture was in the usual form. No other evidence was produced either on the part of the appellants or of the respondents. And the question was, whether the indenture of apprenticeship were a valid instrument or not, being made and executed by one churchwarden and one overseer only. Lord *Ellenborough*, C. J. said, "no evidence having been given to impeach the validity of this indenture by showing that it was executed by less than a majority of the proper officers charged with that duty, the validity of it must be tried by itself: and if any intendment can by law be made to support it, we must make that intendment. Now if there were two existing overseers at the time, and only one churchwarden, the two who executed the indenture, being a majority, would be sufficient to bind the apprentice. Then can there be by law only one churchwarden? That may be regulated by custom, and by custom there may be only one in this place; therefore, the party who impeached the indenture should have given evidence to rebut the intendment which may be made in support of it while unimpeached by evidence." *Le Blanc*, J. "The indenture was produced on one side, and there was no evidence to impeach it on the other. The question then is, whether by any intendment of law such indenture can be good? And it may be good by intendment in the way put by my lord. Then, not being impeached by evidence, it stands good." The other judges concurring, the order was confirmed. *R.* v. *Hinckley*, 12 *East*, 361.

Execution of by churchwardens.

In R. v. *Earl Shilton*, 1 *B. & A.* 275, it was held that the stat. 43 Eliz. c. 2, does not *absolutely* require two churchwardens in every parish for the management of the poor, and therefore an indenture binding out a poor apprentice, which was executed by one churchwarden, (where by custom there was but one,) and one overseer, was held to be within the 5th section of that act, which requires it to be executed by the *greater* part of the churchwardens and overseers. The pauper served his master under such a binding for two years, and resided in his master's parish. The appellants objected to the indenture, that it was signed by one churchwarden and *one overseer* only; and they then proved the registry of appointments of churchwardens for the *parish of C.* whereof the churchwarden and overseer were such churchwarden *and overseer; that* in the year when the above indenture was executed only *one churchwarden* was appointed for that parish, and it was admitted that he was *the only* churchwarden of the parish the year throughout. It was further proved, that for forty years preceding, the practice had invariably been *in the above parish* to appoint only one churchwarden. The question submitted to the court was, whether such indenture of apprenticeship, made and executed during the time when the parish had but one churchwarden, was a valid instrument or not? The cases of *R.* v. *Hinckley*, 12 *East*, 361, and *R.* v. *All Saints, Derby*, 13 *East*, 150, were cited. Lord *Ellenborough*, C. J. said, "*generally speaking*, there are two churchwardens; but I think that the *legislature* used the word churchwardens here in the plural number, not as *requiring* that there should be two, but as speaking of the whole body of officers *of that description*, of whatever number that body be constituted. By custom *there may be only* one churchwarden in a parish, and if so, it is absolutely *necessary* that all the powers of the 43 Eliz. should be vested in

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him, or otherwise the act would be nullified in all those parishes in which such a custom prevailed. The act does not expressly require two churchwardens, and the inconvenience that would necessarily result from adopting that construction of the statute is sufficient to induce me to reject it altogether." *Bayley*, J. "The word churchwardens in the plural number is here used because the legislature were aware that they were generally two. It is as if they had said, "all churchwardens, whether one or more." Order of sessions confirmed.

But where a parish indenture was executed by two persons styling themselves churchwardens and overseers, one of whom was also sole churchwarden, the binding was held insufficient; for the stat. 43 Eliz. c. 2, requires that there shall be two overseers distinct from the churchwardens. *R.* v. *All Saints, Derby*, 13 *East*, 143; and see 8 *East*, 143; 3 *T. R.* 180; *R.* v. *Roach*, 6 *id.* 253.

This decision, however, procured the enactment of the 51 Geo. III. c. 80, (*ante*, 201,) and it has been since held, that an indenture signed by two parish officers, one of whom acted in the double capacity of churchwarden and overseer, is valid under this act, and that such act extends not only to cases where both the parish officers act in a double capacity, but to those also where only one of them is in that situation. *R.* v. *St. Margaret's, Leicester*, 2 *B. & A.* 200. In that case, W. B. was bound apprentice by indenture to R. W., which witnessed that T. C. and J. I. churchwardens of the parish of F., and the said T. C. and F. G., overseers, placed W. B. apprentice, &c., but it was executed by T. C. and F. G. only. It appeared that L. C. and J. I. were the two churchwardens of F. at the time when the said T. C. and F. G. were appointed overseers. It was agreed that this indenture was within the 51 Geo. III. c. 80, and therefore valid. *Et per Curiam.*—"It is admitted, that if both these persons had been churchwardens as well as overseers, the case would be within the act; but the statute is remedial—it ought to be construed liberally. We do not, therefore, put a forced construction upon its provisions when we decide that it extends to the case of a defect in one parish officer only, as well as to cases where both the parish officers act in a double capacity."

The churchwardens of the parish at large (in which the township is situated) need not join in the execution of an indenture of apprenticeship, executed by the overseers of a township which has no churchwardens or chapelwardens, and maintains its own poor separately. *R.* v. *Nantwich*, 16 *East*, 228; see 2 *Bott*, 168; 2 *East*, 168.

The assent and approval by justices.

Assent and Approval of Justices]—It is requisite, under 43 Eliz., that one of the justices should be of the quorum (*a*), and where in a special order of sessions the question was, whether a boy bound over by justices (the boy being no party to the indenture) had gained a settlement, it having been stated only that his binding was allowed and approved of by two justices generally, and for this omission the court quashed the order. *R.* v. *Woolstanton*, 2 *Stra.* 1110; *vide* now the 56 Geo. III. c. 134, ss. 11, 12, *ante*, 199, 200.

The assent of the justices being in its nature an act of *judgment*, it is indispensably necessary that they should be and confer together when their assent is given; for where an indenture was separately signed by two justices, and they neither assented nor signed at the same time, or in the presence of each other, it was held void, and that no settlement could be gained by service under it. In the case referred to, Lord *Kenyon*, C. J. said, "the rule has long been settled, that the concurrence of justices together is not necessary where the act to be done is merely *ministerial*, but they must confer together and form a joint opinion where the act is of a *judicial* nature; and there is no doubt that this is a case of the latter description." *R.* v. *Hamstall Ridware*, 3 *T. R.* 381; 1 *Bott*, 620.

It is sufficient, however, although one magistrate sign the indenture when alone, if he be afterwards present when the other executed it, and they both

(*a*) By a bill now before parliament, it is proposed that all justices named or to be named in any commission shall have equal authority and shall enjoy all powers which are given to justices of the quorum.

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agreed to the propriety of the measure. *R.* v. *Winwick*, 8 *T. R.* 454; 1 *Bott*, 625; and see *R.* v. *Stotfold*, 4 *T. R.* 596.

And where a master had executed the counterpart of an indenture, and afterwards appealed, the Court of K. B. held, that the sessions had done right in rejecting parol evidence, which was offered to show that at the time when the counterpart was executed by him, the indenture and counterpart were signed by one justice only, though the indenture when produced appeared to have been signed and allowed by two justices; the appellant by having executed the counterpart was estopped, and could not be permitted to contradict his own deed. *Wilde*, J. inclined to think it was sufficient if the justices gave their assent at any time before the appeal. *R.* v. *Saltern, Cald.* 444; 1 *Bott*, 613, S. C.; see *R.* v. *Forrest*, 3 *T. R.* 38.

An indenture of apprenticeship sufficiently declares the consent of the proper justices, by describing them of the "said county." *R.* v. *Hinckley*, 1 *B. & A.* 273.

The 2d section of the 56 Geo. III. c. 139, as we have seen, *ante*, 198, enacts, "that in all cases where the residence or establishment of the business of the person to whom any child shall be bound shall be within a different county from that within which the place by the officers whereof such child shall be bound shall be situated, and in all other cases where the justices of the peace for the district or place within which the place by the officers whereof such child shall be bound shall be situated, and who shall sign the allowance of the indenture by which such child shall be bound shall not have jurisdiction, every indenture by which such child shall be bound shall be allowed as well by two justices of the peace for the county or district within which the place by the officers of which such child shall be bound shall be situated, as by two justices of the peace for the county or district within which the place shall be situated wherein such child shall be intended to serve." In the case of *R.* v. *Shipton*, 8 *B. & Cres.* 772; 2 *M. & R.*, S. C., it was held, that under such circumstances the indenture must be allowed by four distinct persons, two of them being justices of the county from which the apprentice is to be bound, and the other two being justices of the county into which he is to be bound.

Signature of justices sufficient.

The allowance of the indenture to which the parish officers are actual parties, is, as we have seen, *ante*, 197, 198, required, by the 56 Geo. III. c. 139, s. 1, to be *signed* by two justices, but it need not be under seal. The allowance, however, of an indenture to which the parish officers are *not* parties, but in respect whereof some expense has been incurred by the public parochial funds, is, as we have seen, *ante*, 163, required, by the 11th section of that statute, to be *sealed* as well as *signed* by two justices. This was decided in the case of *R.* v. *St. Paul's, Exeter*, 10 *B. & Cres.* 12; and *Bayley*, J. after stating the facts of the case, delivered the judgment of the Court as follows:—"On carefully considering the 56 Geo. III. c. 139, (and after conferring with Lord *Tenterden*, who concurs in the judgment I am about to pronounce,) we are of opinion that the first ten sections apply to cases where the parish officers are parties to the indenture of apprenticeship, and the 11th section to cases where the parish officers do not join in the indenture, but where some part of the expense attending the indenture is defrayed out of the public parochial funds. That this is the meaning of the 11th section appears to us to be manifest from the use of the word *clandestinely* in that section. The mischief recited in the preamble to that section is, that the premium or part thereof was *clandestinely* provided by the parish officers, who were thus enabled to bind out poor children without the sanction of justices, and for remedying it, that section provides that no indenture, by reason of which such expense shall be incurred, shall be valid, unless approved of by two justices under their hands and seals. The first ten sections, which evidently apply to bindings by the parish officers, require that the indenture shall be approved of by two justices under their *hands* only. Now parish officers cannot be said to provide the premium *clandestinely* when they join in the indenture. The 11th section therefore can apply to those cases only

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where they are not parties to the indenture, but where they provide some portion of the premium. The indenture of apprenticeship in this case was one (the parish officers being parties to it) contemplated by the first ten sections. The allowance was signed, though not sealed, by the justices. It is, therefore, a valid indenture, and the pauper gained a settlement by serving under it in the parish of *Tedburn, St. Mary*. The order of sessions must therefore be quashed." Order of sessions quashed.

We have already seen that the justices' assent is not necessary where the binding is *voluntary*, and there is no expense incurred out of the *parish funds*, *ante*, p. 162, 3.

Stamp on.

Stamps]—As to the stamp in general, *ante*, p. 165, the indenture is in general exempt from it. It is unnecessary to set out the premium in words at length in an indenture relating to a *parish* apprentice. *R.* v. *Oadby*, 1 *B. & A.* 477; 1 *Salk.* 68; *ante*, p. 168.

Appeal.

Appeal]—As to the right of appeal, see *ante*, p. 197, 200.

V. Assignment, Discharge, and Settling Disputes as to Parish Apprentices.

Assignment.

We have already noticed how far the assignment of apprentices *in general* is sanctioned and valid, *ante*, p. 177, 8. In general the assignment cannot be supported without the consent of all parties, which in the case of parish indentures includes the master and the parish officers.

In case of death.

By the Common Law in case of Death]—At *common law* by the death of the master the agreement for the service by the apprentice is put an end to, but the covenant on the part of the master still continues in force, as far as his assets will extend; see *ante*, p. 181; so that thereby the apprentice gets all the benefit of being provided for without doing any thing in return; *ante*, p. 181. This is remedied in some cases by the 32 Geo. III. c. 57, as will be seen presently.

Vacating indentures.

Vacating Indentures]—A *parish* apprentice under age cannot be *discharged* by his consent; *R.* v. *Austrey*, 1 *Burr.* 441; even though his father consent; *R.* v. *Langham, Cald.* 126; as he is bound out by the parish officers under a special authority, they ought to be consulted and give their assent to his discharge, otherwise the whole policy of the 43 Eliz. might be defeated.

But such assent is not necessary after he has attained the age of twenty-one, at which time the master and apprentice may cancel the indentures by mutual agreement. For at twenty-one the apprentice is *sui juris*, and his discharge from the indenture concerns at that time himself and his master only, and there is no necessity to procure the assent of the parish officers. *R.* v. *Ecclesal Bierlow*, 1 *Bott*, 608. We have already seen, *ante*, p. 171, as to what amounts to a cancellation of the indentures.

Statutes relating to.

The assignment and vacating of *parish* indentures is provided for and regulated in most cases by the following legislative enactments of 32 Geo. III. c. 57; 56 Geo. III. c. 139; and by those enactments relating to the discharge of apprentices in general in case of ill-treatment, misconduct, &c. which we have already noticed, *ante*, p. 183 to 192.

In case of death, covenants for maintenance of parish apprentices, with whom no more than 5*l.* shall be given, to continue in force no longer than three months after

By Statute, in case of Death]—By the 32 Geo. III. c. 57, s. 1, after reciting "that in case of the death of any master or mistress of any parish apprentice, during the term of such apprenticeship, upon the binding out of which apprentice no larger sum than five pounds has been or shall be paid, such covenant as is before mentioned for the maintenance of such apprentice, inserted in the indenture of apprenticeship by which such apprentice shall have been or shall be bound, shall not continue and be in force for and

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during any longer time than for three calendar months next after the death of such master or mistress, and that during such three calendar months such apprentice shall continue to live with and serve as an apprentice, the executors and administrators of such master or mistress, some or one of them, or such person or persons as such executors or administrators, some or one of them, shall appoint; and the master or mistress whom such apprentice shall accordingly serve during the said three calendar months, and also such apprentice, shall during that time be subject and liable to all the laws which are or shall be in force for the better government and regulation of masters and parish apprentices; and that in all such parish indentures of apprenticeship as aforesaid, which shall be made from and after the first day of July, 1792, there shall be annexed to the covenant in such indentures to be entered into on the part of the master or mistress of such apprentice, for such maintenance as aforesaid, a proviso declaring, that such covenant shall not be made to continue and be in force for any longer time than for three calendar months next after the death of such master or mistress, in case such master or mistress shall die during the term of such apprenticeship; which proviso may be in the form or to the effect mentioned in the schedule hereunto annexed, marked with the letter A (*a*); and in case such proviso shall happen to be omitted in any such indenture, the covenant therein contained on the part of the master, for the maintenance of the apprentice, shall be deemed and taken to continue and be in force for no longer time than for three calendar months next after the death of such master or mistress, in case such master or mistress shall die during the term of such apprenticeship; any thing in any such covenant to the contrary notwithstanding."

32 Geo. 3, c. 57.

the death of the master, &c.

Proviso to that effect to be annexed to covenant, but if omitted, the covenant to continue no longer in force.

Sect. 2. "And whereas it is just and reasonable, that such apprentice as aforesaid, in case of his master's death during his apprenticeship, should be obliged, during the term of his apprenticeship, to make some satisfaction by his labour to the family or representatives of his deceased master, for the advantages he has received from his apprenticeship in his childhood, when his services could not be equal to the expenses of his maintenance; be it enacted, that within such three calendar months after the death of such master or mistress, it shall and may be lawful for any two justices of the peace of the county, city, town, riding, division, or place where such master or mistress shall have died, on application made to them by the widow of such master, or by the husband of such mistress, or by any son or daughter, brother or sister, or by any executor or executrix, administrator or administratrix, of such master or mistress, by indorsement on any such indenture of apprenticeship, or the counterpart thereof, or by any other instrument in writing, (which indorsement or instrument may be in the forms or to the effect mentioned in the schedule hereunto annexed marked with the letters B. and C. (*b*),) to order and direct that such apprentice shall serve as an apprentice any one of such persons so making such application as aforesaid, (such person having lived with, and having been part of the family of, such master or mistress at the time of his or her death,) as the said justices shall in their discretion think fit, for and during the residue of the term mentioned in such indenture of apprenticeship; and the person obtaining such order shall declare his acceptance of such apprentice, by subscribing his or her name to such order; and that from and after such order shall be made, the executors and administrators, and the personal assets, estate, and effects of the master or mistress so dying as aforesaid shall be released and discharged of and from any promise or covenant whatsoever, contained in any such indenture of apprenticeship, on the part of such master or mistress, his or her executors or administrators, to be done and performed; and the person obtaining the same shall be, and be deemed and taken to be, the master or mistress of such apprentice, in like manner as if such apprentice had been originally bound to such master or mistress; and that such last-mentioned master or mistress, his or her executors and administrators, each and every

Within three months after the death of a master, two justices may order apprentices to serve the residue of their terms with persons of the description herein specified, on application, &c.

(*a*) See form, (No. 19), *post*.
(*b*) See forms, (No. 29 and 30), *post*.

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of them, shall be held and bound by the several promises and covenants contained in any such indenture of apprenticeship on the part of the master or mistress therein named, his or her executors or administrators, to be done and performed, in like manner as if such master or mistress obtaining such order as aforesaid had duly executed the counterpart of such indenture; and that such master or mistress and apprentice shall be subject and liable to the several penalties, provisions, and regulations which shall then be in force for the better government and good order of masters and parish apprentices; and that all justices of the peace shall have the like powers and authority, with respect thereto, as they shall then have by any act or acts of parliament relating to parish apprentices."

32 Geo. 3, c. 57.

Provisions to take place on the death of the original master to extend to subsequent ones.

Sect. 3 enacts, "that all and singular the regulations and provisions hereinbefore made, and directed to take place on the death of the original master or mistress, shall be deemed and taken to relate to the like event of the death of any such subsequent master or mistress, and to their several relations and representatives before enumerated, from time to time, as often as the case shall happen, during the continuance of the term mentioned in any such indenture of apprenticeship."

If no application be made, or the justices should not think fit that the apprenticeship should be continued, it shall be at an end.

Sect. 4 enacts, "that in case no such application shall be made as aforesaid within three calendar months next after the death of such master or mistress, or in case such two justices to whom any such application as aforesaid shall have been made, shall not think fit that such apprenticeship should be continued, then the said apprenticeship shall be determined, and the indenture of apprenticeship and covenants therein contained shall be at an end, in like manner as they would have been at the expiration of the term therein mentioned."

Act to extend to such parish apprentices only as shall be living with the master.

Sect. 5 provides and enacts, "that nothing herein contained shall extend, or be construed to extend, to any parish apprentice, but to such only as shall be living with and shall make part of the family, or shall be in the actual employment of such original master or mistress, or of any subsequent master or mistress appointed under and by virtue of the several provisions of this act at the time of the death of any such masters or mistresses respectively."

Justices may order the necessary sums for maintenance and clothing of apprentices to be levied by distress.

Sect. 6. "And whereas much difficulty and delay must necessarily happen in bringing an action upon the covenant for maintenance before mentioned contained in any such indenture of parish apprenticeship; be it enacted, that in case any such original master or mistress as aforesaid, or any master or mistress appointed under or by virtue of this act, shall, during the term of any such parish apprenticeship as aforesaid, or if the executors or administrators of such masters or mistresses, any or either of them, having assets, shall, during such three calendar months as aforesaid, refuse or neglect to maintain and provide for any such apprentice, according to the terms of such covenant, it shall and may be lawful for any two justices of the peace of the county, city, town, riding, division, or place in which the parish or place shall lie, to which such apprentice shall belong, on complaint of such apprentice, or of the churchwardens and overseers of the poor of such parish or place, by warrant under their hands and seals, to levy by distress and sale of the personal estate and effects or assets of such master or mistress respectively, such sum or sums of money as shall be necessary for the maintenance and clothing of such apprentice, and as shall also be necessary to reimburse to the churchwardens and overseers of the poor of such parish or place any sum or sums of money that shall have been reasonably expended by them for that purpose."

Parish apprentices, *forced* upon masters, may be assigned with the consent of two justices.

In case of Master having a greater number of Apprentices than convenient, &c.]—By sect. 7 of the same act, after reciting that it frequently "happens that persons are compellable, under and by virtue of the act of the 9th and 10th years of King William, to take a greater number of parish apprentices than it is convenient for them to maintain or employ in their own families, and they are therefore forced to place out or assign over such apprentices to other persons; and it is proper that such assignment should be legally made, under the inspection and control of the magistrates, as well for the benefit of the apprentice, as that the original master may be discharged

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from his covenants in respect of such apprentice; and it is fit that the person to whom such assignment shall be made, and also the apprentice, should be made subject to the ordinary jurisdiction of justices of the peace with respect to masters and parish apprentices;" it is enacted, "that it shall and may be lawful for any master or mistress of any such parish apprentice as aforesaid, by indorsement on the indenture of apprenticeship, or by other instrument in writing, by and with the consent of two justices of the peace of the county, city, town, riding, division, or place, where such master or mistress shall dwell, testified by such justices under their hands, to assign such apprentice to any person who is willing to take such apprentice for the residue of the term mentioned in such indenture of apprenticeship: provided always, that such person to whom such apprentice is intended to be assigned shall at the same time, by indorsement on the counterpart of such indenture, or by writing under his or her hand, stating the said indenture of apprenticeship and the indorsement and consent aforesaid, declare his or her acceptance of such apprentice, and acknowledge himself, herself, his or her executors and administrators, to be bound by the agreements and covenants mentioned in the said indenture on the part of the master or mistress of such apprentice to be done and performed; which indorsement or instrument may be in the forms or to the effect mentioned in the schedule hereunto annexed (*a*); and in such case such apprentice shall be deemed and taken to be the apprentice of such subsequent master or mistress to whom such assignment shall be made, to all intents and purposes whatsoever, and so from time to time, as often as it shall be necessary or convenient for any such subsequent master or mistress to part with any such apprentice; and all justices of the peace shall have the like power and authority, in the several cases last mentioned, with respect as well to the subsequent master or mistress, masters or mistresses, as to the apprentice, as such justices shall then have by any law for the better regulation of parish apprentices."

32 Geo. 3, c. 57.

Assignment by indorsement of the master on the indenture.

On Insolvency]—By sect. 8 of same act, after reciting "and whereas no express provision has been made for the discharging of any such *parish apprentice* from a master or mistress who is become insolvent, or is so far reduced in his or her circumstances as to be unable to employ or maintain such apprentice, be it enacted, that it shall and may be lawful for two justices of the peace of the county, city, town, riding, division, or place where any such master or mistress shall live, on the application of such master or mistress, requesting that any such apprentice may be discharged, for the reasons aforesaid, to inquire into the matter of such allegations, and to discharge any such apprentice from his apprenticeship, in case the said two justices shall find such allegations to be true."

Justices may discharge apprentices where masters become insolvent, &c.

General clauses of 32 Geo. III. c. 57]—Sect. 9. Nothing herein shall extend to any parish apprentice with whom more than 5*l.* shall be given, but the same shall remain subject to the like rules and regulations as if this act had not been made.

Act not to extend to apprentices with whom more than 5*l.* given.

Sect. 10. Provided also, that no indorsement made in pursuance of this act shall be chargeable with any stamp duty.

Stamp duty.

In Sir G. Chetwynd's edition of this work, the 7th, 9th, and 10th sections of the above act are supposed to be inconsistent with the provisions of the Stamp Act, *ante*, 168, but it is submitted they are not so. That able editor supposes that the sum mentioned in the 9th section is applicable to the sum which may be given upon the *assignment* "to get rid of the apprentice;" this seems an error, as that section refers to the premium given at the original binding. The assignment under the above act, where the original premium was within the limit, is exempted from stamp, whatever the consideration for the assignment may be. Though in a *voluntary* binding without consideration, and where *more than* 5*l.* is given in a *parish binding*, the assignment is not exempt from stamp.

(*a*) See Forms, (No. 31, 32,) *post*.

ASSIGNMENT OF.

32 Geo. 3, c. 57.

Order to be made after discharge, in cases of parish apprentices.

By sect. 11, "where any parish apprentice shall be so discharged, such two justices may order (*a*) such master or mistress to deliver up to such apprentice his or her clothes and wearing apparel, and also to pay to the churchwardens or overseers of the parish or place to which such apprentice shall belong, some or one of them, any sum not exceeding 10*l.* to be applied by them, some or one of them, under the order of such justices, for the again binding out such apprentice so discharged, or otherwise, for his or her benefit, as to such justices shall seem meet; and also to pay any sum not exceeding 5*l.* in case such master or mistress shall refuse to deliver up such clothes and wearing apparel; and on his or her refusal to pay the sum so ordered, or either of them, or any part thereof, such justices may levy the same by distress, together with the reasonable expenses of such distress. And such justices may, if they think fit, compel such churchwardens and overseers, some or one of them, to enter into a recognizance for the effectual prosecution, by indictment, of such master or mistress, for such ill-treatment of any such apprentice so discharged as aforesaid; and may also order that the costs and expenses of such prosecution shall be paid or reimbursed to such person entering into such recognizance as aforesaid, one moiety thereof out of the poor rates of the parish or place to which such apprentice shall belong, and the other moiety out of the county rate in which such parish or place shall lie. And in case the churchwardens and overseers shall refuse to pay such their moiety, such justices may levy the same by distress (*b*) on the goods and chattels of such churchwardens and overseers, or any of them, together with the reasonable expenses of such distress."

Costs of prosecution.

Moiety to be paid by county.

Appeal.

Warrant of distress is not to issue till after next general or quarter sessions, if person ordered to pay shall, within seven days after notice of order, give notice to churchwardens, &c. of appeal.

Sect. 12 provides, "that it shall and may be lawful for such master or mistress, from whom any parish apprentice shall be discharged under and by virtue of the act, 20 Geo. II., to appeal against the order made for such discharge, and also against any such order made for his or her payment of any such sum or sums of money in consequence thereof, or for his or her payment of any sum or sums of money in lieu of a subsequent binding, under and by virtue of the provisions of this act, to the next general quarter sessions of the peace for the county, city, riding, division, or place where such orders, any or either of them shall be made, and upon such appeal, the said court of general quarter sessions shall finally determine the same, and in their discretion allow to all parties their reasonable costs; and no such distress for enforcing the payment of any such sum or sums of money as are last-mentioned, shall be taken until after the general quarter sessions of the peace, to be holden next after any such order as aforesaid shall be made, in case the person who is ordered to pay the same, shall, within seven days after notice given to him or her of such order being made, give notice to such churchwardens and overseers of the poor, some or one of them, of such intended appeal; and in case such person shall fail to appear in support of his appeal at such general quarter session, then the sum of 40*s.* shall be added to the expenses of the distress before directed to be taken and levied accordingly."

If party giving notice does not appear to support his appeal, 40*s.* to be added to expenses of distress.

Apprentices discharged for ill-behaviour under 20 Geo. 2, c. 19, may be committed to the house of correction.

By sect. 13, reciting, that whereas by 20 Geo. II. c. 19, *ante*, p. 188, 191, it is enacted, "that it shall and may be lawful to and for two justices, upon application or complaint made upon oath by any master or mistress against any parish apprentice, touching or concerning any misdemeanor, miscarriage, or ill-behaviour of such apprentice, to hear and determine the same, and punish the offender in such manner as is therein mentioned, or otherwise to discharge such apprentice from his apprenticeship, and it is expedient to prevent the expectation of such discharge being an inducement to such ill-behaviour on the part of the apprentice;" it is enacted, "that in all cases where any *parish* apprentice shall be discharged by two justices, under and by virtue of the said last-mentioned act, from his or her apprenticeship, on account of any misdemeanor, miscarriage, or ill-behaviour on the part of such apprentice, that it shall and may be lawful for such two justices, if they think proper, by warrant under their hands and seals, to punish such offender by commitment to

(*a*) See forms, (No. 36, 37), *post*. (*b*) See form, (No. 38), *post*.

the house of correction, there to remain and be corrected and kept to hard labour for a reasonable time, not exceeding three calendar months, as to such justices shall seem meet."

ASSIGNMENT OF.

32 Geo. 3, c. 57.

Appeal.

By sect. 14, persons aggrieved by any thing done or omitted by any churchwarden or overseer, or justice, or any other person by virtue of this act, (besides such matters or things for which an appeal is hereinbefore specially given,) may appeal to the next sessions, where the same shall be heard and finally determined; and such court may award reasonable costs and expenses to either party.

Where master removes, &c. how apprentices disposed of.

Master on removing out of county or forty miles from parish where apprentice bound, to give fourteen days' notice to parish where apprentice resides, or by which he is certificated.

Apprentice to appear before two justices of county, who shall inquire, &c. and make order for apprentice's continuance or otherwise.

On Removal of Master]—By the 56 Geo. III. c. 139, s. 8, "if any person or persons to whom any child shall be bound apprentice by the overseers of the poor of any parish or place, shall after the said first day of October remove his, her, or their residence or establishment of business out of the same county, or forty miles from the parish or place wherein the same was when such child was bound apprentice, such person or persons shall, at least fourteen days previous to such removal, give a written notice thereof to the churchwardens or overseers of the poor of the place where such apprentice shall then reside, unless such person or persons shall reside in such place under certificate; and in that case such persons shall give the like notice to the churchwardens or overseers of the poor of the place where such apprentice shall then be legally settled; and which churchwardens and overseers, and also the master or masters, mistress or mistresses of such apprentice, shall cause such apprentice to appear before two of his Majesty's justices of the peace for the county or district within which such apprentice shall be then serving, who shall inquire whether it may be fit and proper that such apprentice should continue in the service of such person or persons, or be discharged therefrom, or bound or assigned over to any other person or persons, and shall thereupon make order (*a*), either for the continuance of such apprentice with such person or persons, or for the discharge of such apprentice, or for the binding or assigning of such apprentice to any other person, as to them in their discretion shall seem meet; and, if they shall see fit, shall also require the person or persons so giving notice of removal to pay the amount of the premium received with such apprentice, or such portion of it as to them shall seem meet, for the expense of assigning or binding such apprentice to any other person to be approved by the said justices; and the person or persons to whom such apprentice shall be so bound or assigned shall be subject to the same rules and regulations as the person or persons to whom such apprentice shall be originally bound; and in case any such master or masters, mistress or mistresses, shall remove as aforesaid, and shall take any such apprentice to any other place, without such order as aforesaid, or shall wilfully abandon and leave any such apprentice without giving such notice as aforesaid, every person so offending shall forfeit the sum of 10*l.* for every such apprentice, to the churchwardens and overseers of the poor of the parish, township, or place wherein, at the time of such removal or taking, the apprentice shall have been legally settled, for the use of the poor of the same parish, township, or place; provided an information shall be exhibited for such offence within three calendar months next after the commission of the same."

As to appeal, see ante, p. 200.

Provisions of 32 Geo. 3, c. 57, enforced as to assigning or discharging apprentices.

Provisions of 32 Geo. III. further enforced]—By stat. 56 Geo. III. c. 139, s. 9, after reciting that "whereas it may be expedient that those to whom parish apprentices are bound or assigned should be empowered to place out or assign over such apprentice to others, and it is proper that such placing out or assignment should in all instances be under the inspection and controul of the magistrates; and it is fit that the person to whom such putting out or assignment shall be made, and also the apprentice, shall be made subject to

(*a*) See form, (No. 23), *post*.

ASSIGNMENT OF.

the ordinary jurisdiction of justices of the peace with respect to masters and parish apprentices; and it is inexpedient that any master or mistress should in any way discharge or dismiss from his or her service any parish apprentice without the consent of such justices;" it is enacted, "that from and after the 1st of October, in the year 1816, it shall not be lawful for any master or mistress to put away or transfer any parish apprentice to any other, or in any way to discharge or dismiss from his or her service any parish apprentice without such consent of justices as is directed in an act passed in the thirty-second year of the reign of Geo. III. intituled, An act for the further regulation of parish apprentices; and that no settlement (*a*) shall be gained by any service of such apprentice, after such putting away or transfer, unless such service shall have been performed under the sanction of such consent as aforesaid."

56 Geo. 3, c. 109.

Settlement.

The master of a parish apprentice not having work sufficient for him, proposed to him to go to a farm in a different parish, occupied by the master's sister. The pauper assented to the proposal, and agreed with her to work there for a twelvemonth for his meat and drink. He worked for her for four years and four months. During the first two years he received from her meat and drink. During the third and fourth year he received wages. It was held, first, that no settlement was gained by the service with the sister, the service not being under the indentures; and secondly, there had been a putting away of the apprentice without the consent of the justices, within the meaning of the 9th section of 56 Geo. III. and that the pauper did not by his service with the sister gain any settlement by hiring and service. *R.* v. *Shipton*, 8 *B. & Cres.* 88.

Penalty on discharging apprentices without consent of justices, 10*l.*

Sect. 10. "Any person or persons, who, after the 1st of October, 1816, shall put away or transfer any parish apprentice to another, or who shall in any way discharge or dismiss from his or her service any parish apprentice without such consent as aforesaid, shall forfeit a sum not exceeding 10*l.* for every apprentice so transferred."

Penalties, how recoverable.

Sect. 12. "All penalties and forfeitures imposed for any offence against this act shall be recovered by information, before any two justices of the county or district where such offence shall be committed."

To whom payable.

By sect. 13, "the justices before whom any such penalty shall be recovered may direct such penalty, after deducting the necessary costs and charges attending any information, to be paid either to the person giving information of the offence for which such penalty shall be incurred, or to the overseer of the poor of the parish or township in which such offence shall have been committed, or by the officer whereof such apprentice shall have been bound, for the use of the poor of such parish or township, or in the binding of the apprentice respecting whom such offence shall be committed, to any other person, or to be applied to any one or more of such purposes as to such justices shall seem meet."

Distress for penalty.

By sect. 14, "in case of nonpayment of any penalty hereby imposed, the same shall be levied by distress and sale of offender's goods and chattels, by warrant under the hands and seals of the justices before whom such offender shall have been convicted, or of any other two justices of the same county or district; and for want of such distress such offender shall be committed to the common gaol or house of correction for any period not less than one nor more than six months, to be appointed by the justices before whom such offender shall be convicted."

Imprisonment.

(*a*) Where a parish apprentice was assigned before the passing of 56 Geo. III. c. 139, but for want of consent of two magistrates in writing under 32 Geo. III. c. 57, s. 7, the instrument was not valid to confer a settlement; the Court of King's Bench held, that though the assignment might be for many purposes inoperative, yet that it manifested a consent of the first master to a service with the second, and rendered that a service under the original binding. *R.* v. *Berleston*, 5 *B. & A.* 780. And see *R.* v. *St. Petrox*, *ante*, 152, and *R.* v. *East Bridgeford*, *Burr. S. C.* 133.

Discharging Indentures on Complaints between Master and Apprentice]— We have already noticed the jurisdiction of justices as to discharging and settling disputes between and punishing masters and apprentices in general; and it will be found those considerations, in addition to the preceding, will, for the most part, be applicable to disputes between masters and *parish* apprentices. See *ante*, 183 to 192. See the 32 Geo. III. c. 57, s. 13, *ante*, 214, empowering justices to imprison a parish apprentice in case of his discharge for ill behaviour.

Discharging on complaints in general.

VI. Registry of Parish Apprentices.

By stat. 42 Geo. III. c. 46, after reciting the power given by the 43 Eliz. c. 2, to overseers of the poor to bind out poor children apprentices: and that "whereas it would tend to the benefit of the children so bound as apprentices, if the overseers of the poor were required to keep a register of all children who shall be so bound:" it is enacted, "that the overseers of the poor of every parish, township, or place, appointed by virtue of the said recited act, passed in the forty-third year of the reign of Queen Elizabeth, shall, from and after the 1st day of June, 1802, and they are hereby required to provide and keep a book or books, at the expense of the said parish, township, or place, and to enter, or cause to be entered therein, the name of every child who shall be bound out by them respectively as an apprentice, together with the several other particulars, in manner and form required by this act, according to the schedule hereunto annexed; and every such entry, when made in the said register, shall be produced and laid before the two justices of the peace, who shall signify their assent to the indenture of apprenticeship, of every such child, at the time when such indenture shall be laid before such justices for their assent, as required by the said recited act; and each entry in the said register shall, if approved of by such justices, be signed by them according to the form marked in the schedule." (*a*)

42 G. 3, c. 46.

The overseers of the poor shall keep a book for entering the name of every apprentice bound out by them, and each entry shall be signed by two justices, according to the form in the schedule.

Sect. 2. "If any overseer or overseers of the poor shall refuse or neglect to provide and keep such book or books, or to make such entry therein as before directed, or shall destroy, or permit, suffer, or cause to be destroyed, any such book or books, or shall wilfully and knowingly obliterate, deface, or alter any such entry, so that the same shall not be a true entry of the several particulars hereby required, or shall wilfully and knowingly make a false entry therein, or shall so permit, suffer, or cause the same to be done, or shall not produce or lay such book or books before such justices as aforesaid for their signatures, or shall not deliver or tender, or cause to be delivered or tendered, such book or books to his, her, or their successor or successors in office, within fourteen days after the appointment of such successor or successors, or if any such successor or successors shall refuse or neglect to receive the same when offered or tendered to him or them by his or their predecessor or predecessors in office, then and in every such case, every such person so offending shall, for every such offence, on being convicted thereof before any two justices of the peace for the county, city, or place where the offence shall be committed, on the oath of any credible witness, (which oath such justices are hereby empowered and required to administer,) or on the voluntary confession of the party or parties, forfeit and pay a sum not exceeding 5*l.*, to be recovered by distress and sale of the goods and chattels of the offender or offenders, by warrant under the hands and seals of the justices before whom the offender or offenders shall be convicted, and the overplus (if any) of the money arising by such distress and sale shall be returned upon demand to the owner or owners of such goods and chattels, after deducting the costs and charges of making, keeping, and selling such distress; and such penalties and forfeitures shall be applied for the use of the poor of the parish, township, or place, for which such offender or offenders shall be overseer or overseers; and in case such sufficient distress cannot be found, or such penalties and forfeitures shall not be paid forthwith, it shall and may be lawful to and

Penalty for not providing such book, or neglecting to make such entries therein, &c.

(*a*) See form, (No. 47), *post*.

REGISTRY OF.

42 Geo. 3, c. 46.

for such justices, by warrant under their hands and seals, and they are hereby required to commit every such offender to the common gaol or house of correction of the county, city, or place where the offence shall be committed, there to remain without bail or mainprize, for any time not exceeding one calendar month, unless such penalties and forfeitures shall be sooner paid and satisfied."

Books may be inspected.

Sect. 3. "It shall be lawful for any person or persons, at all seasonable hours, to inspect such book or books in the hands of the said overseer or overseers, and to take a copy of such entry in such book or books, upon payment of the sum of sixpence, except in case of any of his Majesty's justices of the peace acting in and for the said county, who shall be entitled at all such times to inspect such book *gratis;* and every such book shall be and be deemed to be sufficient evidence in all courts of law whatsoever, in proof of the existence of such indentures, and also of the several particulars specified in the said register respecting such indentures, in case it shall be proved to the satisfaction of such court that the said indentures are lost or have been destroyed."

Books to be deemed evidence of indentures, if lost, &c.

Sect. 4. The justices before whom any person shall be convicted by virtue of this act, shall cause the conviction to be drawn up in form L. (*a*)

When assignment of apprentices shall take place, an entry thereof shall be made in such book in manner herein directed.

Sect. 5. "Whenever any such apprentice shall be assigned or bound over to any other master or mistress by virtue of an act passed in the thirty-second year of the reign of Geo. III., entitled, 'An Act for the further regulation of parish apprentices,' then and in every such case, the overseer or overseers, party or parties to the assignment of such apprentice, shall insert the name and residence of the master or mistress, to whom such apprentice shall be assigned or bound over as aforesaid, together with the other particulars, in the book or books herein directed to be provided and kept by such overseer or overseers; and for non-performance thereof, every such overseer or overseers shall be liable to the pains, penalties, and forfeitures incurred by this act, in like manner as if such apprentice had been originally bound to such master or mistress."

Persons having like powers as overseers to bind out apprentices to comply with directions of act.

By sect. 6, reciting, "and whereas by different acts of parliament the like powers are given to certain persons therein named, for binding out parish apprentices, as are given to the overseers of the poor;" it is enacted, "that such several persons shall be subject to the like pains, penalties, and forfeitures for non-compliance with the several provisions and directions in this act contained for registering any parish apprentice bound out or assigned by them respectively, to which overseers of the poor are subject and *liable* by virtue of this act for non-compliance with such provisions and directions."

Appeal may be made to quarter sessions.

Sect. 7. "If any person or persons shall think himself, herself, or themselves aggrieved by any thing done in pursuance of this act, it shall and may be lawful to and for such person or persons to appeal to the justices at the first general quarter sessions of the peace to be holden for the county or place where the cause of appeal shall arise, within four calendar months next after the cause of appeal shall have arisen, on giving to the person or persons appealed against ten days' notice of such appeal and of the matter thereof; and the justices at such sessions are hereby authorised and required to hear and determine the matter of such appeal in a summary way, and to grant such costs and expenses to either party as to them shall seem reasonable."

INCORPORATED DISTRICT APPRENTICES.

Incorporate district apprentices.

The stat. 20 Geo. III. c. 36, after reciting that, "Whereas several acts of parliament have of late years been made and passed, for the better relief and employment of the poor in particular incorporated hundreds or districts, within that part of Great Britain called England, whereby power is given to bind poor children apprentices under certain restrictions therein

(*a*) See form (No. 48), *post.*

mentioned: and whereas doubts have arisen, whether persons are compellable to receive and provide for such poor children as shall be appointed to be bound apprentices to them in pursuance of the said acts;" by section 1, enacts, "that from and after the twenty-fourth day of June, one thousand seven hundred and eighty, the respective persons to whom any poor children shall be appointed to be bound apprentices, in pursuance of any act or acts of parliament made and passed for the better relief and employment of the poor in any particular incorporated hundreds or districts, within that part of Great Britain called England, shall, and they are hereby required to receive and provide for such children, according to the indentures to be executed by the directors and acting guardians of the poor for such respective hundreds or districts, for the binding of such poor children, in like manner as persons are now obliged by the laws in being to receive and provide for poor children appointed to be bound apprentices by churchwardens and overseers of the poor, with the assent of two justices of the peace, and also to execute the counterpart of such indentures respectively: and if any person, to whom any poor child shall be appointed to be bound apprentice, in pursuance of any such act of parliament as aforesaid, shall refuse or neglect to receive and provide for such poor child, or to execute the counterpart of the indenture for binding such child as aforesaid, every person so refusing or neglecting, upon proof of such refusal or neglect being made by the oath of one of the directors or acting guardians, or of some other credible witness, before any two justices of the peace acting in and for the county, liberty, or place, within which the incorporated hundred or district to which such child belongs shall be situate, shall forfeit and pay to the directors and acting guardians of the poor for such incorporated hundred or district, or to their treasurer or appointee, to be applied to the relief of the poor within the same, the sum of ten pounds; such penalty or forfeiture to be levied by distress and sale of goods of the person refusing or neglecting as aforesaid, by warrant under the hands and seals of such justices; saving always to the person, to whom any poor child shall be so appointed to be bound an apprentice, his or her appeal to the next general or quarter session of the peace for that county, liberty, or place, whose order therein shall be final."

After June 24, 1780, all persons to whom any children shall be appointed to be bound in pursuance of any act for relief of the poor in any particular district in England, shall be obliged to provide for them, &c.

Penalty on such persons neglecting to provide for such children.

May be levied by distress.

Appeal to the quarter sessions.

Sect. 2. "Provided always, that nothing in this act contained shall be construed to compel any person to take any such poor child apprentice as aforesaid, unless such person shall be an inhabitant and occupier of lands, tenements, or hereditaments, in the parish to which such child belongs; and that all bastard children born or to be born in the house of industry within any such incorporated hundred or district, shall be deemed to belong to the parish or place where the mother of such bastard child was legally settled."

No person compellable to take a poor child apprentice, except he be an inhabitant, &c. of the parish.

Bastards born in houses of industry to belong to the mother's parish.

Unless he be an Inhabitant and Occupier]—*R.* v. *Directors and Guardians of the Poor within the hundreds of Tunstead and Happing in Norfolk*, incorporated by 25 Geo. III. c. 27; 3 *T. R.* 523; 1 *Bott*, 622. The directors, under the powers given them by that act, bound a poor male child apprentice to one Reynolds, who was an occupier of land, but not an *inhabitant* within the said hundreds. He appealed to the sessions, who were of opinion that he was not bound to receive the apprentice, because he was not an inhabitant as well as an occupier. But the Court of K. B. said, that incorporated districts under particular statutes, were to be governed, as to binding out apprentices, by the same rule as other places. That for some purposes *inhabitants* and *occupiers* are synonimous terms; that where a person derives a benefit from property which he occupies in a parish, he is liable to contribute to the ease of it. If indeed the legislature had used imperative words, the court must have been bound by them, but there are none such in this statute. Order of sessions quashed. See further, *post*, p. 220, as to who may be compelled to take; and *ante*, p. 205.

42 Geo. 3, c. 46.

Act of 20 Geo. 3, c. 36, extended.

By stat. 42 Geo. III. c. 46, s. 8, in order to obviate doubts, whether the provisions of the 20 Geo. III. c. 36, extended to apprentices bound under the authority of the several acts which have since passed, by which houses of industry, or establishments for the poor, have been authorised to bind ap-

IN INCORPORATED DISTRICTS.

prentices, the powers of that act are extended to poor children bound under the authority of any subsequent act.

See the 56 Geo. III. c. 139, s. 18, &c., *ante*, p. 200, regulating the mode of binding apprentices in incorporated districts.

Compulsory hiring.

R. v. *Stowmarket*, 9 *East*, 211. It appeared that the pauper was a poor boy of the age of fourteen, in the house of industry for the poor of the incorporated hundred of Stowmarket: that the guardians of this house were empowered by their incorporating act to apprentice poor children for seven years: that it did not appear that they had ever exercised this power, but instead of binding out the children, they were sent to their respective parishes: the pauper was sent to one R. of Stowmarket, to whom he had been allotted by the officers of that parish: this person told the pauper he had procured him a service with one F. of Coddenham. The pauper did not object, conceiving he had no discretion on the subject. On the day after Michaelmas he went to F. who received him, and told him he would give him clothes, and that he was to stay with him a year. The pauper did stay the year, receiving clothes, maintenance, and a little pocket money. And per Lord *Ellenborough*, C. J. (who reprobated this practice of the directors alloting children out, instead of providing for them in the manner pointed out by the act). The adoption of a contract must be the act of a free agent; and it appears from the circumstances of the pauper's making no objection or agreement, conceiving that he had no discretion on the subject, and that he was obliged to accept the service as being under the control of others, that he connot be considered as having *adopted* the act of his master.

Poor child allotted instead of bound.

PUBLIC CHARITY APPRENTICES.

Public charity apprentices.

By the 7 J. c. 3, s. 2, all sums of money given by any person to be continually employed for the binding out apprentices shall be employed in manner following, unless otherwise ordered by the givers, viz. all corporations of cities, boroughs and towns corporate, and in places not corporate, the parson or vicar, constables, churchwardens, collectors, and the overseers, or the most part of them, shall have the nomination and placing of such apprentices, and the guiding and employment of such monies, and if they shall not employ the same accordingly, every person offending shall forfeit 3*l.* 6*s.* 8*d.*, half to the poor and half to him that shall sue, by action of debt, bill, plaint, or information.

Sect. 3. The master that shall receive the money shall be bound with one or two sureties in double the sum unto such corporation, or to the other persons appointed by this act in places not corporate to take the ordering of it, on condition to repay it at the end of seven years, or within three months thereof; and if the apprentice shall happen to die within the seven years, then within one year after such death, and if the master shall die within the seven years, then within one year after such master's death.

Sect. 4. The said money shall always be put forth in three months after it shall come to the said parties' hands: and if there be not then fit persons to be bound apprentices within the places where the money is given to be employed, it shall be disposed of for binding some of the poorest children of any adjoining parish, after the same manner.

Sect. 5. And choice shall always be made of the poorest children; and no such apprentice shall be above fifteen years of age when bound.

Sect. 6. The said persons in places not corporate shall yearly, within a month after Easter, account before four, three, or two justices for the said monies, and within ten days after such accounting yield up the monies and bonds remaining in their hands.

Sect. 7. And if any of the trustees shall break their trust, or commit any offence for which no penalty is given by this act, any person may petition the lord chancellor, who may issue a commission to hear and determine the same, and may levy the money misemployed upon such defaulters, or other-

wise upon such able inhabitants of the place, as they shall think fittest; and persons aggrieved may appeal to the lord chancellor. SEA SERVICE.

As to the exemption of these apprenticeships from stamp duty, and the cases thereon, see *ante*, p. 165.

SEA SERVICE APPRENTICES.

We have seen that in general an apprentice cannot be compelled to go beyond sea, *ante*, p. 17, 184. Sea service.

By stat. 2 & 3 Ann. c. 6, s. 1, it shall be lawful for two justices, and also for the head officers in corporations, and likewise for the churchwardens and overseers of the several parishes or townships, with the consent of such justices or head-officers, to bind and put out any boy at the age of ten years or upwards, who shall be chargeable, or whose parents shall be chargeable, or who shall beg for alms, to be an apprentice to the sea-service, to any subject being master or owner of any ship or vessel, until he shall attain the age of twenty-one years. Who may be bound.

Sect. 6. Every person to whom any poor parish boy shall be put apprentice by the 43 Eliz. may, with the consent of two justices dwelling near the parish where such poor boy was bound, or with the like consent of the chief officer in a corporation, at the request of the master, his executors, administrators, or assigns, by indenture, assign over such poor boy apprentice to any master or owner of a ship or vessel using the sea service during the remaining time of his apprenticeship. Parish boys bound apprentices may be turned over to the sea service.

Sect. 8. And every master or owner of a ship, from 30 to 50 tons burden, shall be obliged to take one such apprentice, and one more for the next 50 tons, and one more for every 100 tons such ship shall exceed the burden of 100 tons, on pain of forfeiting 10*l.* to the poor of the parish from whence such boy was bound. Who shall take.

By stat. 5 Eliz. c. 5, s. 12, every owner of a ship or vessel, and every householder exercising the trade of the seas by fishing or otherwise, and every gunner, commonly called a cannoneer, and every shipwright, may take apprentices for ten years or under; and every apprentice so taken, being above seven years of age, shall be by the same covenants bound, or ordered and used to all intents, according to the custom of London, so that the covenant or bond of apprenticeship be made by writing indented, and *enrolled in the town*,(*a*) where the apprentice shall be inhabiting, if it be a town corporate, if not, then in the next town corporate, for which enrolment shall be paid not above 12*d.*

By stat. 4 Ann. c. 19, no master shall be obliged to take any such apprentice under thirteen years of age, or who shall not appear to be fitly qualified both as to health and strength of body for that service. Age of apprentice.

Now by stat. 4 Geo. IV. c. 25, s. 2,(*b*) from 1st of January, 1824, every

(*a*) This act is entitled "An act for regulating the number of apprentices to be taken on board British merchant vessels, and to prevent the desertion of seamen therefrom." The first section of the act repeals the 37 Geo. III. c. 73, s. 4. The 4 Geo. IV. c. 25, was repealed by 6 Geo. IV. c. 105, but was revived by 7 Geo. IV. c. 48, s. 50.

(*b*) The indentures of a mariner's apprentice, bound under 5 Eliz. c. 5, s. 12, must be enrolled in the next corporate town, according to the statute, in order to sustain an action of covenant, and not in the Trinity-house, according to the charter of that company; for the king cannot by his charter alter the place of enrolment, but it must be according to the direction of the statute; otherwise the covenants should be according to the common law, and the apprentices not bound by them. *Poulson's case*, 3 *Lev.* 389; 1 *Bott*, 634; *Barber* v. *Dennis*, 6 *Mod.* 69; 1 *Bott*, 527.

The provision, however, contained in this clause, is intended for the benefit of the apprentice, and as a check upon the master. Therefore, where the indenture was not enrolled in the town where the apprentice was then inhabiting, nor in the next corporate town to the habitation of the apprentice, pursuant to the stat. 5 Eliz. c. 5, nor with the collector of the

SEA SERVICE.

master of any merchantship exceeding 80 tons burthen shall have on board his ship at clearing out from any port of (*a*) the United Kingdom called Great Britain, one apprentice or apprentices in the following proportion to the number of tons of her admeasurement according to the certificate of registry; *i. e.* for every ship exceeding 80 and under 200 tons one apprentice at least; for every ship of 200 and under 400 tons two apprentices at least; for every ship of 400 and under 500 tons three apprentices at least; for every ship of 500 and under 700 tons four apprentices at least; for every ship of 700 tons and upwards five apprentices at least, who shall, at the period of being indentured, respectively be under the age of seventeen years. Provided that every apprentice so to be employed on board any ship as above described shall be duly indented for at least four years, and his indenture or indentures shall be duly enrolled (*b*) with the collector and comptroller at the custom-house of the port from whence any such ship shall first clear out after the execution.

Number of apprentices on board ships proportioned to tonnage.

Time of apprenticeships.

Enrolment of.

See penalty for not enrolling indentures, *post*, p. 223, sect. 4.

Enrolment with collector.

By the 6 Geo. IV. c. 107, s. 138, "no person shall be deemed to be an apprentice for the purposes of [the 4 Geo. IV. c. 25,] unless the indenture of such apprenticeship shall have been enrolled with the collector or comptroller of the port from which any such apprentice shall first go to sea after the date of such indenture, or in default of such enrolment until the same shall have been enrolled at some port from which the ship in which such apprentice shall afterwards go to sea shall be cleared."

Proviso for acts, by which ships are required to have apprentices on board.

Sect. 3 of the 4 Geo. IV. c. 25, enacts, that nothing in this act shall extend to alter or affect any act now in force and not amended or repealed (*c*) by this act, whereby any ships are required to have on board apprentices, and that such apprentices as shall be on board any ships conformably to the regulations of any such act shall be counted, deemed, and reckoned in the number required by this act.

Stamp.

By 7 & 8 Geo. IV. c. 56, s. 7, "for the greater encouragement of navigation," it is enacted, "that no higher duty of stamps than 2*s.* shall be charged upon the indenture of any apprentice bound to serve at sea in the merchant service, or upon any memorandum or agreement made between the master and mariners of any vessel for wages or service in any voyage in such ship or vessel."

Age to be inserted in the indenture.

By stat. 2 & 3 Ann. c. 6, s. 1, the boy's age shall be inserted in the indenture, being taken truly from a copy of the entry in the register-book (where it can be had), which copy shall be given and attested by the minister without fee; and where no such entry can be found, two such justices, and such head officers, shall, as fully as they can, inform themselves of such boy's age, and from such information shall insert the same in the indentures.

What money shall be given with him.

Sect. 2 of the same act, And the churchwardens and overseers shall pay down to the master, at the time of the binding, the sum of 50*s.* for clothing and bedding; and the charges by this act appointed shall be allowed on their accounts.

Indentures to be registered.

Sect. 5. The churchwardens and overseers shall send the indentures to the collector of the customs at the port whereunto the master belongeth; who shall enter the indenture in a book, and make an indorsement upon the indenture of the registry thereof, subscribed by him, without fee. And if he shall neglect or refuse to enter such indentures, and indorse the same, or

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customs, pursuant to the 2 & 3 Ann. c. 6, it was holden that the apprentice should not be prejudiced by the neglect of the master to enrol the indenture, although the stamp duties were thereby evaded. *R. v. Gainsborough, Burr. S. C.* 586; 1 *Bott*, 635.

(*a*) So in the act; but *quære*, if it is not intended to mean "*part* of."

(*b*) As to this enrolment, see *ante*, 221, note (*b*).

(*c*) By s. 1, so much of stat. 37 Geo. III. c. 73, as requires the master of any ship trading to his Majesty's colonies, &c. in the West Indies to have on board an apprentice or apprentices (viz. s. 4,) is repealed.

shall make false entries, he shall forfeit 5*l.* to the poor of the parish from whence such boy was bound.

Apprentice how conveyed to the port.

Sect. 10. Such apprentice shall be conveyed to the port to which his master belongeth by the churchwardens and overseers or their agents; and the charges thereof shall be paid as by the vagrant act of 11 & 12 Wil. c. 18. See *post*, **Vagrant**, Vol. V.

Counterpart to be then executed.

Sect. 11. The counterpart of the indenture shall be sealed and executed by the master, in the presence of and attested by the collector at the port and the constable or other officer who carries the apprentice; which officer shall transmit such counterpart to the churchwardens and overseers of the place from whence the apprentice was bound.

Certificate.

Sect. 5 of same act. The collector or his deputy shall transmit a certificate under his hand to the commissioners of the Admiralty, containing the name and age of such apprentice, and to what ship he belongs; and on receipt of such certificate a protection shall be made and given gratis to such apprentice till he attain the age of eighteen years.

Protection from being impressed.

By the 4 Geo. IV. c. 25, s. 4, every apprentice enrolled, as in s. 2, *ante*, 221, 2, is exempted from serving in his Majesty's navy till he has attained the age of twenty-one years; provided he is regularly serving his time either with his first master or ship owner, or some other master or ship owner to whom his indentures shall have been regularly transferred; and every owner or master who shall neglect to enrol such indenture or indentures, (as in s. 2, *ante*, 221,) or who shall suffer any such apprentice to leave his service, except in case of death or desertion, sickness, or other unavoidable cause, to be certified in the log-book after the vessel has cleared outwards on the voyage on which bound, shall for every offence forfeit the sum of 10*l.*, to be paid one moiety by the owner or owners of such ship, and the other by the master or masters thereof, to be levied, recovered, and applied in manner hereinafter mentioned.

Master not enrolling indentures or suffering apprentice to leave his service, penalty 10*l.*

Application and recovery of penalties.

Greenwich Hospital, &c.

Sect. 8 of the last act enacts, that the above forfeiture shall be paid and applied in manner following, *i.e.* one-third to Greenwich Hospital; one-third to the Seamens' Hospital at the port to which the vessel in respect of which the forfeiture shall arise belongs; but in case there shall be no such seamens' hospital at that port, then to and for the use and benefit of the old and disabled seamen of the same port and their families, to be distributed at the discretion of the persons having the direction of the merchant seamens' fund at such port, or in case there shall be no such establishment there, by the magistrates or overseers of the poor of such port; and the other third part thereof to and for the person or persons who shall inform and sue for the same; and that such forfeiture shall be recovered upon information on the oath of one or more witnesses before one or more justices in any part of the United Kingdom, who shall not reside more than ten miles from the abode of the person or persons complained of, which justice and justices is and are hereby required to issue out his or their warrant or warrants to bring before him or them every person charged with any offence under this act; and in case he or they shall refuse or neglect to pay such penalties or forfeitures aforesaid, to issue his or their warrant or warrants to levy the same by distress and sale of the offender's goods; and in case no distress can be found, to commit the offender or offenders to the common gaol at the city, town, or place within the jurisdiction of such respective justice or justices, there to remain for the space of three calendar months, or until he or they shall pay the same. (And see stat. 5 Geo. IV. c. 18, *post*, title, **Distress**, Vol. I.)

Mode of recovery. Oath.

Justice to issue warrant.

Distress.

Imprisonment.

Apprentice may be employed in any ship whereof his master is captain or owner; may be transferred.

Sect. 5 of the same act enacts, that every person to whom such apprentice shall have been bound may employ him at any time in any vessel of which such person may be the master or owner, and may also with the consent of such apprentice, if above the age of seventeen, and if under that age with the consent of his parents or guardians, transfer the indentures of such apprentice by endorsement thereon to any other person who may be the master or owner of any registered ship or vessel.

Stamp.

And by sect 6, no stamp duty shall be charged on any such transfer by endorsement.

SEA SERVICE.

master of any merchantship exceeding 80 tons burthen shall have on board his ship at clearing out from any port of (*a*) the United Kingdom called Great Britain, one apprentice or apprentices in the following proportion to the number of tons of her admeasurement according to the certificate of registry; *i. e.* for every ship exceeding 80 and under 200 tons one apprentice at least; for every ship of 200 and under 400 tons two apprentices at least; for every ship of 400 and under 500 tons three apprentices at least; for every ship of 500 and under 700 tons four apprentices at least; for every ship of 700 tons and upwards five apprentices at least, who shall, at the period of being indentured, respectively be under the age of seventeen years. Provided that every apprentice so to be employed on board any ship as above described shall be duly indented for at least four years, and his indenture or indentures shall be duly enrolled (*b*) with the collector and comptroller at the custom-house of the port from whence any such ship shall first clear out after the execution.

Number of apprentices on board ships proportioned to tonnage.

Time of apprenticeships.

Enrolment of.

See penalty for not enrolling indentures, *post*, p. 223, sect. 4.

Enrolment with collector.

By the 6 Geo. IV. c. 107, s. 138, "no person shall be deemed to be an apprentice for the purposes of [the 4 Geo. IV. c. 25,] unless the indenture of such apprenticeship shall have been enrolled with the collector or comptroller of the port from which any such apprentice shall first go to sea after the date of such indenture, or in default of such enrolment until the same shall have been enrolled at some port from which the ship in which such apprentice shall afterwards go to sea shall be cleared."

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Sect. 3 of the 4 Geo. IV. c. 25, enacts, that nothing in this act shall extend to alter or affect any act now in force and not amended or repealed (*c*) by this act, whereby any ships are required to have on board apprentices, and that such apprentices as shall be on board any ships conformably to the regulations of any such act shall be counted, deemed, and reckoned in the number required by this act.

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By 7 & 8 Geo. IV. c. 56, s. 7, "for the greater encouragement of navigation," it is enacted, "that no higher duty of stamps than 2*s.* shall be charged upon the indenture of any apprentice bound to serve at sea in the merchant service, or upon any memorandum or agreement made between the master and mariners of any vessel for wages or service in any voyage in such ship or vessel."

Age to be inserted in the indenture.

By stat. 2 & 3 Ann. c. 6, s. 1, the boy's age shall be inserted in the indenture, being taken truly from a copy of the entry in the register-book (where it can be had), which copy shall be given and attested by the minister without fee; and where no such entry can be found, two such justices, and such head officers, shall, as fully as they can, inform themselves of such boy's age, and from such information shall insert the same in the indentures.

What money shall be given with him.

Sect. 2 of the same act, And the churchwardens and overseers shall pay down to the master, at the time of the binding, the sum of 50*s.* for clothing and bedding; and the charges by this act appointed shall be allowed on their accounts.

Indentures to be registered.

Sect. 5. The churchwardens and overseers shall send the indentures to the collector of the customs at the port whereunto the master belongeth; who shall enter the indenture in a book, and make an indorsement upon the indenture of the registry thereof, subscribed by him, without fee. And if he shall neglect or refuse to enter such indentures, and indorse the

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shall make false entries, he shall forfeit 5*l.* to the poor of the parish from whence such boy was bound.

Apprentice how conveyed to the port.

Sect. 10. Such apprentice shall be conveyed to the port to which his master belongeth by the churchwardens and overseers or their agents; and the charges thereof shall be paid as by the vagrant act of 11 & 12 Wil. c. 18. See *post*, **Vagrant**, Vol. V.

Counterpart to be then executed.

Sect. 11. The counterpart of the indenture shall be sealed and executed by the master, in the presence of and attested by the collector at the port and the constable or other officer who carries the apprentice; which officer shall transmit such counterpart to the churchwardens and overseers of the place from whence the apprentice was bound.

Certificate.

Sect. 5 of same act. The collector or his deputy shall transmit a certificate under his hand to the commissioners of the Admiralty, containing the name and age of such apprentice, and to what ship he belongs; and on receipt of such certificate a protection shall be made and given gratis to such apprentice till he attain the age of eighteen years.

Protection from being impressed.

By the 4 Geo. IV. c. 25, s. 4, every apprentice enrolled, as in s. 2, *ante*, 221, 2, is exempted from serving in his Majesty's navy till he has attained the age of twenty-one years; provided he is regularly serving his time either with his first master or ship owner, or some other master or ship owner to whom his indentures shall have been regularly transferred; and every owner or master who shall neglect to enrol such indenture or indentures, (as in s. 2, *ante*, 221,) or who shall suffer any such apprentice to leave his service, except in case of death or desertion, sickness, or other unavoidable cause, to be certified in the log-book after the vessel has cleared outwards on the voyage on which bound, shall for every offence forfeit the sum of 10*l.*, to be paid one moiety by the owner or owners of such ship, and the other by the master or masters thereof, to be levied, recovered, and applied in manner hereinafter mentioned.

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Greenwich Hospital, &c.

Sect. 8 of the last act enacts, that the above forfeiture shall be paid and applied in manner following, *i.e.* one-third to Greenwich Hospital; one-third to the Seamens' Hospital at the port to which the vessel in respect of which the forfeiture shall arise belongs; but in case there shall be no such seamens' hospital at that port, then to and for the use and benefit of the old and disabled seamen of the same port and their families, to be distributed at the discretion of the persons having the direction of the merchant seamens' fund at such port, or in case there shall be no such establishment there, by the magistrates or overseers of the poor of such port; and the other third part thereof to and for the person or persons who shall inform and sue for the same; and that such forfeiture shall be recovered upon information on the oath of one or more witnesses before one or more justices in any part of the United Kingdom, who shall not reside more than ten miles from the abode of the person or persons complained of, which justice and justices is and are hereby required to issue out his or their warrant or warrants to bring before him or them every person charged with any offence under this act; and in case he or they shall refuse or neglect to pay such penalties or forfeitures aforesaid, to issue his or their warrant or warrants to levy the same by distress and sale of the offe[nder's goods]; and in case no distress can be found, to commit the offender [to] the common gaol [of] the city, town, or [place] within the jurisdi[ction] respective justice or justices, there to [remain] the space o[f] months, or until he or they shall pay [the] And see [18, *post*, title, **Distress**, Vol. I.)

Mode of recovery. Oath.

Justice to issue warrant.

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Stamp.

[shall be charged]

SEA SERVICE.

Number of apprentices on board ships proportioned to tonnage.

master of any merchantship exceeding 80 tons burthen shall have on board his ship at clearing out from any port of (*a*) the United Kingdom called Great Britain, one apprentice or apprentices in the following proportion to the number of tons of her admeasurement according to the certificate of registry; *i. e.* for every ship exceeding 80 and under 200 tons one apprentice at least; for every ship of 200 and under 400 tons two apprentices at least; for every ship of 400 and under 500 tons three apprentices at least; for every ship of 500 and under 700 tons four apprentices at least; for every ship of 700 tons and upwards five apprentices at least, who shall, at the period of being indentured, respectively be under the age of seventeen years. Provided that every apprentice so to be employed on board any ship as above described shall be duly indented for at least four years, and his indenture or indentures shall be duly enrolled (*b*) with the collector and comptroller at the custom-house of the port from whence any such ship shall first clear out after the execution.

Time of apprenticeships.

Enrolment of.

See penalty for not enrolling indentures, *post*, p. 223, sect. 4.

Enrolment with collector.

By the 6 Geo. IV. c. 107, s. 138, "no person shall be deemed to be an apprentice for the purposes of [the 4 Geo. IV. c. 25,] unless the indenture of such apprenticeship shall have been enrolled with the collector or comptroller of the port from which any such apprentice shall first go to sea after the date of such indenture, or in default of such enrolment until the same shall have been enrolled at some port from which the ship in which such apprentice shall afterwards go to sea shall be cleared."

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Sect. 3 of the 4 Geo. IV. c. 25, enacts, that nothing in this act shall extend to alter or affect any act now in force and not amended or repealed (*c*) by this act, whereby any ships are required to have on board apprentices, and that such apprentices as shall be on board any ships conformably to the regulations of any such act shall be counted, deemed, and reckoned in the number required by this act.

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Age to be inserted in the indenture.

By stat. 2 & 3 Ann. c. 6, s. 1, the boy's age shall be inserted in the indenture, being taken truly from a copy of the entry in the register-book (where it can be had), which copy shall be given and attested by the minister without fee; and where no such entry can be found, two such justices, and such head officers, shall, as fully as they can, inform themselves of such boy's age, and from such information shall insert the same in the indentures.

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Sect. 2 of the same act, And the churchwardens and overseers shall pay down to the master, at the time of the binding, the sum of 50*s.* for clothing and bedding; and the charges by this act appointed shall be allowed on their accounts.

Indentures to be registered.

Sect. 5. The churchwardens and overseers shall send the indentures to the collector of the customs at the port whereunto the master belongeth; who shall enter the indenture in a book, and make an indorsement upon the indenture of the registry thereof, subscribed by him, without fee. And if he shall neglect or refuse to enter such indentures, and indorse the same

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shall make false entries, he shall forfeit 5*l.* to the poor of the parish from whence such boy was bound. SEA SERVICE.

Apprentice how conveyed to the port.

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Master not entering indentures or suffering apprentice to leave his service, penalty 10*l.*

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Mode of recovery. Oath.

Justice to issue warrant.



SEA SERVICE.

Number of apprentices on board ships proportioned to tonnage.

master of any merchantship exceeding 80 tons burthen shall have on board his ship at clearing out from any port of (*a*) the United Kingdom called Great Britain, one apprentice or apprentices in the following proportion to the number of tons of her admeasurement according to the certificate of registry; *i. e.* for every ship exceeding 80 and under 200 tons one apprentice at least; for every ship of 200 and under 400 tons two apprentices at least; for every ship of 400 and under 500 tons three apprentices at least; for every ship of 500 and under 700 tons four apprentices at least; for every ship of 700 tons and upwards five apprentices at least, who shall, at the period of being indentured, respectively be under the age of seventeen years. Provided that every apprentice so to be employed on board any ship as above described shall be duly indented for at least four years, and his indenture or indentures shall be duly enrolled (*b*) with the collector and comptroller at the custom-house of the port from whence any such ship shall first clear out after the execution.

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Sect. 5. The churchwardens and overseers shall send the indentures to the collector of the customs at the port whereunto the master belongeth; who shall enter the indenture in a book, and make an indorsement upon the indenture of the registry thereof, subscribed by him, without fee. And if he shall neglect or refuse to enter such indentures, and indorse the same, or

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customs, pursuant to the 2 & 3 Ann. c. 6, it was holden that the apprentice should not be prejudiced by the neglect of the master to enrol the indenture, although the stamp duties were thereby evaded. *R. v. Gainsborough*, *Burr. S. C.* 586; 1 *Bott*, 635.

(*a*) So in the act; but *quære*, if it is not intended to mean "*part of.*"

(*b*) As to this enrolment, see *ante*, 221, note (*b*).

(*c*) By s. 1, so much of stat. 37 Geo. III. c. 73, as requires the master of any ship trading to his Majesty's colonies, &c. in the West Indies to have on board an apprentice or apprentices (viz. s. 4,) is repealed.

shall make false entries, he shall forfeit 5*l.* to the poor of the parish from whence such boy was bound.

Apprentice how conveyed to the port.

Sect. 10. Such apprentice shall be conveyed to the port to which his master belongeth by the churchwardens and overseers or their agents; and the charges thereof shall be paid as by the vagrant act of 11 & 12 Wil. c. 18. See *post*, Vagrant, Vol. V.

Counterpart to be then executed.

Sect. 11. The counterpart of the indenture shall be sealed and executed by the master, in the presence of and attested by the collector at the port and the constable or other officer who carries the apprentice; which officer shall transmit such counterpart to the churchwardens and overseers of the place from whence the apprentice was bound.

Certificate.

Sect. 5 of same act. The collector or his deputy shall transmit a certificate under his hand to the commissioners of the Admiralty, containing the name and age of such apprentice, and to what ship he belongs; and on receipt of such certificate a protection shall be made and given gratis to such apprentice till he attain the age of eighteen years.

Protection from being impressed.

By the 4 Geo. IV. c. 25, s. 4, every apprentice enrolled, as in s. 2, *ante*, 221, 2, is exempted from serving in his Majesty's navy till he has attained the age of twenty-one years; provided he is regularly serving his time either with his first master or ship owner, or some other master or ship owner to whom his indentures shall have been regularly transferred; and every owner or master who shall neglect to enrol such indenture or indentures, (as in s. 2, *ante*, 221,) or who shall suffer any such apprentice to leave his service, except in case of death or desertion, sickness, or other unavoidable cause, to be certified in the log-book after the vessel has cleared outwards on the voyage on which bound, shall for every offence forfeit the sum of 10*l.*, to be paid one moiety by the owner or owners of such ship, and the other by the master or masters thereof, to be levied, recovered, and applied in manner hereinafter mentioned.

Master not enrolling indentures or suffering apprentice to leave his service, penalty 10*l.*

Application and recovery of penalties.

Greenwich Hospital, &c.

Sect. 8 of the last act enacts, that the above forfeiture shall be paid and applied in manner following, *i.e.* one-third to Greenwich Hospital; one-third to the Seamens' Hospital at the port to which the vessel in respect of which the forfeiture shall arise belongs; but in case there shall be no such seamens' hospital at that port, then to and for the use and benefit of the old and disabled seamen of the same port and their families, to be distributed at the discretion of the persons having the direction of the merchant seamens' fund at such port, or in case there shall be no such establishment there, by the magistrates or overseers of the poor of such port; and the other third part thereof to and for the person or persons who shall inform and sue for the same; and that such forfeiture shall be recovered upon information on the oath of one or more witnesses before one or more justices in any part of the United Kingdom, who shall not reside more than ten miles from the abode of the person or persons complained of, which justice and justices is and are hereby required to issue out his or their warrant or warrants to bring before him or them every person charged with any offence under this act; and in case he or they shall refuse or neglect to pay such penalties or forfeitures aforesaid, to issue his or their warrant or warrants to levy the same by distress and sale of the offender's goods; and in case no distress can be found, to commit the offender or offenders to the common gaol at the city, town, or place within the jurisdiction of such respective justice or justices, there to remain for the space of three calendar months, or until he or they shall pay the same. (And see stat. 5 Geo. IV. c. 18, *post*, title, Distress, Vol. I.)

Mode of recovery. Oath.

Justice to issue warrant.

Distress.

Imprisonment.

Apprentice may be employed in any ship whereof his master is captain or owner; may be transferred.

Sect. 5 of the same act enacts, that every person to whom such apprentice shall have been bound may employ him at any time in any vessel of which such person may be the master or owner, and may also with the consent of such apprentice, if above the age of seventeen, and if under that age with the consent of his parents or guardians, transfer the indentures of such apprentice by endorsement thereon to any other person who may be the master or owner of any registered ship or vessel.

Stamp.

And by sect 6, no stamp duty shall be charged on any such transfer by endorsement.

SEA SERVICE.

Voluntary apprentice to the sea.

By stat. 2 & 3 Anne, c. 6, s. 15, also no person who shall voluntarily bind himself apprentice to the sea service shall be impressed for three years from the date of his indentures; which indentures shall be registered, and certificates thereof given and transmitted by the collector as aforesaid; on receipt of which certificates protection shall be made and given for the first three years without fee.

Impressment.

By stat. 13 Geo. II. c. 17, s. 2 & 3, every person not having before used the sea, who shall bind himself apprentice to serve at sea, shall be exempted from being impressed for three years; and the commissioners of the Admiralty, on due proof of the circumstances, shall grant a protection accordingly without fee.

By stat. 4 Anne, c. 19, s. 17, no person of the age of eighteen years shall have any protection from being impressed, who shall have been in any sea service before he bound himself apprentice.

When impressed master to have the wages.

By stat. 2 & 3 Anne, c. 6, s. 17, when such parish or voluntary apprentice shall be impressed, or voluntarily enter into the King's service, the owner or master, his executors, administrators, or assigns, shall be entitled to able seaman's wages for such of the apprentices as shall, upon due examination, be found qualified for the same, notwithstanding their indentures of apprenticeship.

Exempted from the 6*d.* a month.

Sect 7 of the same act. Such poor boys bound out or assigned over to the sea service, until they shall attain to the age of eighteen years, shall be exempted from the payment of 6*d.* a month to Greenwich Hospital.

Master to enter his apprentices on clearing out.

Sect. 9. Every master so obliged to take such apprentice shall after his arrival into any port aforesaid, and before he clears out of such port, give an account in writing under his hand to the collector, containing the names and numbers of such apprentices as are then remaining in his service.

The same to be inserted in the cocquet.

Sect. 14. Every custom-house officer shall insert at the bottom of their cocquets the number of men and boys on board the respective ships at their going out, describing the apprentices by their names, ages, and dates of their indentures, for which no fee shall be taken.

Registry to be kept in the ports.

Sect. 13. And the collector in the port shall keep a register containing the number and burden of all ships belonging to the port, together with the masters' or owners' names, and also the names of all such apprentices in such ships, and from what parishes and places they were sent; and shall transmit (gratis) true copies thereof, signed by him, to the quarter sessions, or to such towns corporate, parishes, or places, when and so often as he shall be reasonably required so to do; and every collector refusing or neglecting to send such copy shall forfeit 5*l.* to the poor of the parish from whence such boy was bound.

True copy to be given gratis.

Differences between such masters and apprentices.

Sect. 12. Two justices near the port and mayors, all and other chief officers of cities or towns corporate, in or near adjoining to such port to which such ship or vessel shall at any time arrive, may determine all complaints of ill usage from the master to such apprentice, and also of all such as shall voluntarily put themselves apprentices to the sea service, and make such order therein as they are now enabled by law to do in other cases between masters and apprentices.

Penalties.

Sect. 18. All the penalties aforesaid shall by warrant of two justices of the county, city, borough, or town corporate, be levied by distress and sale.

Master dying.

By stat. 4 Anne, c. 19, s. 16, if any master who hath been obliged to take such parish boy an apprentice shall die during the term, his widow or his executor or administrator may assign over such apprentice to any other master who hath not his complement of apprentices.

Fishing vessels.

By stat. 2 Geo. III. c. 15, s. 22 & 25, masters, apprentices, mariners, and others employed in fishing vessels upon the coasts, are exempted, under certain restrictions, during such their employment from being impressed; and see 4 Geo. IV. c. 25, s. 4, *ante*, 223, and 50 Geo. III. c. 108, s. 1.

If an apprentice be impressed, master cannot sue out a *habeas corpus*, but apprentice may.

R. v. *Edwards*, *MS. (D.)* S. C. reported 7 *T. R.* 745, an apprentice is protected also from being impressed. Upon showing cause against a rule obtained for quashing a writ of *habeas corpus*, to bring up the body of an apprentice detained on board a King's ship at the Nore, *per* Lord *Kenyon et*

tot. Cur. To impress an apprentice is an illegal act; and the party impressed may regain his liberty by applying for an *habeas corpus*, or his master may bring an action for the detention of his apprentice. The writ of *habeas corpus* being a writ specially granted by the legislature for the liberty of the subject, it can be granted only at the instance of the party detained, and not on the application of any other person. Lord *Kenyon* observed, that he remembered Lord *Mansfield* to have said, that for a long time he was not aware that he had a power, as chief justice, to relieve the party by his warrant for his discharge, but that he had been informed by Mr. *Way* that such a power had existed ever since the time of Lord *Holt*. Lord *Kenyon* declared, that he should not hesitate a moment to grant his warrant on the present occasion, though the writ, having been moved on behalf of the master, and not of the party impressed, must be quashed. An apprentice, his lordship observed, could not even enter voluntarily, for his time was his master's property. *Lawrence*, J. mentioned the case of an apprentice who had absconded from his master and enlisted as a soldier, but was immediately restored upon application to the War Office by his master, in consequence of the apprentice disliking his situation, and expressing a wish to return to his master's service. The War Office, however, though they restored the apprentice, were advised to indict him for taking the bounty. The learned judge said, that Mr. J. *Buller* had informed him that Lord *Mansfield* had frequently by his warrant discharged persons in the situation of this apprentice at the request of their masters. The power to grant such a warrant was given by a clause in some act of parliament in the time of Hen. VII. or VIII. he did not recollect exactly which.

The lord chief justice may issue a warrant to bring up the apprentice either on application from the master or apprentice.

CHIMNEY SWEEPERS' APPRENTICES.

By stat. 28 Geo. III. c. 48, intituled "An Act for the better regulation of chimney sweepers, and their apprentices," after reciting that "Whereas the laws now in being respecting masters and apprentices do not provide sufficient regulations, so as to prevent various complicated miseries, to which boys employed in climbing and cleansing of chimneys are liable, beyond any other employment whatsoever, in which boys of tender years are engaged: and whereas the misery of the said boys might be much alleviated, if some legal power and authorities were given for the regulation of chimney sweepers and their apprentices:" sect. 1 enacts, "that from and after the 5th day of July, 1788, it shall and may be lawful to and for the churchwardens and overseers of the poor for the time being, of the several and respective parishes, townships, or places, within the kingdom of Great Britain, by and with the consent and approbation of two or more of his Majesty's justices of the peace acting in and for any county, riding, city, town corporate, borough or division, within Great Britain, (such consent and approbation to be signified by such justices in writing under their hands, according to the form prescribed by the indenture contained in the schedule hereunto annexed,(*a*)) to bind or put out any boy, or boys, who is, are, or shall be of the age of eight years, or upward, and who is, are, or shall be chargeable, or whose parents are or shall become chargeable to the parish or parishes, or places, where they shall so be, or who shall beg for alms, or by and with the consent of the parent or parents of such boy or boys, to be apprentice and apprentices to any person or persons using or exercising the trade, business, or mystery of a chimney sweeper, for so long time, and until such boy or boys shall attain or come to the age of sixteen years; and such binding out any such apprentice and apprentices shall be as effectual in the law, to all intents and purposes, as if such boy or boys was or were of full age, and by indenture had bound himself or themselves an apprentice or apprentices."

Preamble.

Churchwardens and overseers of the poor, with consent of two justices, may bind boys chargeable, &c. apprentices to chimney sweepers.

Sect. 2. "And to the end that the time of the continuance of the service of such apprentice or apprentices may plainly and certainly appear; be it

The age of the apprentice to be inserted in the indenture.

(*a*) See Form, *post*, (No. 52.)

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further enacted, that the age of every such boy or boys so to be bound apprentice or apprentices shall be mentioned and inserted in such indenture, being taken truly from the copy of the entry in the register book, wherein the time of his or their being baptized is or shall be entered (where the same can or may be had); which copy shall be given and attested by the minister, vicar, or curate of such parish or parishes or places wherein such boy or boys' baptism shall be registered, without fee or reward, and may be written upon paper or parchment, without any stamp or mark; and where no such copy of such boy or boys being baptized can be had, such justices of the peace shall, as fully as they can, inform themselves of his or their age or ages, and from such information shall insert the same in the said indenture; and the age of such boy or boys, so inserted and mentioned in the said indenture (in relation to the continuance of his or their service) shall be taken to be his and their true age and ages without any further proof thereof."

Reference to the form of the indenture in the schedule.

Sect. 3. "And to the end and intent that there may be no doubt or uncertainty as to the form of the indenture, by which such boy or boys shall be bound apprentice or apprentices as aforesaid, and that the stipulations and agreements to be made and entered into by the said master or mistress may plainly and fully appear; be it enacted by the authority aforesaid, that such indenture shall be made and written out according to the form in the schedule hereunto annexed, and that the same shall not be charged with or liable to the payment of any higher or other stamp duty than is now charged upon indentures for binding out poor children by their respective parishes or places; any law or statute to the contrary notwithstanding."

Penalty on persons taking apprentices under the age of eight years.

Sect. 4. "And be it further enacted by the authority aforesaid, that all indentures, covenants, promises, and bargains hereafter to be made or taken of or for the having, taking, employing, retaining, or keeping of any boy or boys as or in the nature of an apprentice or apprentices, or servant or servants, employed in the capacity of a climbing boy or chimney sweeper, who shall be under the age of eight years as aforesaid, than is by this act limited, ordained, and appointed, shall be absolutely void in the law to all intents and purposes: and that every person who shall from henceforth have, take, employ, retain, or keep any such boy or boys as or in the nature of an apprentice or apprentices, or servant employed in the capacity of a climbing boy or chimney sweeper as aforesaid, who shall be under the age of eight years as aforesaid, contrary to the tenor and true meaning of this act, and being convicted thereof, as hereinafter mentioned, shall forfeit and pay for every such apprentice or servant, so by him or her had, taken, employed, retained, or kept, any sum not exceeding 10*l.* nor less than 5*l.*"

Overseers of the poor of any township or village may act as churchwardens.

Sect. 5. "And whereas in many large parishes within this realm there are several townships or villages, and overseers of the poor are chosen and appointed within and for each such township or village respectively; be it therefore further enacted by the authority aforesaid, that the overseers of the poor of every such township or village shall and may from time to time, within every such township or village, do, perform and execute all and every the acts, powers and authorities hereby enacted or directed to be done, performed, or executed by the churchwardens or overseers of the poor of a parish or place; any thing herein, or in any other law or laws contained to the contrary in anywise notwithstanding."

Justices to determine complaints between masters and apprentices.

Sect. 6. "And be it further enacted by the authority aforesaid, that it shall and may be lawful for one or more such justice or justices, and he or they shall have full power and authority, and is and are hereby authorised and impowered to inquire into and examine, hear, and determine, as well all complaints of hard or ill usage from the several and respective masters or mistresses to whom such apprentice and apprentices shall be so bound as aforesaid, as also all complaints of such boys as already have, or who shall at any time hereafter voluntarily put themselves apprentices to such trade, business, or mystery of a chimney sweeper as aforesaid; and in like manner also to inquire into and examine, hear, and determine all complaints of masters or mistresses against such apprentice and apprentices, and to make such orders therein respectively, as he or they is or are now enabled by law to do in other cases between masters and apprentices."

Sect. 7. "And be it further enacted by the authority aforesaid, that no person or persons using or exercising the trade, business, or mystery of a chimney sweeper, shall retain, keep, or employ any more than six apprentices at one and the same time; and that the name of every person so taking or receiving an apprentice or apprentices as aforesaid, and also the place of his or her abode shall be marked or put upon a brass plate, to be set or affixed in the front of a leathern cap, which every master or mistress shall provide for each such apprentice, and which he shall wear when out upon his duty; and that every master or mistress shall forfeit for every apprentice so retained, kept, or employed by him or her beyond the number limited by this act, or for neglecting to provide each such apprentice with such leathern cap, and brass plate to be so affixed thereupon, and marked with his or her name and place of abode as aforesaid, contrary to the true intent and meaning of this act, any sum not exceeding the sum of 10*l.* nor less than 5*l.*"

Not more than six apprentices at the same time.

Sect. 8. "And be it further enacted by the authority aforesaid, that if any such master or mistress shall misuse or evil treat his or her apprentice, or that the said apprentice shall have any just cause to complain of the forfeiture or breach of any of the covenants, clauses, or agreements, to be expressed and contained in such indenture, made and written out according to the form in the schedule hereunto annexed, on the part and behalf of such master or mistress, then and in such case such master or mistress, being convicted thereof in manner hereinafter mentioned, shall forfeit and pay for every such offence any sum not exceeding 10*l.* nor less than 5*l.*"

Penalty on the master for breach of any of the covenants specified in the indenture.

Sect. 9. "And be it further enacted, that no person or persons using or exercising the trade, business, or mystery of a chimney sweeper, shall let out to hire, or lend by the day or otherwise, to any other person for the purpose of sweeping of chimneys, any boy or boys that are already apprentice or apprentices, or that shall hereafter be bound apprentice or apprentices, under the directions of this act, nor shall cause such boy or boys to call the streets before seven of the clock in the morning, nor after twelve of the clock at noon, between Michaelmas and Lady-day, nor before five of the clock in the morning, nor after twelve of the clock at noon, between lady-day and Michaelmas; and that if any master or mistress shall, after the passing of this act, offend in any of the cases aforesaid, he or she shall forfeit and pay for every such offence any sum not exceeding 10*l.* nor less than 5*l.*"

That boys shall not be let out to hire, nor to call the streets before a certain time.

Sect. 10. "And be it further enacted by the authority aforesaid, that all convictions for penalties and forfeitures by this act imposed for any offence against the same, shall be made before one or more justice or justices of the peace, acting for the county, riding, city, town, borough, or division, where such offence was committed, either by confession of the offender, or upon the oath of one or more credible witness or witnesses; and for that purpose it shall be lawful for one or more such justice or justices, upon complaint made to him or them thereof, to summon the person or persons so offending before him or them to answer to such complaint, in such manner as he or they is and are authorised so to do in any other matter cognizable before a magistrate."

Convictions for penalties and forfeitures to be made before one or more justices of the peace.

Sect. 11. "And be it further enacted by the authority aforesaid, that all penalties and forfeitures by this act imposed for any offence, neglect, or default against the same, and all costs and charges to be allowed and ordered by the authority of this act, shall be levied by distress and sale of the goods and chattels of the offender, or person liable or ordered to pay the same respectively, by warrant under the hand and seal of one or more such justice or justices of the peace, acting for the county, riding, city, town, borough, or division, where such offence, neglect, or default shall happen; and such order for payment of such costs or charges shall be made, rendering the overplus of such distress and sale (if any) to the party or parties, after deducting the charges of making the same; which warrant such justice or justices is and are hereby impowered and required to grant, upon conviction of the offender by confession, or upon the oath of one or more credible witness or witnesses, or upon order made as aforesaid; and the penalties and forfeitures, costs and charges, when so levied, shall be paid, the one half to the informer, and the

Penalties how be levied and applied.

CHIMNEY SWEEPERS.

other half to the overseers of the poor of the parish, township, or place where the master or mistress of such apprentice shall dwell and inhabit; and in case such distress cannot be found, and such penalties and forfeitures, or the said costs or charges shall not be forthwith paid, it shall and may be lawful for such justice or justices, and he and they is and are hereby authorised and required, by warrant under his or their hand and seal, or hands and seals, to commit such offender or offenders, or person or persons liable to pay the same respectively, to the common gaol or house of correction of the county, riding, city, town, borough, or division, where the offence shall be committed, or such order as aforesaid shall be made, for any time not exceeding three months, unless the said penalty, forfeiture, costs or charges, shall respectively be sooner paid."

No warrant or distress to be issued until six days after the conviction.

Sect. 12. "Provided nevertheless, that no warrant of distress shall be issued for levying any penalty or forfeiture, costs or charges, until six days after the offender shall have been convicted, and an order made and served upon him or her for payment thereof."

Distress not unlawful for want of form, &c.

Sect. 13. "And be it further enacted by the authority aforesaid, that where any distress shall be made for any sum or sums of money, to be levied by virtue of this act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers, on account of any default or want of form in any proceedings relating thereto; nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio* on account of any irregularity which shall be afterwards done by the party or parties distraining; but the person or persons aggrieved by such irregularity may recover a full satisfaction for the special damage in an action on the case."

Plaintiff not to recover for any irregularity, if tender of sufficient amends be made.

Sect. 14. "Provided always, that no plaintiff or plaintiffs shall recover in any action for any such irregularity, trespass, or wrongful proceedings, if tender of sufficient amends shall be made by or on the behalf of the party or parties who shall have committed, or cause to have been committed, any such irregularity or wrongful proceedings, before such action brought; and in case no such tender shall have been made, it shall and may be lawful for the defendant in any such action, by leave of the court where such action shall depend, at any time before issue joined, to pay into court such sum of money as he or they shall see fit, whereupon such proceedings or orders and judgments shall be had, made, and given in and by such court, as in other actions where the defendant is allowed to pay money into court."

Justices to administer oaths.

Sect. 15. "And be it further enacted, that where any oath is hereby required and directed to be taken, the justice or justices of the peace of the county, riding, city, town, borough, or division, where the offence shall be committed, shall administer, and he or they is and are hereby respectively impowered to administer the same."

Persons aggrieved may appear, &c.

Sect. 16. "Provided always, and be it further enacted, that if any person shall think himself or herself aggrieved by any thing done by any justice or justices of the peace, in pursuance of this act, such person may appeal to the justices of the peace at the next general or quarter sessions of the peace to be holden for the county, riding, city, town, borough, or division wherein the cause of such complaint shall arise, having first entered into a recognizance, with sufficient surety, before such justices, to prosecute and abide by the order or orders that shall be made on such appeal, and also giving, or causing to be given, to the justice by whose act or acts such person shall think himself or herself aggrieved, notice in writing of his or her intention to bring such appeal, and of the matter thereof, within six days after the cause of such complaint shall have arisen."

Public act.

Sect. 17. "And be it further enacted by the authority aforesaid, that this act shall be deemed, adjudged, and taken to be a public act, and be judicially taken notice of as such by all judges, justices, and other persons whomsoever, without specially pleading the same."

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(4.) Relative to Chimney-Sweepers' Apprentices.

Indenture of Apprenticeship of Chimney-Sweepers, (No. 51.)

Approbation of, by Justices, (No. 52.)

Information, &c against a Sweep for taking an Apprentice under Eight Years of Age, (No. 53.)—the like for having more than Six Apprentices, (No. 54.)—the like for Ill-using Apprentice, (No. 55.)—the like for Letting to Hire an Apprentice, (No. 56.)

(1.) Forms relating to Apprentices in General.

(No. 1.)

Usual printed indenture. (a)

THIS INDENTURE witnesseth, that A. B. doth put himself apprentice to C. D. to learn his art and with him [after the manner of an apprentice] to serve from the unto the full end and term of seven years from thence next following, to be fully complete and ended. During which term the said apprentice his master faithfully shall serve, his secrets keep, his lawful commands everywhere gladly do; he shall do no damage to his said master, nor see to be done of others, but to his power shall let or forthwith give warning to his said master of the same; he shall not waste the goods of his said master, nor lend them unlawfully to any; he shall not commit fornication nor contract matrimony within the said term; he shall not play at cards, dice, tables, or any other unlawful games, whereby his said master may have any loss, with his own goods or others during the said term without license of his said master; he shall neither buy nor sell; he shall not haunt taverns or playhouses, nor absent himself from his said master's service day or night unlawfully, but in all things as a faithful apprentice he shall behave himself towards his said master and all his, during the said term. And the said A. B. his said apprentice, in the art of which he useth, by the best means that he can, shall teach and instruct, or cause to be taught and instructed, limiting unto the said apprentice sufficient meat, drink, lodging, and all other necessaries during the said term. And for the true performance of all and every the said covenants and agreements either of the said parties bindeth himself unto the other by these presents. In witness whereof the parties abovenamed to these indentures interchangeably have put their hands and seals, the day of and in the year of the reign of our sovereign lord by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and in the year of our Lord one thousand eight hundred and

(a) See *ante*, p. 159 to 170. It would be advisable to insert a clause providing for the death of the master, resembling the form (No. 19.) *post*, p. 237.

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(No. 2.)

Indenture of apprenticeship to two masters to serve them consecutively in distinct trades.(a)

THIS INDENTURE made the [1st] *day of* [May,] *in the* [20th] *year, &c. and in the year of our Lord,* [1820,] *between* [*J. G. of the parish of Leeds in the county of York,* [*weaver,*] *and T. F.* [*woolcomber,*] *of the one part, and B. F. of the parish aforesaid, of the other part, witnesseth, that the said B. F. hath of his own freewill and with the consent of his parents, put and bound himself apprentice to and with the said J. G. and T. F. and with them after the manner of an apprentice to dwell, remain, and serve, from the date hereof, for, during, and until the term of seven years thence next following to be fully completed and ended, during all which term the said apprentice his said masters well and faithfully shall serve, their respective secrets shall keep, and lawful commands do, fornication or adultery shall not commit, hurt or damage to his said master shall not do or consent to be done, but to his power shall let it and forthwith his said masters thereof warn; taverns or alehouses he shall not haunt or frequent unless it be about his masters' business there to be done; at dice, cards, tables, bowls, or any such unlawful games, he shall not play; the goods of his said masters respectively shall not waste, or lend or give to any person without his masters' license; matrimony within the said term shall not contract, nor from either of his masters' services at any time absent himself, but as a true and faithful apprentice shall order and behave himself towards his said masters and all theirs as well in words as in deeds during the said term, and a true and just account of all his masters' goods, chattels, and money committed to his charge, or which shall come to his hands, faithfully he shall give at all times when thereunto required by his said masters, or either of their executors, administrators, and assigns; and the said J. G. for himself, his executors, and assigns, doth covenant, promise, and grant, by these presents, to and with the said B. F. apprentice, that the said J. G. and T. F. their executors, administrators, or assigns, shall and will teach, learn, and inform him the said apprentice, or cause him to be taught, learned, and informed in the mystery of the trade of stuff-weaving and woolcombing, which the said masters now use, after the best manner or knowledge which he or they may or can with all circumstances thereunto belonging, and also shall find and provide to or for him the said apprentice sufficient and enough of meat; and that the said J. G. shall find and provide him meals, drink, washing and lodgings for the first four years (to and not to exceed eight hanks per day, and to have four hanks allowed for looming, to have three days each year for himself, and to have four shillings for a low count if he works any overwork, and so on in proportion,) the said apprentice to serve the latter three years with T. F. (and not to exceed five pounds per day,) the said apprentice to receive one shilling per year wages, and the said J. G. to be absolutely free from the said apprentice at the end of four years from the date hereof, and the said apprentice not to have above three days if he should have to stand for work; and for the true performance of all and singular the covenants and agreements aforesaid, each of the parties aforesaid doth bind himself unto the other firmly by these presents. In witness whereof, &c.*

(No. 3.)

Assignment of an apprentice.(b)

TO all to whom these presents shall come: I, A. M. of send greeting. Whereas my apprentice A. P. hath divers years yet to come and unexpired of his apprenticeship, to wit, whole years from the day of now last past, as by his indenture of apprenticeship to be sealed doth appear; Now know ye, that I the said A. M. for divers good causes and considerations me hereunto moving, have given, granted, assigned, and set over, and by these presents do fully and absolutely give, grant, assign, and set over, unto A. S. of all such right, title, duty, term of years to come, service, and demand whatsoever, which I the said A. M. have in or to the said A. P. or which I may or ought to have in him by force and virtue of the said indenture of apprenticeship. And moreover, I the said A. M. do by these presents covenant, promise, and agree to and with the said A. S., his executors and administrators, that notwithstanding any thing by me the said A. M. to be done to the contrary, the said A. P. shall, during the said term of years, well and truly serve the said A. S. as his master, and his commandments lawful and honest shall do, and from his service shall not absent himself during the said term. Provided, that the said A. S. shall well intreat and use him the said A. P., and him the said A. P. in the craft, mystery, and occupation of a , which he the said A. S. now useth, after the best manner that he can or may, shall teach, instruct, and inform, or cause to be taught, instructed, and informed, as much as thereunto belongeth, or in anywise appertaineth, and shall also during the same term find and allow unto the said A. P. sufficient meat, drink, apparel, washing, lodging, and all other things needful or meet for an apprentice. In witness, &c.

(a) This is the form of the indenture adopted in *Rex* v. *Louth*, 1 *M. & R. M. C.* 238; 8 *B. & Cres.* 247, S. C. *ante*, p. 160, with an alteration of its grammatical errors.

(b) See *ante*, p. 177.

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(No. 4.)

County of } *To the constable of* .

Summons of master for misusing his apprentice; on 5 Eliz. c. 4, s. 35. (a)

WHEREAS complaint and information have been made unto me , one of his Majesty's justices of the peace in and for the said county [or, *to me, mayor, &c.* or as the case may be,] *by A. P. apprentice to A. M. of in the said county,* [*shoemaker,*] *that the said A. M. hath misused and evil intreated him the said A. P. by cruel punishment and beating him the said A. P. without just cause, and by not allowing unto him sufficient meat, drink, apparel* [or as the case shall be]: *These are therefore in his Majesty's name to command you to summon the said A. M. to appear before me at the house of in the said county, on the day of , at the hour of in the afternoon of the same day, to answer unto the said complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal the day of, &c.*

Note.—A summons rather than a warrant, in all such like cases, between party and party, is generally most eligible; yet in this case it seems, that a warrant is justifiable to apprehend the master and bring him before the justice (especially if he shall contemn the summon); because it is required that he shall give security to the justice to appear at the sessions, if he shall not conform to the justice's order in the premises.

(No. 5.)

County of } *To the constable of* .

Summons of apprentice on complaint of the master; on 5 Eliz. c. 4, s. 35. (a)

WHEREAS complaint and information have been made unto me , one of his Majesty's justices of the peace in and for the said county, by A. M. of , in the said county, [*husbandman,*] *that A. P. now being an apprentice to him the said A. M., is negligent, stubborn, disorderly,* [or as the case shall be], *and doth not his duty to him the said A. M. his master: These are therefore to command you to summon the said A. P. to appear before me at , in the said county, on the day of , at the hour of in the afternoon of the same day, to answer to the said complaint, and to be further dealt with according to law. Herein fail not. Given under my hand and seal the day of, &c.*

As to complaints by master or his steward, &c. on oath, under stats. 20 Geo. II. c. 19, and 4 Geo. IV. c. 34, s. 1, see post, (No. 11 to No. 15.)

(No. 6.)

Order of discharge by four justices at the sessions; on 5 Eliz. c. 4, s. 35. (a)

County of } *AT a general quarter sessions of the peace holden at in and for the county aforesaid, the day of , in the year of the reign of our lord William the Fourth, by the grace of God, of Great Britain and Ireland King, Defender of the Faith, and so forth; before justices of our said lord the King, assigned to keep the peace in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and of the quorum, it is ordered as followeth:*

Upon the petition of A. P., apprentice to A. M. of in the said county, [*husbandman,*] *to be relieved upon certain neglects of the said master in instructing him in his trade, and in misusing and evil intreating the said apprentice by cruel punishment* [or as the case shall be]: *And the said master having likewise appeared upon his recognizance taken before J. P., Esq., one of the said justices, to answer to the complaint of the said petition, and having proved nothing whereby to clear himself of the said complaint, but on the contrary, the said A. P. having given full proof of the truth of the said complaint to the satisfaction of the said court: we, therefore, whose hands and seals are hereunto set, being four of the said justices, and of the quorum, do hereby order, pronounce, and declare, that the said apprentice shall be and is hereby discharged and freed from his said apprenticehood: and this to be a final order betwixt the said master and apprentice, any thing contained in their indentures of apprenticeship, or otherwise, to the contrary notwithstanding. Given under our hands and seals the day and year first above written.*

(a) *Ante*, p. 184 to 188.

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(No. 7.)

—— } *THE information and complaint of A. P. apprentice to A. M. of* } *in the said county, [husbandman,] exhibited before me J. P. one (a) [or us and two] of his Majesty's justices of the peace in and for the said county, the day of in the year of our Lord .*

Who saith, that he the said A. P. is an apprentice bound by indenture to A. M. of aforesaid, [husbandman]; and that he the said A. M. hath misused and ill treated him the said apprentice, and particularly [as the case shall be.]

Before me, J. P. [or *us, J. P., K. P.* as the case may be.] *A. P*

Complaint by apprentice to one justice, or to two or more justices, against his master, for misusing him, on 20 Geo. 2, c. 19, s. 3.(b)

(No. 8.)

—— } *To the constable of .*

WHEREAS information and complaint have been made unto me J. P. one (a) [or us and two] of his Majesty's justices of the peace in and for the said county, by A. P. apprentice to A. M. of in the said county, [husbandman,] that he the said A. M. hath misused and ill treated him the said A. P. and particularly [as the case shall be]: *These are therefore to require you to summon the said A. M. to appear before me* [or *us*, as the case shall be,] *at in the said county, on the day of at the hour of in the forenoon of the same day, to answer unto the said information and complaint. And be you then there to certify what you shall have done in execution hereof. Herein fail you not. Given under my* [or *our*] *hands and seals the day of in the year .*

Summons of master thereon.

(No. 9.)

—— } *WHEREAS complaint hath been made before me J. P. one* [or *us and two*] *of his Majesty's justices of the peace in and for the said county, by A. P. apprentice to A. M. of in the said county, [tailor,] that he the said A. M. hath misused and evil treated him the said apprentice, and particularly* [as the case shall be]: *and whereas the said A. M. hath appeared before us in pursuance of our summons to that purpose, but hath not cleared himself of and from the said accusation and complaint, but on the contrary the said A. P. hath made full proof of the truth thereof, and the said A. M. now stands duly convicted of the same before us upon oath; We therefore by these presents do discharge him the said A. P. of and from his apprenticeship to the said A. M. any thing in the indenture of apprenticeship made betwixt them, or otherwise howsoever, to the contrary notwithstanding. Given under our hands and seals the day of, &c.*

[Or, *And whereas it hath been duly proved before us, as well upon the oath of A. C. constable of aforesaid, as otherwise, that he the said A. C. did duly summon the said A. M. to appear before us at a reasonable time in the said summons mentioned and specified; but notwithstanding the same, he the said A. M. hath not appeared before us according to such summons: We therefore, having duly examined into the matter of the said complaint, and the truth thereof having been fully proved before us upon oath, do discharge, &c.*

Discharge of apprentice by two justices on master misusing him; on 20 Geo. 2, c. 19, s. 3.(c)

(No. 10.)

—— *BE it remembered, that at a special* [or *petty*] *sessions holden at in the county aforesaid, on the day of in the year of our Lord A. B. of, &c. [labourer,] came before* [us,] *J. P. [and L. M. two] of his Majesty's justices of the peace in and for the same county, and informed* [us] *on the behalf of A. P. an apprentice, (upon whose binding out not more than the sum of twenty-five pounds was paid,) that A. M. of in the county of [shoemaker,] to whom the said A. P. was bound as an apprentice as aforesaid, did, on the day of in the year aforesaid, at in the said ill-use the said*

Conviction for ill-using a parish or other apprentice, on 33 Geo. 3, c. 55, and 4 Geo. 4. c. 29.(b)

(a) See the 3 Geo. IV. c. 23, s. 2, which allows the complaint to be before *one* justice only, *post*, 817.

(b) See *ante*, 188.

(c) See *ante*, 189

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A. P. by [stating how]; *contrary to the form of the statute in such case made and provided: whereupon the said A. M. after, &c.* [conclude as usual *post*, **Conviction**, Vol. I. p. 836, 857.]

The penalty is not exceeding 40*s.*

(No. 11.)

Complaint to one justice, or more justices, by master or his agent, &c. against apprentice, for ill-behaviour; on 20 Geo. 2, c. 19, s. 3, 4, and 4 Geo. 4, c. 29, s. 1.(*a*)

—— } *THE complaint and information of A. M. of in the said county of* [*husbandman,*] [or *by A. A. of in the county of , steward,* [*manager,* or *agent,*] *of A. M. of in the said county,*] *the master of A. P. an apprentice to the said A. M. on oath* (*b*) *before me one* [or *us and two*] *of his Majesty's justices of the peace in and for the said county, the day of , who saith, that A. P. apprentice by indenture to the said A. M. and upon whose binding out no larger sum than 25l. of lawful British money, to wit, the sum of £ was paid or contracted to be paid, hath in the service of his apprenticeship been guilty of several misdemeanors, miscarriages, and of much misconduct and ill behaviour towards the said A. M. and particularly* [as the case shall be].

Before me, J. P. [or *us, J. P., K. P.*] *A. M.* [or *A. A.*]

(No. 12.)

Warrant thereon against the apprentice.

—— } *To the constable of .*

WHEREAS complaint and information have been made before me one [or *us, and two*] *of his Majesty's justices of the peace in and for the said county, by A. M. of in the said county,* [*husbandman,*] [or *by A. A. of in the said county, steward,* [*manager,* or *agent*] *of A. M. of in the said county,*] *the master of A. P. an apprentice by indenture to the said A. M. on oath, that A. P. the said apprentice, upon whose binding out no larger sum than 25l. of lawful British money, to wit, the sum of was paid or contracted to be paid, hath, in the service of his apprenticeship, been guilty of several misdemeanors, miscarriages, and of much misconduct and ill behaviour towards the said A. M. and particularly* [as the case may be, and following the words of the complaint]* [or, if the complaint is not made on oath, but is made by the master or his agent, verified by the oath of another person, then proceed as above to the asterisk, omitting the words on oath, and then say] *and which said complaint has been verified before us by the oath of A. W. of : These are therefore to require you forthwith to apprehend the said A. P. and bring him before us to answer unto the said complaint, and to be dealt with according to law: and you are to give notice to the said A. M. that he appear before us at the same time, to make good the said complaint. Given under our hands and seals, &c. the day of, &c.*

(No. 13.)

Commitment thereon by two justices to the house of correction.

—— } *To the constable of in the said county, and to the keeper of the house of correction at in the said county.*

WHEREAS complaint and information have been made before me one [or *before us two*] *of his Majesty's justices of the peace in and for the said county, by A. M. of in the said county,* [*husbandman,*] [or, *by A. A. of in the said county, steward,* [*manager,* or *agent,*] *of A. M. of in the said county*] *the master of A. P. an apprentice by indenture to the said A. M. on oath, that the said A. P. upon whose binding out no larger sum than 25l. of lawful British money, to wit, the sum of was paid, or contracted to be paid, hath in the service of his said apprenticeship been guilty of several misdemeanors, miscarriages, and of misconduct and ill behaviour towards the said A. M. and particularly* [as the case shall be,]*

(*a*) See *ante*, 191, 192.

(*b*) Though the complaint must be by the master or his steward, &c., yet the verification on oath may be by another person, in which case the words "*on oath*" must be omitted; and afterwards, after the statement of facts, must be added, "*and which said complaint and information were verified before us by the oath of A. W. of* [*labourer,*] *on the day and year aforesaid, at aforesaid, in the county aforesaid.*"

[or, if the complaint is not made on oath, but is made by the master or his agent, verified by the oath of another person, then proceed as above to the asterisk, omitting the words "on oath" and then say] *and which said complaint has been verified before us by the oath of A. W. of* .

And whereas upon examination thereof, and upon hearing the allegations of both parties, they having come before us, two of his Majesty's justices of the peace in and for the said county of for that purpose, and upon due consideration had thereof, it manifestly appears to us and we do adjudge that he the said A. P. is guilty of the premises so charged against him as aforesaid: we do therefore hereby command you the said constable to take and convey the said A. P. to the said house of correction, and to deliver him to the said keeper thereof, together with this warrant: and we do hereby command you the said keeper of the said house of correction to receive the said A. P. into your custody in the said house of correction, there to remain and be corrected, and held to hard labour for the space of . Given under our hands and seals the day, &c.

(No. 14.)

Discharge of an apprentice by two justices on complaint of the master; on 29 Geo. 2, c. 19, s. 4.(*a*)

—— } *WHEREAS complaint, &c.* [as in the form No. 13.] *We do therefore by* } *these presents discharge the said A. P. from his apprenticeship to the said A. M. any thing in any indenture or indentures of apprenticeship betwixt them, or otherwise, to the contrary notwithstanding. Given, &c.*

(No. 15.)

Master's oath to claim his apprentice, on stat. 6 Geo. 3, c. 25, s. 3.(*b*)

—— } *I A. M. of in the county of do make oath that I am by trade* } *a and that A. P. was bound to serve as an apprentice to me in the said trade, by indenture bearing date the day of in the year of our Lord one thousand eight hundred and for the term of years, and that the said A. P. did, on the day of in the year of our Lord one thousand eight hundred and abscond and quit my service without my consent, and that to the best of my knowledge and belief the said A. P. is aged about years. Witness my hand, the day of in the year of our Lord one thousand eight hundred and .*

Sworn before me, at in the of this day of in the year of our Lord one thousand eight hundred and .

J. P.

One of his Majesty's justices of the peace for the of .

(No. 16.)

Indictment for ill-treating an apprentice.(*c*)

—— *THE jurors for our Lord the King upon their oath present that on, &c., at, &c., C. D., late of, &c. in and upon one A. B., a child of tender years, to wit, the age of years, being the servant and apprentice of the said C. D., did make an assault, and with certain rods, whips, sticks, and cords,* [as the case may be,] *the said A. B. did then and there violently, cruelly, and immoderately beat, scourge, and strike, and did then and there pull, and strip, and force, and compel the said A. B. to pull and strip from off the body of the said A. B. certain clothes and wearing apparel, wherewith the said A. B. was then and there clothed and covered, so that the said A. B. was then and there naked and uncovered, and the said A. B. as well whilst she was so covered and clothed with the said clothes and wearing apparel as whilst she was so naked and uncovered, did forces and compel to work and labour violently, immoderately, and beyond her strength in the business of the said C. D. for the space of hours then next following; and the said A. B. so working and labouring as aforesaid did then and there shut up, confine, and keep in a certain room there for all the time aforesaid, without giving or affording to her the said A. B. or permitting her to have sufficient meat, drink, and food, for her nourishment, and support during that time; and such assaulting, beating, scourging, striking, and otherwise ill treating her the said A. B. in manner and form aforesaid, he the said C. D. on other different days then next following, at, &c.* [venue] *aforesaid, did*

(*a*) See *ante*, 191.

(*b*) See *ante*, 192, from Toones's M. M. 59.

(*c*) See a similar form, Cro. C. C. 8 ed. 63, from which this one was taken. See also Stark. 417; 2 Campb. 650; 1 Leach, 137; 3 Chit. C. L. 829. As to the offence see *ante*, p. 177.

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barbarously, cruelly, and inhumanly, repeat and reiterate in, upon, and against the said A. B., with an intent her the said A. B. then and there feloniously, wilfully, and of his malice aforethought, to kill and murder, and other wrongs to her did, against the peace of our Lord the King his crown and dignity. [Second count was for an assault, and compelling the apprentice to go naked into a frozen rivulet; the third count was for holding the apprentice near to a large fire, and scorching her and throwing her against the ground.]

(No. 17.)

Indictment for not providing sufficient food for servant of tender age.(a)

—— *THE jurors for our Lord the King upon their oath present, that E. R., the wife of S. R., unlawfully and maliciously contriving and intending to hurt and injure one E. W., being a servant to her the said E. R. and an infant of tender years, to wit, of the age of ten years, and under the control of the said E. R.(b) heretofore, to wit, on, &c. and on divers other days and times, as well before as after that day, with force and arms, at, &c. unlawfully, wilfully, and maliciously did omit, neglect, and refuse to provide for, and give and administer to the said E. W. sufficient meat and drink necessary for the sustenance, support and nourishment of the body of her the said E. W., and did then and there expose the said E. W. to the cold and inclemency of the weather, as well within as without the house wherein she the said E. R. then dwelt, and kept the said E. W. without sufficient and proper warmth necessary for the health of her the said E. W., to wit, at, &c. the said E. R. on the several days and times, and during all the times aforesaid, living separately and apart from the said S. R. her husband, to wit, at, &c. contrary to the duty of her the said E. R. as the mistress of the said E. W., by reason of all which premises, she the said E. W. afterwards, to wit, on, &c. became and was, and for a long time, to wit, the space of six months then next following, continued to be very weak, sick, and ill, and greatly consumed and emaciated in her body, to wit, at, &c. aforesaid, to the great damage of the said E. W. to the evil example of all others, and against the peace of our Lord the King his crown and dignity.*

(2.) Forms relating to Parish Apprentices.

(No. 18.)

Order from two justices empowering overseers to bind a poor apprentice, pursuant to 56 Geo. 3, c. 139, s. 1.(c)

—— } *WHEREAS A. B. and C. D. overseers (c) of the poor of the parish of*
to wit. } *in the county of , have on this day of in the year of the reign of our sovereign lord William the Fourth, at the parish of in the said county, brought before us J. C. and S. P. Esquires, two of the justices assigned to keep the peace in and for the said county of , A. P. a poor male* [or *female*] *child, and exceeding the age of nine years, that is to say, of the age of (d) and upwards, belonging to and having a settlement in the said parish of , in the said county, whose parents E. P. and G. P. are not able to maintain such child: and the said A. B. and C. D. as such overseers of the poor of the parish of aforesaid, have proposed to us the said justices, to bind such child to be an apprentice to one A. M. of the parish of , in the county of ,* [*tailor,*] *residing within the distance of forty miles from the parish and place to which the said child belongs, and as an apprentice with him the said A. M. to dwell and serve until the said A. P. shall come to the age of years,* [or if a female, *or until the time of her marriage, which shall first happen,*] *according to the statutes in such case made and provided. And whereas we the said justices, having now here inquired into the propriety of binding such child apprentice to the said A. M., being the person to whom it hath been so proposed by such overseers to bind such child as aforesaid: and whereas we, the said justices, have now here particularly inquired and considered whether such person doth reside and hath his place of business within a reasonable distance from the place to which such child doth so belong as aforesaid, having regard to the means of*

(a) This was the indictment against Elizabeth Ridley, 2 Campb. 650; *ante*, 177.

(b) Query, if it ought not to be averred that the infant was unable to provide for itself. Russ. & R. C. C. 20; *ante*, 177.

(c) See *ante*, p. 197, 198. Query, whether the order ought not to mention the churchwardens. See *ante*, p. 205.

(d) The child must exceed nine years of age; *ante*, 197.

communication between such places, and whether any circumstances make it fit in the judgment of us, the said justices, that such child should be placed apprentice at a greater distance. [*And whereas also we have now here examined the said E. P. and G. P. the father and mother of the said child, and who reside in the said parish and place to which the said child doth belong,* (omit this averment if not according to fact.)] *And we have now here particularly inquired of the said E. P. and G. P. and otherwise, as to the distance of the residence and place of business of the said A. M. and the means of communication therewith: and whereas also we, the said justices, have also now here inquired into the circumstances and character of the said A. M. and on such examination and inquiry, we, the said justices, think it proper that such child should be bound apprentice to the said A. M. Now, therefore, we, the said justices, do declare, that the said A. M. is a fit person to whom the said child may be properly bound as apprentice as aforesaid. And we do therefore hereby order and direct, that the said A. B. and C. D. the overseers of aforesaid, being the place to which such child doth belong, shall be and are at liberty to bind such child apprentice accordingly. Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and .* J. C. (L. S.)
J. P. (L. S.)

(No. 19.)

Indenture of apprenticeship in pursuance of such order, and according to 43 Eliz. c. 2, and 56 Geo. 3, c. 139, s. 1, with proviso directed to be added by 32 Geo. 3, c. 57, s. 1, in case of death of master. (*a*)

THIS INDENTURE, made the day of in the year of the reign of our sovereign lord William the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland King, defender of the faith, and in the year of our Lord one thousand eight hundred and Witnesseth, that J. K. and L. M. churchwardens of the parish of in the county of and A. B. and C. D. overseers of the poor of the said parish, by and with the consent of J. P. and K. L. two of his Majesty's justices of the peace for the said county, whose names are hereunto subscribed, one of them, to wit, Esquire, being of the quorum, and by virtue and in pursuance of an order in writing made by and under the hands and seals of J. P. and S. P. Esquires, justices of the peace in and for the said county, in pursuance of the statute in that case made and provided, and bearing date the day of have put and placed, and by these presents do put and place, A. P. exceeding the age of nine years, to wit, of the age of years, or thereabouts, a poor child of the said parish of apprentice to A. M. of with him to dwell and serve from the day of the date of these presents, until the said apprentice shall accomplish his full age of years, [or, if a female, *or until the time of her marriage, which shall first happen,*] *according to the statute in that case made and provided. During all which term, the said apprentice his said master faithfully shall serve, in all lawful businesses, according to his power, wit, and ability, and honestly, orderly, and obediently in all things demean and behave himself towards his said master and all his during the said term. And the said A. M. for himself, his executors, and administrators, doth covenant, agree, and grant, to and with the said churchwardens and overseers, and every of them, their and every of their executors and administrators, and their and every of their successors for the time being, by these presents, that he the said A. P. the said apprentice, in the art, trade, or mystery of shall and will teach and instruct, or cause to be taught and instructed, in the best way and manner that he can during the said term* [here insert any other covenant that may be desirable]; *and shall and will during all the term aforesaid find, provide, and allow unto the said apprentice, proper, competent, and sufficient meat, drink, apparel, lodging, washing, and all other things necessary and fit for an apprentice: (provided always, that the said last-mentioned covenant on the part of the said A. M. his executors and administrators, to be done and performed, shall continue and be in force for no longer time than for three calendar months next after the death of the said A. M. in case he the said A. M. shall happen to die during the continuance of such apprenticeship, according to the provisions of an act passed in the thirty-second year of the reign of his late Majesty King George the Third, entitled, "An Act for the further regulation of parish apprentices," and also of another act passed in the fifty-sixth year of the reign of King George the Third, entitled, "An Act to regulate the binding of parish apprentices.") And also shall and will so provide for the said apprentice that he be not in any way a charge to the said parish of or the parishioners of the same: but of and from all charge shall and will save the said parish and parishioners harmless and indemnified during the said term.*

(*a*) See *ante*, p. 196, 197, 202, 203, 206.

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In witness whereof the parties above said to these present indentures interchangeably have set their hands and seals, the day and year first above written.
Sealed and delivered in the presence of .

(No. 20.)

Justices' allowance of such indenture.(a)

WE, whose names are hereunto written, justices of the peace, acting in and for the county of aforesaid (whereof one is of the quorum,) do consent to the putting forth A. P. an apprentice, according to the intent and meaning of this indenture; and do sign and seal this our allowance of such indenture of apprenticeship before the same hath been executed by any of the other parties thereto, in pursuance of the statute in such case made and provided. Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and . J. P. (L. S.)
K. L. (L. S.)

(No. 21.)

Order under 56 Geo. 3, c. 139, s. 1, for binding a poor apprentice at a greater distance than forty miles from place of settlement.(b)

—— } *WHEREAS A. B. and C. D. overseers of the poor of the parish of* } *in the county of have on this day of in the year of the reign of our Sovereign Lord William the Fourth, at the parish of in the said county, brought before us J. P. and S. P. Esquires, two of his Majesty's justices assigned to keep the peace in and for the said county of A. P. a poor male* [or *female*] *child, exceeding the age of nine years, to wit, of the age of years and upwards, belonging to and having a settlement in the said parish of in the said county, and whose parents E. P. and G. P. are not able to maintain such child; and the said A. B. and C. D. as such overseers of the poor of the parish of aforesaid, have proposed to us, the said justices, to bind such child to be an apprentice to one A. M. of the parish of in the county of he the said A. M. residing and having an establishment in trade at which it is intended such child should be employed, out of the same county of aforesaid, at a greater distance than forty miles from the parish of aforesaid, to which such child so belongs as aforesaid; and the said parish of to which such child so belongs as aforesaid, being also more than forty miles from the city of London, and as an apprentice with the said A. M. to dwell and serve until the said A. P. shall come to the age of years,* [or if a female, *or until the time of her marriage, which shall first happen,*] *according to the statutes in such case made and provided: and whereas we, the said justices, having now inquired into the propriety of binding such child apprentice to the said A. M. and having particularly inquired and considered whether such person doth reside and have his place of business within a reasonable distance from the place to which such child doth so belong as aforesaid, having regard to the means of communication between such places, and whether any circumstances make it fit, in the judgment of us the said justices, that such child should be placed an apprentice at a greater distance:* [*and whereas also we have now here examined the said E. P. and G. P. the father and mother of the said child, and who reside in the said parish and place to which the said child doth belong,* (omit this averment if not according to the fact.)] *And having particularly inquired of the said E. P. and G. P. and otherwise, as to the distance of the residence and place of business of the said A. M. having, also, now here inquired into the circumstances and character of the said A. M.: and whereas, also, we, the said justices, have now here particularly inquired into and considered the grounds for allowing of the apprenticing of such child to the said A. M. so residing and having an establishment in trade at a greater distance than forty miles from the said parish and place to which such child so belongs as aforesaid, we do hereby find the grounds following; that is to say,* [state the reasons according to the fact, which may be thus: *because it appears to us, the said justices, that there is no person within the said distance of forty miles to whom such child may be more properly bound apprentice, &c.*] *And whereas, also, on such examination and inquiry, we, the said justices, think it proper that such child should be bound apprentice to the said A. M. notwithstanding he the said A. M. resides and has an establishment in trade at a greater distance than forty miles from the said parish and place to which the said child belongs as aforesaid. Now, therefore, we, the said justices, do declare, that the said A. M. is a fit person to whom the said child may be properly bound as an apprentice as aforesaid; and we do, therefore, hereby*

(a) See *ante*, 98, 208, 209. (b) See *ante*, 198.

order and direct that the said A. B. and C. D. the overseers of the poor of the parish of aforesaid, being the place to which such child doth belong, shall be and are at liberty to bind such child apprentice accordingly. Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and .

(No. 22.)

Justices' allowance of indenture pursuant to such order.(a)

WE J. P. and K. L. Esquires, whose names are hereunder written, two of his Majesty's justices of the peace in and for the county of (whereof J. P. one of us is of the quorum,) do consent to the putting forth of as an apprentice, according to the intent and meaning of this indenture; it having been proved upon oath before us, that due notice in writing has been given by the overseers of the poor of the parish of [the parish binding the apprentice] to the overseers of the poor of the parish of [the parish in which the apprentice is to serve] of such binding being intended, and do sign this our allowance of such apprenticeship in pursuance of the statute in such case made and provided. Dated this day of one thousand eight hundred and .

(No. 23.)

Order on indenture in case of original master removing to another county, or forty miles distant from parish where apprentice bound, either for apprentice to continue with such master or be discharged or assigned to another person, on 56 Geo. 3, c. 139, s. 8.(b)

—— } *WHEREAS A. M. the master of the apprentice in the within indenture mentioned, is about to quit his present residence at and to remove out of the same county of or at least forty miles from the place of residence where the said A. P. was bound apprentice, and has given fourteen days previous notice in writing to the churchwardens and overseers of the poor of the parish of* [the parish where the apprentice resides at time of removal]: *And whereas the said A. P. the said apprentice, as also the said A. M. and the overseers of the poor of the parish of did on, &c. the day of the date hereof, appear before us J. P. and K. L. two of the justices of the peace in and for the said county, and upon inquiry we do find* [state whether the apprentice is to continue with his master in another parish, or whether to be assigned or discharged]: *and we, the said justices, do hereby order that the said A. P. the apprentice aforesaid, may* [here insert as above;] *and we do further order, that the said A. M. the former master of the said A. P. do pay to the intended new master of the said A. P. the sum of as and for the expense of assigning or binding of the said apprentice to the said as aforesaid, being in our judgment a reasonable part of and proportion of the original apprentice fee paid to the said on his being bound an apprentice to the said . Given under our hands and seals this day of one thousand eight hundred and .*

J. P.
K. L.

(No. 24.)

Conviction on stat. 56 Geo. 3, c. 139, s. 15.(c)

—— } *BE it remembered, that on the day of in the year of our Lord A. M. of, &c. is convicted before us and two of his Majesty's justices of the peace in and for the county of upon the information of for that* [here state the offence] *contrary to the form of the statute passed in the fifty-sixth year of the reign of his late Majesty King George the Third, intituled, An Act to regulate the binding of parish apprentices, and for which offence we do adjudge that the said shall forfeit and pay the sum of to be paid and applied as follows* [here state the application of the penalty]; *and in case such penalty shall not be paid by the said or levied by distress upon goods and chattels, within days from the date of this conviction, we adjudge that the said shall be imprisoned in for the space of . Given under our hands and seals the day and year first above mentioned.*

(No. 25.)

Information for not receiving a poor apprentice, on 8 & 9 Will. 3, c. 30, s. 3.(d)

—— } *THE information and complaint of A. B. churchwarden* [or *overseer of the poor*, as the case may be,] *of the parish of in the said county,*

(a) See *ante*, p. 198.
(b) See *ante*, p. 215.
(c) See *ante*, p. 200. The act gives this form.
(d) See *ante*, p. 196, 197, 203.

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made upon oath before me, J. P. one (a) [or us, two] of his Majesty's justices of the peace in and for the said county of the day of in the year of our Lord one thousand eight hundred and twenty . Who says, that he A. B. and C. D. churchwardens, and E. F. and G. H. overseers of the poor of the parish of by the assent of and Esquires, two of his Majesty's justices of the peace in and for the said county, dwelling near to [or in] the said parish of one whereof is of the quorum, did endeavour to bind A. P. a poor [male] child of the said parish, whose parents are not able to maintain [him,] apprentice to A. M. of in the said parish, [tailor,] and for that intent did prepare and duly perfect one pair of indentures, pursuant to the statute in that case made and provided, which said pair of indentures was signed and confirmed by the said justices. And the said A. B. further says that he the said A. M. hath refused and doth refuse to receive and provide for the said A. P. as an apprentice, and also to execute another part of the said indentures, being duly tendered to him by the said churchwardens and overseers of the poor, whereby the said A. M. hath forfeited the sum of 10*l. to the use of the poor of the said parish of in which such offence has been committed. Whereupon the said A. P. prays the judgment of two of his Majesty's justices of the peace for the said county of in the premises, and that the said A. M. may be summoned to answer the premises accordingly.* *A. B.*

Before me, J. P. [or *us, J. P. and K. P.* as the case may be.]

(No. 26.)

Warrant to levy 10*l.* for not receiving a poor apprentice, on 8 & 9 Will. 3, c. 30, s. 5.(*b*)

—— *to wit. To* [*and* or] *the Constables of* .

WHEREAS A. B. and C. D. churchwardens, and E. F. and G. H. overseers of the poor of the parish of in the said county, by the assent of [*us*] *two of his Majesty's justices of the peace for the said county, dwelling near to* [or in] *the said parish of one whereof is of the quorum, did endeavour to bind A. P. a poor* [*male*] *child of the said parish, whose parents are not able to maintain* [*him,*] *apprentice to A. M. of in the said parish,* [*tailor,*] *and for that intent did prepare and duly perfect one pair of indentures, pursuant to the statute in such case made and provided, which said pair of indentures was signed and confirmed by* [*us*] *the said two justices; and whereas the said A. M. is duly convicted before us the justices aforesaid, as well upon the oath of the said A. P. as otherwise, for that he the said A. M. hath refused, and doth refuse to receive and provide for the said A. P. as an apprentice, and also to execute another part of the said indentures, being duly tendered to him by the said churchwardens and overseers of the poor, whereby the said A. M. hath forfeited the sum of ten pounds: these are, therefore, in his said Majesty's name, to require and command you to make distress of the goods and chattels of him the said A. M. and if within the space of* [*six*] *days next after such distress by you made, the said sum of* 10*l. together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale pay the said sum of* 10*l. to the overseers of the poor of the said parish of where the said offence was committed, for the use of the poor of the said parish; returning the overplus upon demand unto him the said A. M. the reasonable charges of taking, keeping, and selling the said distress being thereout first deducted. Herein fail you not. Given under our hands and seals the day of in the year .*

Practical directions.

Note.—As an appeal is given to the sessions against the appointment of an apprentice to be bound to any person as aforesaid, it is proper either not to make out, or not to execute the warrant of distress until after the next sessions.

And it is to be observed, that one *precedent* alone in this case is here inserted, for brevity sake, as being not in a matter of constant practice; but it is to be understood, in all such like cases, that there must be a *complaint* or *information* in writing, then a *summons* of the party accused, or *warrant*, as the case may be, and a hearing and determining of the cause, and *conviction* thereupon, if the party shall be found to be guilty. But as the special fact must be the same throughout all the forms of proceedings, it is easy from one to frame all the rest.

(*a*) See 3 Geo. IV. c. 23, s. 2, *post*, p. 817. (*b*) See *ante*, 196, 197.

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(No. 27.)

Summons thereon.

—— *WHEREAS A. I. one of the overseers of the poor of the parish of hath informed and laid a complaint before me that A. O. of the said parish of [farmer,] being an occupier of certain lands and tenements in the parish of aforesaid, hath refused and doth refuse to receive and provide for A. P. an apprentice duly bound to him by indentures by the churchwardens and overseers of the poor of the said parish of the said A. P. being a poor child of the said parish of whose parents are not able to maintain him, and that he the said A. O. hath also refused and doth refuse to execute the other part of the said indentures, the same being duly tendered to him for that purpose, whereby he the said A. O. hath forfeited the sum of* 10*l.*: *These are therefore, &c.* [conclude as *post*, No. 41.]

(No. 28.)

Conviction on 56 Geo. 3, c. 139, against persons taking or overseers binding, poor apprentices, without an order of Justices. (*a*)

—— *BE it remembered, that on, &c. C. D. of, &c. is convicted before us, J. P. and S. P. Esquires, two of his Majesty's justices of the peace for the county of upon the information of G. H. for that the said C. D. on, &c. at, &c. aforesaid, did receive, as an apprentice, a certain poor child, named A. P. who was then and there by a certain indenture of apprenticeship bound unto him the said C. D. as such apprentice by E. F. overseer of the poor of the parish aforesaid; [or, being overseer of the poor of the parish aforesaid, did, by a certain indenture of apprenticeship, bind a certain poor child, named A. P. as an apprentice to one E. F.] an order of two justices of the peace in that behalf, and an allowance of such indenture of apprenticeship by two justices of the peace, not having before then been obtained, as required by the statute in that case made and provided; contrary to the form of the statute made in the fifty-sixth year of the reign of his late Majesty King George the Third, intituled, "An Act to regulate the binding of parish apprentices;" and for which offence we do adjudge that the said C. D. shall forfeit and pay the sum of* [ten] *pounds, to be paid and applied as follows, that is to say,* [*the sum of*] *to be paid and applied for the necessary costs and charges attending the said information and the proceedings thereon; and the sum of being the residue of the said sum of* 10*l. to be paid unto G. H. who gave us information of the said offence, or, unto for the use of the poor of the said parish* (*b*); *and in case such penalty shall not be paid by the said C. D. or levied by distress upon his goods and chattels, within days from the date of this conviction, we adjudge that the said C. D. shall be imprisoned in* [*the house of correction for the said county*], *for the space of months.* (*c*) *Given under our hands and seals, the day and year first above mentioned.* *J. P.*
S. P.

(No. 29.)

Order of two justices, directing a parish apprentice to continue with widow, &c. of deceased master, on 32 Geo. 3, c. 57, s. 2. (*d*)

WHEREAS D. M. within named, late of the parish of in the said —— } *county, died on the day of being within three calendar months now last past, we, two of his Majesty's justices of the peace in and for the county aforesaid, whose names are hereunto subscribed, on the application and at the request of A. M. widow* [or as the case may be] *of the said D. M. living with and being part of the family of the said D. M. at the time of his death, do hereby order and direct, that A. P. the apprentice within named, who was in the service and actual employment of the said D. M. at the time of his death, shall serve the said A. M. as such apprentice for the residue of the term of such apprenticeship within mentioned, according to the provisions of an act passed in the thirty-second year of the reign of his late Majesty King George the Third, intituled "An Act for the further regulation of parish apprentices." Witness our hands this day of* *J. P.*
S. P.

I, the above named A. M. do hereby declare, that the above order is made at my request, and that I do accept the said A. P. as my apprentice, according to the terms and covenants contained in the said indenture, and according to the provisions of the said act. Witness my hand, the day and year above written. *A. M.*

(*a*) See *ante*, 198, 199. The formal parts of this form are given by the 56 Geo. III. c. 139, s. 15, *ante*, 200. See form Archb. Forms of *Convictions*.

(*b*) See 56 Geo. III. c. 139, s. 13, *ante*, 200.

(*c*) Not less than three nor more than six months.

(*d*) See *ante*, 211.

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(No. 30.)

The like order, by a separate instrument.

} *WHEREAS it appears unto us, two of his Majesty's justices of the peace for* —— } *the said county, that A. P. was bound an apprentice by the churchwardens and overseers of the poor of the parish of to D. M. late of the said parish of and that the said D. M. died on the day of being within three calendar months now last past: now we, the said two justices, on application and at the request, &c.* [then to the end of the form (No. 29), *mutatis mutandis*].

(No. 31.)

Assignment of a parish apprentice, with consent of two justices, by indorsement on indenture, &c. on 32 Geo. 3, c. 57, s. 7. (a)

} *BE it remembered, that the within named F. M. by and with the consent and* —— } *approbation of J. P. and S. P. two of his Majesty's justices of the peace, in and for the said county, whose names are subscribed to the consent hereunder written, doth hereby assign A. P. the apprentice within named, unto N. M. to serve him during the residue of the term within mentioned; and that he the said N. M. doth hereby agree to accept and take the said A. P. as an apprentice for the residue of the said term, and doth hereby acknowledge himself, his executors and administrators, to be bound by the agreements and covenants within mentioned on the part of the said F. M. to be done and performed, according to the true intent and meaning thereof, and pursuant to the provisions of an act passed in the thirty-second year of the reign of his late Majesty King George the Third, intituled, "An Act for the further regulation of parish apprentices." In witness whereof we, the said F. M. and N. M. have hereunto set our hands, this day of .* F. M. N. M.

WE, two of his Majesty's justices of the peace above mentioned, } J. P. *do consent thereto. Witness our hands this day of .* } S. P.

(No. 32.)

The like assignment by a separate instrument.

} *WHEREAS it appears unto us, J. P. and S. P. two of his Majesty's justices* —— } *of the peace in and for the said county, whose names are subscribed to the consent hereunder written, that A. P. was bound an apprentice by the churchwardens and overseers of the poor of the parish of to F. M. of the same parish, by indenture bearing date on or about the day of until the said A. P. should attain his age of twenty-one years. Now be it remembered, that the said F. M. by and with the consent, &c.* [and so on to the end, as in form (No. 31), *mutatis mutandis.*]

(No. 33.)

Discharge of a parish apprentice on 32 Geo. 3, c. 57, s. 11. (b)

} *WHEREAS complaint has been made before us J. P. and S. P. two of his* —— } *Majesty's justices of the peace in and for the said county, by A. P. a parish apprentice to A. M. of, &c. that he the said A. M. has misused and evil-treated him the said apprentice, and particularly* [here state the particular acts of ill-treatment.] *And whereas the said A. M. has appeared before us, in pursuance of our summons for that purpose, yet has not cleared himself of and from the said accusation and complaint, but on the contrary, the said A. P. has made full proof of the truth thereof before us, upon oath: We therefore by these presents do discharge him the said A. P. of and from his apprenticeship to the said A. M. any thing in the indenture of apprenticeship whereby the said A. P. is bound to the said A. M. to the contrary notwithstanding.*

And we do hereby order that he the said A. M. shall, upon due notice hereof, forthwith deliver up to the said apprentice his clothes and wearing apparel, and also pay immediately to the churchwardens or overseers of the poor of the parish of in the said county, to which parish the said apprentice belongs, some or one of them, the sum of to be applied by them, some or one of them, under our order, for the benefit of the said apprentice, as to us shall seem meet. Given under our hands and seals the day of one thousand eight hundred and .

(a) See *ante*, 212.

(b) See *ante*, 214.

(No. 34.)

Complaint thereon that the money has not been paid.

} *THE information and complaint of A. O. of, &c. one of the overseers of the* —— } *poor of the parish of in the said county, made on oath before us J. P. and S. P. two of his Majesty's justices of the peace in and for the said county, this day of one thousand eight hundred and who on his oath aforesaid says, that by an order under the hands and seals of us the said J. P. and S. P. two of his Majesty's justices of the peace in and for the said county, which said order he now here produces to us the said justices, A. P. the parish apprentice of A. M. of the said parish was discharged of and from his apprenticeship to the said A. M. for ill treatment; and further, that in and by the said order the said A. M. was ordered upon due notice of the said order forthwith to deliver up to the said apprentice his clothes and wearing apparel, and also to pay immediately to the churchwardens or overseers of the poor of the said parish, to which parish the said A. P. belongs, some or one of them, the sum of to be applied by them, some or one of them, under the order of us the said justices, for the benefit of the said apprentice; and that of the said order the said A. M. has had due notice, but that the said A. M. has nevertheless not paid the said sum of so directed to be paid by him the said A. M. nor any part thereof, but refuses so to do: Whereupon the said A. P. prays that justice may be done in the premises.* A. O.

Sworn before us, J. P. and S. P. the day and year first above mentioned at .

(No. 35.)

Warrant of distress thereon. (a)

—— } *To the constable of in the said county, and others whom this may concern.*

WHEREAS by an order under the hands and seals of us J. P. and S. P. two of his Majesty's justices of the peace in and for the said county, dated the, &c., A. P. the parish apprentice of A. M. of in the said county, was discharged of and from his apprenticeship to the said A. M. for misusage and ill treatment; and whereas in and by the said order the said A. M. was ordered upon due notice of the said order forthwith to deliver up to the said A. P. his clothes and wearing apparel, and also to pay immediately to the churchwardens or overseers of the poor of the said parish of (to which parish the said A. P. belongs,) some or one of them, the sum of to be applied by them, some or one of them, under the order of us the said justices, for the benefit of the said apprentice: and whereas it appears unto us upon the oath of A. O. one of the overseers of the poor of the said parish, that the said A. M. has had due notice of our said order, but has not paid the said sum of so directed to be paid by the said A. M. nor any part thereof, but on the contrary has refused and still refuses so to do, and thereupon the said A. O. prays that justice may be done in the premises: These are therefore to command you [that at the expiration of seven days from the notice of our said order, you do make distress of the goods and chattels of the said A. M. unless before the expiration of the said seven days, he the said A. M. give notice to the churchwardens and overseers of the said parish of or to one of them, of his intent to appeal to the next general quarter sessions after such order made, against the said order of discharge, or the said order of payment,*

(a) See *ante*, 214. It will be seen that this form is applicable only to where the warrant of distress has been issued within the seven days. If the warrant be issued after that time, then it may be in the above form, omitting the words between brackets. In the event of the appeal being made, and the order confirmed; or if the appeal being made, and the master do not appear, then the warrant of distress may be framed from the above form *mutatis mutandis*; and may be thus from the above asterisk: *And that within seven days after such notice of the said order, the said A. M. did give notice to the churchwardens and overseers of the said parish of of his intent to appeal against the said order at the then next sessions of the peace, to be holden for the said county. And that at the said sessions the said order was then and there confirmed,* [or, *but that at the said sessions the said A. M. did not appear in support of the said appeal.*] *These are therefore to command you, &c.* [proceed from these words in the above form, except that after the words *thereout first deducted*, should be added in case of non-appearance, *and that you add* 40*s. to the said reasonable expenses on account of the non-appearance of the said A. M, as aforesaid.*]

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in which case you are to postpone the taking of the said distress till after the said next sessions shall have been holden; and if at the sessions the said A. M. shall not appear in support of his said appeal, then you are hereby further commanded to add the sum of 40s. to the said expenses of distress, and immediately upon such non-appearance, or upon the confirmation at the said sessions of the said order of discharge or payment, you are to proceed forthwith to make the said distress] that you do levy the same by distress of the goods and chattels of the said A. M. together with the reasonable expenses of such distress; and if within the space of four days next after such distress by you made, the said sum of together with the reasonable expenses of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by the sale thereof that you pay the said sum of unto the churchwardens or overseers of the poor of the said parish of to be by them applied as aforesaid, returning the overplus, upon demand, unto the said the reasonable charges of taking, keeping, and selling the said distress being thereout first deducted. Given under our hands and seals the day of one thousand eight hundred and .

J. P.
S. P.

(No. 36.)

Complaint against master for not giving a discharged parish apprentice his clothes; on 32 Geo. 3, c. 57, s. 11.(a)

THE information and complaint of A. P. of, &c. late the parish apprentice of A. M. of in the said county, made on oath before us J. P. and S. P. two of his Majesty's justices of the peace in and for the said county, this day of, &c. who, on his oath aforesaid, saith, that by an order under the hands and seals of us the said justices, dated the day of, &c. which said order he now here produces to us the said justices, he the said A. P. was discharged from his apprenticeship to the said A. M. for ill-treatment; and that in and by the said order, the said A. M. was ordered upon due notice of the said order forthwith to deliver up to him the said A. P. his clothes and wearing apparel; and that the said A. M. had due notice of the said order on the day of, &c. and that this complainant did then demand his clothes and wearing apparel of and from the said A. M. according to the said order, which he the said A. M. then refused, and still refuses, to deliver up, wherefore he the said A. P. prays us the said justices that justice may be done in the premises.

A. P.

Sworn before us, J. P. and S. P. the day and year first above named.

(No. 37.)

Order thereon.

WHEREAS by an order under the hands and seals of us J. P. and S. P. two of his Majesty's justices of the peace in and for the said county, dated the day of, &c. A. P. the parish apprentice of A. M. of in the said county, was discharged of and from his apprenticeship to the said A. M. for ill-treatment; and whereas in and by the said order the said A. M. was ordered upon due notice of the said order forthwith to deliver up to the said A. P. his clothes and wearing apparel: And whereas information and complaint have been made unto us the said justices, by and upon the oath of the said A. P. that the said A. M. had due notice of our said order on the day of, &c. and that the said A. P. did then demand his clothes and wearing apparel, but that the said A. M. then refused, and still refuses to deliver up to him, the said A. P. such clothes and wearing apparel as aforesaid, according to the directions of the said order: and thereupon the said A. P. prays us the said justices that justice may be done in the premises: And whereas the said A. M. has been duly summoned to appear before us the said justices to answer unto the said complaint, but has not shown unto us any just cause why he refuses to comply with the directions of the said order, and to deliver up the said clothes and wearing apparel as thereby commanded: We do therefore hereby order the said A. M. upon due notice of this our order, to pay to the churchwardens or overseers of the poor of the said parish of the sum of (b) to be by them applied as the law directs. Given under our hands and seals, the day of one thousand eight hundred and .

J. P.
S. P.

(a) See *ante*, 214.

(b) A sum not exceeding 5*l*.

(No. 38.)

Warrant of distress thereon.

——} *To the constable of and others whom this may concern.*

WHEREAS by an order under the hands and seals of us J. P. and S. P. two of his Majesty's justices of the peace in and for the said county, dated the day of, &c. A. P. of, &c. the parish apprentice of A. M. of in the said county, was discharged of and from his apprenticeship to the said A. M. for misusage and ill-treatment: And whereas in and by the said order the said A. M was ordered upon due notice of the order forthwith to deliver up to the said A. P. his clothes and wearing apparel: And whereas information and complaint have been made unto us the said justices, by and upon the oath of the said A. P. that the said A. M. had due notice of our said order on the day of, &c. but refused to deliver up to him, the said A. P. such clothes and wearing apparel as aforesaid, according to the direction of the said order: And whereas the said A. M. was duly summoned to appear before us on the day of last, to answer unto the said complaint, but did not show unto us any just cause why he refused to comply with the directions of the said order, and deliver up to the said A. P. the said clothes and wearing apparel as thereby commanded: We the said justices did thereupon then and there, by an order under our hands and seals, order that he the said A. M. should, upon due notice of the said order last mentioned, pay to the churchwardens or overseers of the poor of the said parish of the sum of to be by them applied as the law directs: And whereas it appears unto us the said justices, upon the oath of A. O. one of the overseers of the poor of the parish of aforesaid, that the said A. M. has had due notice of our said order last mentioned, but has not paid the said last mentioned sum of so directed to be paid by the said A. M. nor any part thereof: These are therefore to command you to make distress of the goods and chattels of the said A. M. and if within the space of four days next after such distress by you made the said last mentioned sum of together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the goods and chattels so by you distrained, and out of the money arising by the sale thereof that you pay the said last mentioned sum of unto the churchwardens or overseers of the poor of the parish of to be by them applied as aforesaid, returning the overplus, upon demand, unto the said A. M. the reasonable charges of taking, keeping, and selling the said distress being thereout first deducted. Given under our hands and seals the day of one thousand eight hundred and

J. P.
S. P.

(No. 39.)

Recognizance of overseers to prosecute master for ill-treatment of parish apprentice, on 32 Geo. 3, c. 57, s. 11. (a)

——} *BE it remembered, that on the day of in the year of the reign of our Sovereign Lord William the Fourth, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, A. O. and P. O. overseers of the poor of the parish of in the said county, [or P. O. one of the overseers of the poor of the parish of as the case is,] personally came before us, J. P. and S. P. Esquires, two of his Majesty's justices of the peace in and for the said county, and acknowledged themselves to owe to our said Lord the King the sum of each, to be made and levied of their goods and chattels, lands, and tenements respectively, to the use of our said Lord the King, his heirs and successors, if default shall be made in the condition following:*

Whereas A. P. an apprentice by a parish indenture to A. M. of the parish of in the said county, [farmer,] has charged on oath the said A. M. his master, before us the said justices, with misusage and ill-treatment, he the said A. M. having [here state shortly the particular grounds of complaint,] *for which said offences and misconduct we have discharged the said A. P. of and from his apprenticeship to the said A. M.*

Now the condition of this recognizance is such, that if the above bounden A. O. and P. O. do and shall produce the said A. P. or other material evidence, and prosecute with effect the said A. M. for the said offence and misconduct, by indictment at the

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(a) See *ante*, 214.

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next general quarter sessions of the peace [or *gaol delivery*, as the case is,] *for the said county, according to the directions of an act passed in the thirty-second year of the reign of his late Majesty King George the Third, intituled "An Act for the further regulation of parish apprentices," then this recognizance to be void, otherwise of force. Acknowledged before us,* J. P.
S. P.

(No. 40.)

Information against master for abandoning a parish apprentice, and removing above forty miles, on 56 Geo. 3, c. 139, s. 8. (*a*)

THE information and complaint of A. O. overseer of the poor of the parish of in the said county, *made upon oath before me, one* [or *us two*] *of his Majesty's justices of the peace in and for the said county, the day of, &c. who says that A. P. a poor child of the parish of aforesaid, in the county aforesaid, was put apprentice by the churchwardens and overseers of the poor of the said parish of by and with the consent of two of his Majesty's justices of the peace in and for the said county, unto A. M. then of the said parish of* [tailor,] *and that the said A. M. afterwards removed into the parish of in the county aforesaid,* [or as the case is, see post, 247, (No. 42), *with the said A. P. his apprentice, and where he left her and wilfully abandoned her on the removing his residence more than forty miles from the parish where the same was when the said A. P. was bound apprentice, as well as from the said parish of where he so wilfully abandoned her, without giving a written notice thereof to the churchwardens and overseers of the poor of the parish, where the said apprentice then resided and was legally settled, fourteen days previous to such removal, according to the directions of an act passed in the fifty-six year of the reign of King George the Third, intituled "An Act to regulate the binding of parish apprentices," whereby the said A. M. has forfeited the sum of* 10*l. to be paid to the overseers of the poor of the said parish in which such offence has been committed: Whereupon the said A. O. prays the judgment of two of his Majesty's justices of the peace for the said county of in the premises, and that the said A. M. may be summoned to answer the premises accordingly.*

Sworn before me [or *us*,] *J. P. Esquire,* [*and S. P. Esquire,*] *the day and year first above named.*

(No. 41.)

Summons thereon.

To the constable of in the county of and others whom this may concern.

WHEREAS information and complaint upon oath have been made before me, [or *us*, as the case may be,] *one* [or *two*] *of his Majesty's justices of the peace in and for the said county, by A. O. overseer of the poor of the said parish of in the said county, that A. P. a poor child of the parish of aforesaid, in the county aforesaid, was put apprentice by the churchwardens and overseers of the poor of the said parish of by and with the consent of two of his Majesty's justices of the peace in and for the said county, unto A. M. then of the said parish of* [*tailor*]; *and that the said A. M. afterwards removed into the parish of in the county aforesaid,* [or as the case is,] *with the said A. P. his apprentice, and where he left him and wilfully abandoned him on the removing his residence more than forty miles from the parish where the same was when the said A. P. was bound apprentice, as well as from the said parish of* [or as the case is,] *where he so wilfully abandoned him without giving a written notice thereof to the churchwardens and overseers of the poor of the parish where the said apprentice then resided and was legally settled, fourteen days previous to such removal, according to the directions of an act passed in the fifty-sixth year of the reign of his late Majesty King George the Third, intituled "An Act to regulate the binding of parish apprentices," whereby the said A. M. has forfeited the sum of ten pounds, to be paid to the overseers of the poor of the said parish in which such offence has been committed: These are therefore, in his Majesty's name, to command you to summon the said A. M. to appear before me,* [or *us*,] *and such other of his Majesty's justices of the peace in and for the said county as shall be present at in in the said county, on the day of instant, at the hour*

(*a*) See *ante*, 215, and the form, *Y. C. P.* 56.

of in the forenoon, to answer unto the said information and complaint, and to be further dealt with according to law. Given under my hand and seal, [or our hands and seals,] this day of in the year of our Lord one thousand eight hundred and

J. P.
S. P.

(No. 42.)

Conviction of master removing with, or abandoning, a parish apprentice without order, &c. on 56 Geo. 3, c. 139. (a)

BE it remembered, that on the day of in the year of our Lord A. M. of, &c. [tailor,] is convicted before us, J. P. and S. P. Esquires, two of his Majesty's justices of the peace in and for the county of upon the information of A. O. for that the said A. M. being a person to whom a child, named A. P. had been before then bound apprentice by the overseers of the poor of the parish of and whilst the said A. P. was so bound to him as aforesaid, did, on the day of last past, and within three calendar months next before the information in this behalf was exhibited, remove his residence to in the county of being forty miles and upwards from the parish wherein the said A. M. resided, when the said A. P. was so bound apprentice as aforesaid, (b) and took the said A. P. to aforesaid, without an order in that behalf being made by two justices of the peace, either for the continuance of such apprentice with the said A. M. or for the discharge of such apprentice, or for the binding or assigning of such apprentice to any other person ; [or, did wilfully abandon and leave the said A. P. without giving a written notice to the churchwardens or overseers of the poor of the said parish, in which the said A. P. then resided, of his the said A. M.'s intention to remove his residence or establishment of business, pursuant to the statute in that case made and provided] : contrary to the form of the statute made in the fifty-sixth year of the reign of his late Majesty King George the Third, intituled "An Act to regulate the binding of parish apprentices;" and for which offence we do adjudge that the said A. M. shall forfeit and pay the sum of ten pounds, to be paid and applied as follows, that is to say, to be paid to the churchwardens and overseers of the poor of the parish of wherein the said A. P. was legally settled at the time the said A. M. did so remove, [or did so abandon and leave the said A. P.] as aforesaid, for the use of the poor of the said parish ; and in case such penalty shall not be paid by the said A. M. or levied by distress on his goods and chattels, within days from the date of this conviction, we adjudge that the said C. D. shall be imprisoned in [the house of correction for the said county,] for the space of months. (c) Given under our hands and seals, the day and year first above mentioned.

J. P.
S. P.

(No. 43.)

Warrant of distress thereon.

To the constable of the parish of and others whom this may concern.

WHEREAS A. M. late of, &c. [tailor,] is this day duly convicted before us J. P. and S. P. Esquires, two of his Majesty's justices of the peace in and for the said county, upon the oath of A. O. overseer of the poor of the said parish of [or as the case is,] for that A. P. a poor child of the parish of aforesaid, in the county aforesaid, was put apprentice by the churchwardens and overseers of the poor of the said parish of by and with the consent of two of his Majesty's justices of the peace in and for the said county, unto the said A. M. then of the said parish of [tailor,] and that the said A. M. afterwards removed into the parish of in the county aforesaid, [or as the case is,] with the said A. P. his apprentice, and where he left him and wilfully abandoned him on the removing his residence more than forty miles from the parish where the same was when the said A. P. was bound apprentice, as well as from the said parish of [or as the case is,] where he so wilfully abandoned him, without giving a written notice thereof to the churchwardens and overseers of the poor of the parish where the said apprentice then resided and was legally settled, fourteen days previous to such removal, according to the directions of an act passed in the fifty-sixth year of the reign of his late Majesty King George the Third, intituled "An Act to regulate the binding of parish apprentices," whereby the said A. M. hath forfeited the sum of 10l. to be paid to the overseers of the poor of the said parish in which such offence has been committed :

(a) See *ante*, 215. The act gives the formal parts of the conviction, see *ante*, 200.
(b) See the 56 Geo. III. c. 139, s. 8, *ante*, 215.
(c) Not less than one nor more than six months.

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*These are therefore to command you, in case no notice of appeal to any court or *general or quarter sessions to be holden for the said county, within three calendar months from the date of such information and complaint, be given by the said A. M. to us the said justices, and also to the person or persons interested in such appeal, within twenty-one days from the date hereof, the said A. M. entering into a recognizance with two sufficient sureties, before some justice of the peace for the county or district within which the said conviction has taken place, to appear at such general or quarter sessions to abide the judgment of the court upon such appeal, and to pay the costs which may be awarded thereon, to levy the said sum of* 10*l. by distress and sale of the goods and chattels of the said A. M.; and if within the space of four days next after such distress by you taken, the said sum of* 10*l. together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained as aforesaid, and out of the money arising by such sale that you do pay the sum of* 10*l. to the overseers of the poor of the said parish in which the said offence was committed, to be by them applied under our orders as the said act directs, returning the overplus (if any), on demand, unto the said A. M. and if sufficient distress cannot be found of the goods and chattels of the said A. M. whereon to levy the said sum of* 10*l. that then you do certify the same to us, together with the return of this precept. Given under our hands and seals at in the said county, the day of in the year of our Lord one thousand eight hundred and*

J. P.
S. P.

(No. 44.)

Commitment thereon for want of distress. (*a*)

To the constable of in the said county, and to the keeper of the house of —— correction, [or common gaol,] at in the said county.

WHEREAS A. M. late of, &c. [tailor,] was, on the of last, duly convicted before me [or us] J. P. [and S. P.] Esquires, one [or two] of his Majesty's justices of the peace in and for the said county, upon the oath of A. O. overseer of the poor of the parish of [or as the case is,] for that A. P. a poor child of the parish of aforesaid, in the county aforesaid, was put apprentice by the churchwardens and overseers of the poor of the said parish of by and with the consent of two of his Majesty's justices of the peace in and for the said county, unto the said A. M. then of the parish of [tailor,] and that the said A. M. afterwards removed into the parish of in the county aforesaid, [or as the case is,] with the said A. P. his apprentice, and where he left him and wilfully abandoned him on the removing his residence more than forty miles from the parish where the same was when the said A. P. was bound apprentice, as well as from the said parish of [or as the case is,] where he so wilfully abandoned him, without giving a written notice thereof to the churchwardens and overseers of the poor of the parish, where the said apprentice then resided and was legally settled, fourteen days previous to such removal, according to the directions of an act passed in the fifty-sixth year of the reign of his late Majesty King George the Third, intituled "An Act to regulate the binding of parish apprentices," whereby the said A. M. has forfeited the sum of 10*l. to be paid to the overseers of the poor of the said parish in which such offence has been committed: And whereas on the day of, &c. we, [or the said justices,] did issue our [or their] warrant to the constable of to levy the said sum of* 10*l. by distress and sale of the goods and chattels of the said A. M. and to pay the same according to the direction of the said statute; and whereas it duly appears unto us J. P. and S. P. Esquires, two [or me J. P. Esquire, one] of his Majesty's justices of the peace in and for the said county, as well upon the oath of the said constable of as otherwise, that he the said constable of has used his best endeavours to levy the said sum of* 10*l. on the goods and chattels of the said A. M. as aforesaid, but that no sufficient distress can be found whereon to levy the same: These are therefore to require you, the constable of aforesaid, to convey the said A. M. to the said house of correction [or common gaol] of the said county of and deliver him to the said keeper thereof, together with this precept. And you the said keeper are hereby commanded to receive into your custody in the house of correction [or common gaol] him the said A. M. and there safely to keep him for the space of And for your so doing this shall be your sufficient warrant. Given under our hands and seals, [or my hand and seal,] at in the said county, the day of in the year of our Lord one thousand eight hundred and*

J. P.
S. P.

(*a*) See *ante*, 216.

(No. 45.)

Conviction for discharging parish apprentices without consent of two justices, on 56 Geo. 3, c. 139, s. 10.(a)

[The 56 Geo. III. c. 139, s. 15, gives the formal parts of the conviction, *ante*, (No. 42), and state the offence thus:] *in the county aforesaid, did put away and transfer unto A. B.*, [or, *did discharge and dismiss from his service*] *a parish apprentice named G. H. then bound to the said C. D. as apprentice, without the consent of two justices of the peace in that behalf; contrary to the form of the statute made in the fifty-sixth year, &c.* [as in the form, *ante*, (No. 42), to the end.]

(No. 46.)

Recognizance on giving notice of appeal, on 56 Geo. 3, c. 139, s. 17.(b)

County of } *BE it remembered, that on the day of in the year of* } *the reign of our Sovereign Lord William the Fourth, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, A. M. of in the county aforesaid,* [yeoman,] *and A. S. of* [weaver,] *and B. S. of* [carpenter,] *personally came before me J. P. Esquire, one of his Majesty's justices of the peace for the said county, and acknowledged themselves to owe to our said Lord the King, that is to say, the said A. M. the sum of 20l., and the said A. S. and B. S. the sum of 10l. each, of good and lawful money of Great Britain, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said Sovereign Lord the King, his heirs and successors, if the said A. M. shall make default in the condition following:—*

Whereas the above bounden A. M. was on the day of instant, duly convicted before J. P. and K. P. Esquires, two of his Majesty's justices of the peace in and for the said county, upon the oath of O. P. overseer of the poor of the parish of in the said county, [or as the case may be,] *for that A. P. a poor child of the parish of in the county aforesaid, was put apprentice by the churchwardens and overseers of the poor of the said parish of by and with the consent of two of his Majesty's justices of the peace in and for the said county, unto the said A. M. then of the said parish of and that the said A. M. afterwards removed into the said parish of W. with the said A. P. his apprentice, and where he left her and wilfully abandoned her on the removing his residence more than forty miles from the parish where the same was when the said A. P. was bound apprentice, as well as from the said parish of W. where he so wilfully abandoned her without giving notice thereof to the churchwardens and overseers of the poor of the parish, where the said apprentice then resided and was legally settled, fourteen days previous to such removal: Now the condition of this recognizance is such, that if the above bound A. M. shall well and truly appear at the next general* [or *quarter*] *session of the peace to be holden in and for the said county, and then and there enter and prosecute an appeal against the said conviction, and abide the judgment of the court upon such appeal, and pay the costs which may be awarded thereon, and not depart without leave of the court, then this recognizance to be void.*

Acknowledged before me, J. P.

(No. 47.)

Register of a Parish Apprentice, under 42 Geo. III. c. 46.(c)

Number.	Date of Indenture.	Name of the Apprentice.	Sex.	Age.	His or her Parents' Names.	Their Residence.	Name of Persons to whom bound or assigned, as the case may be.	His or her Trade.	His or her Residence.	Term of the Apprenticeship or Assignment.	Apprentice or Assignment Fee.	Overseers Parties to the Indenture or Assignment.	Magistrates assenting.	Magistrates resident in any other County, within which the place shall be situated where the Child is to serve.
													(To be signed by themselves.)	N. B. This is added in consequence of stat. 56 Geo. III. c. 139, s. IV. *ante*, 193.

(a) See *ante*, 216. (b) See *ante*, 200. (c) The act gives this form. See *ante*, 217.

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(No. 48.)

Conviction under 42 Geo. 3, c. 46, s. 2. (a)

BE it remembered, that on the day of in the year of our Lord one thousand eight hundred and A. B. is convicted before us, two of his Majesty's justices of the peace for the [specifying the offence, and the time and place when and where committed, as the case may be,] *contrary to an act made in the forty-second year of the reign of King George the Third, intituled* [here set forth the title of the act.] *Given under our hands and seals the day and year above mentioned.*

(3.) Forms relating to Sea Service Apprentices.

(No. 49.)

Conviction of master or owner of ship, refusing to take a parish apprentice. (b)

[Commencement as usual, *post*, **Conviction**, Vol. I. or *ante*, (No. 42), to the words] *informed us that C. D. a subject of our Sovereign Lord the now King, on, &c. at, &c. aforesaid, being then the* [captain, or *owner*,] *of a certain ship, of the burthen of one hundred and twenty tons, did refuse to take as an apprentice one A. B. when then and there required so to do, the said A. B. being then a boy of the age of thirteen years and upwards, and fitly qualified both as to health and strength of body for the sea service, and whose parents were then chargeable to the said parish, and the said C. D. then having but one such apprentice; contrary to the form of the statute in such case made and provided: whereupon* [&c. as usual, *post*, **Conviction**, Vol. I. to the end. Penalty 10*l.* to the poor of the parish from whence such boy was bound, see 2 & 3 Anne, c. 6, s. 8, 1, 6; and 4 Anne, c. 19, *ante*, 221.

(No. 50.)

Conviction of master for allowing apprentice to leave his service, on 4 Geo. 4, c. 25, s. 4. (c)

—— *BE it remembered, that on, &c. at, &c. G. H. of, &c. labourer, personally came before me. J. P. one of his Majesty's justices of the peace for the said county, residing less than ten miles from the respective abodes of C. D. and E. F. hereinafter mentioned, and informed me, that at the time of the committing of the offence hereinafter mentioned, C. D. of, &c. was captain of a certain ship, called the Hebe, and that E. F. of, &c. was owner of the said ship; and that the said C. D. on, &c. and whilst he was captain, and the said E. F. was owner of the said ship as aforesaid, at, &c. as aforesaid, did suffer one A. B. who was then bound unto him the said C. D. as an apprentice, to leave the service of the said C. D. the same not being occasioned by death or desertion, sickness or other unavoidable cause; contrary to the form of the statute in such case made and provided: whereupon the said C. D. and E. F. after being duly summoned* [&c. as usual, *post*, **Conviction**, Vol. I. to the end.]

(4.) Forms as to Chimney Sweep Apprentices.

(No. 51.)

Chimney sweep indenture of apprenticeship. (d)

THIS INDENTURE made the day of in the year of the reign of our Sovereign Lord George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and in the year of our Lord Between A. B. and A. C. churchwardens and overseers of the poor of the parish of [or E. F. the father or next friend of the boy,] *of the one part; and A. M. of the parish of in the county of chimney sweeper, of the other part; Witnesseth, that the said churchwardens and overseers of the poor* [or the said E. F.] *by and with the consent and approbation of G. I. and H. I. two of his Majesty's justices of the peace acting in and for the of signified as here underwritten, have put, bound, and by these presents do put and bind A. P. a poor boy of the said parish, being of the age of years, to be apprentice to the said A. M. he being his first,* [second, or as the case may be,] *apprentice to learn the trade, business, art, and mystery of a chimney sweeper, and with him to dwell, remain, and serve from the day of the date of these presents, for and during the term of years, from hence next ensuing, fully to be complete and ended, during all which time he the*

(a) See *ante*, 217. The act gives this form.

(b) See *ante*, 223.

(c) See *ante*, 223.

(d) This form is given by the 28 Geo. III. c. 48, s. 1, *ante*, 225.

said A. P. his said master faithfully shall serve and obey, his secrets keep, and his lawful commands every where gladly do and perform; he shall not haunt alehouses or gaming-houses, nor absent himself from the service of his said master day or night without his leave, but in all things as a faithful apprentice shall behave himself towards his said master and all his during the said term: and the said A. M. in consideration of the good will which he hath and beareth towards the said apprentice, and of the faithful service so to be performed by him, doth hereby covenant, promise, and agree with the said churchwardens and overseers of the poor, [or the said E. F.] *that he the said A. M. his said apprentice, in the art and mystery of a chimney sweeper, which he now useth, shall and will teach and instruct, or cause to be taught and instructed, in the best manner that he can, and shall and will provide and allow unto the said apprentice, during all the said term, competent and sufficient meat, drink, washing, lodging, apparel, and all other things necessary for the said apprentice: and that the said A. M. his executors, administrators, or assigns, shall not nor will assign over this present indenture, or the apprentice to be bound thereby, without the consent and approbation, in writing, of two or more such justices of the peace, to be signified according to the form of the approbation here underwritten. And whereas, from the nature of the business or employment of a chimney sweeper, it is necessary for the boys employed in climbing to have a dress particularly suited to that purpose, which dress is only fit for that part of the occupation, the said A. M. doth hereby also covenant, promise, and agree to and with the said churchwardens and overseers of the poor,* [or the said E. F.] *to find and allow such suitable dress for the said apprentice, as often as need or occasion shall be and require, and provide for and deliver to the said apprentice, once in every year at least, during the term aforesaid, over and above the said dress proper for climbing, one whole and complete suit of clothing, with suitable linen, stockings, hats, and shoes. And further, that the said A. M. shall and will, at least once in every week, cause the said apprentice to be thoroughly washed and cleansed from soot and dirt, and shall and will require the said apprentice to attend the public worship of God on the Sabbath day, and permit and allow him to receive the benefit of any other religious instruction; and that the said apprentice shall not wear his sweeping dress on that day: and that the said A. M. shall not, nor will compel or oblige the said apprentice to call the streets, or any other places, before seven of the clock in the morning, nor after twelve of the clock at noon, between* Michaelmas *and* Lady-day, *nor before five of the clock in the morning, nor after twelve of the clock at noon, between* Lady-day *and* Michaelmas: *and that the said A. M. shall not nor will at any time during the said term let out his said apprentice for hire by the day, night, or otherwise, to any other person or persons exercising or using the said trade, nor shall he the said A. M. or any person or persons whomsoever by his directions require or force him the said apprentice to climb or go up any chimney which shall be actually on fire, nor make use of any violent or improper means to force him to climb or go up any such chimney; but shall in all things treat his said apprentice with as much humanity and care as the nature of the employment of a chimney sweeper will admit of. In witness, &c.*

(No. 52.)

Approbation of by justices.(*a*)

WE the above named G. I. and H. I. two of his Majesty's justices of the peace acting in and for the county of having inspected and examined the above named A. P. do hereby consent to and approve of his being bound [or *assigned over*] *as an apprentice to the above named A. M. according to the term and stipulations expressed in the above written indenture.*

(No. 53.)

Information against a sweep for taking apprentices, &c. under age of eight years, on 28 G. 3. c. 48, s. 4.(*b*)

[Commencement as usual, *post*, **Information**, Vol. III. to the words] *informeth me that C. D. late of, &c. chimney sweeper, on, &c. at, &c. in the said county, did take, employ, retain, and keep a certain boy, named A. B. in the capacity of a climbing boy and chimney sweeper, the said A. B. being then and there under the age of eight years; contrary to the form of the statute in such case made and provided: whereby, &c.* [as usual, *post*, **Conviction**, Vol. I. to the end. Penalty, not more than 10*l.* nor less than 5*l.* half to informer, and half to overseer of poor of parish where master shall inhabit; see the act, *ante*, 225.]

(*a*) This form is prescribed by the 28 Geo. III. c. 48.
(*b*) See *ante*, 226.

(No. 54.)

Information against a sweep for having more than six apprentices.

[Describe the offence thus:] *that C. D. late of, &c. being a person using the trade of a chimney sweeper, did, on, &c. at, &c. in the said county, retain, keep, and employ seven apprentices at the same time; contrary to the form of the statute in such case made and provided: whereby, &c.* [as usual to the end, *post*, **Conviction**, Vol. I.]

(No. 55.)

Information against a sweep for ill-using his apprentice.

[Describe the offence thus:] *that C. D. late of, &c. being a person using the trade of a chimney sweeper, did, on, &c. at, &c. in the said county, misuse and evil treat one A. B. his apprentice, by* [stating how]: *contrary to the form of the statute in such case made and provided: whereby, &c.* [as usual to the end, see *post*, **Conviction**, Vol. I.]

(No. 56.)

Information against a sweep for letting to hire his apprentice.

[Describe the offence thus:] *that C. D. late of, &c. being a person using the trade of a chimney sweeper, did, on, &c. at, &c. in the said county, let out for hire* [or *lend*] *unto one E. F. one of his the said C. D.'s apprentices, named A. B. for the purpose of sweeping chimnies; contrary to the form of the statute in such case made and provided: whereby, &c.* [as usual to the end, see *post*, **Conviction**, Vol. I.]

Approver.

AN Approver (probator) is a person indicted of treason or felony, and in prison for the same, who, upon his arraignment, before any plea pleaded, doth confess the indictment, and takes a corporal oath to reveal all treasons and felonies that he knoweth of, and therefore prays a coroner, before whom he is to enter his appeal or accusation against those that are partners in the crime contained in the indictment. 3 *Inst.* 129.

This accusation of himself and oath makes his accusation of another person of the same crime to amount to an indictment; and if his partners are convicted, he shall have his pardon of course. *Id.* 129, 130.

But justices of the peace cannot take cognizance hereof, because they have no authority by their commission to assign a coroner. *Id.* 130.

And besides, as it is in the discretion of the court, whether they will suffer one to be an approver, this method of late hath been seldom practised: and in many cases we have what seems to amount to the same by statute, where pardon is assured to offenders on discovering and convicting their accomplices. 4 *Bla. Com.* 330; statutes 4 & 5 Will. III. c. 8; 6 & 7 Will. III. c. 17; 10 & 11 Will. III. c. 23, s. 5; 5 Anne, c. 31, s. 4; 29 Geo. II. c. 30. The rewards given by these statutes were abolished by the 58 Geo. III. c. 70: but by 7 Geo. IV. c. 64, s. 32, the court have now a discretionary power of rewarding those who have been acting in the apprehension of offenders. See *post*, **Rewards**, Vol. V.

Accomplice's evidence.

The engagement of a magistrate to an accomplice, that if he will give his evidence he will experience favour, is merely in the nature of a recommendation to mercy, for no authority is given to a justice of the peace to pardon an offender and to tell him that he shall be a witness against others. He is not therefore assured of his pardon, but gives his evidence *in vinculis*, in custody, and it depends upon his behaviour whether he shall or shall not be admitted to mercy. A justice has no authority to select whom he pleases to pardon or to prosecute; and a prosecutor himself has even less power or rather pretence to select than a justice of the peace. It is merely an equitable claim to the mercy of the crown, from the magistrate's express or implied purpose of an indemnity upon certain conditions of a most candid disclosurse. The practice of the London police offices is in conformity to these principles, for it is not their custom to release an accomplice who proposes to give evidence as a witness against his associates, but to commit him for the felony; in

which case, upon his fully disclosing the facts upon the trial, he will probably receive his pardon; in order, however, to avoid collusion in the testimony between the parties suspected, the accomplice is usually committed to the house of correction and the others to the county prison. See 1 *Ch. C. L.* 83; *Rudd's Case*, 1 *Leach*, 120; 1 *Coup.* 336.

An accomplice admitted as King's evidence, and performing the condition on which he is admitted as a witness, is not entitled, as matter of right, to be exempt from prosecution for other offences with which he is charged, but it will be matter in the discretion of the judge whether he will recommend him for a pardon or not. *R.* v. *Lee, Russ. & Ry. C. C. R.* 361; *R.* v. *Brunton, Russ. & R. C. C. R.* 454; *R.*v. *Duce*, 1 *Burn's, J. by Chetwynd*, 212. But the judges will not, in general, admit an accomplice as King's evidence, although applied to for that purpose by the counsel for the prosecution, if it appear that he is charged with any other felony than that on the trial of which he is to be a witness. 2 *C. & P.* 411.

If an accomplice be confirmed in his evidence against one prisoner, but not confirmed with respect to another, both may be convicted, if the jury think the accomplice worthy of credit. *R.* v. *Dawber & others*, 2 *Stark. N. P. C.* 34. See further, *post*, **Evidence**, Vol. II. p. 77.

Arbitration. *See* **Award**, Vol. I.

Armour. *See* **Affray**, Vol. I.; **Stores**, Vol. V.

Armorial Bearings. *See* **Taxes**, Vol. V.

Army. *See* **Military Law**, Vol. III.

Arrack. *See* **Excise**, Vol. II.

Arraignment.

What.

IN *felonies* it is absolutely necessary the prisoner should attend his trial personally, though it is not so in misdemeanors. See *ante*, 153.

When an offender comes into court, or is brought in by process, sometimes of *capias*, and sometimes of *habeas corpus* directed to the gaoler of another prison, the first thing that follows thereupon is his arraignment. 2 *Hale*, 216.

Now arraignment is nothing else but calling the offender to the bar of the court, to answer the matter charged upon him. *Id.*

Standing in irons.

The prisoner on his arraignment, though under an indictment of the highest crime, must be brought to the bar without irons and all manner of

ARRAIGNMENT.

shackles and bonds, unless there be a danger of escape, and then he may be brought with irons. 2 *Hale*, 219; 4 *Bla. Com.* 323; 2 *Hawk.* c. 28, s. 1.

But at this day they usually come with their shackles upon their legs, for fear of an escape, but stand at the bar unbound, till they receive judgment. 2 *Hale*, 219.

A distinction, however, has been taken as to the standing in irons, &c. between the time of the arraignment and the trial, and it seems to be the better opinion, that the prisoner is not entitled to have his fetters taken off until after he has pleaded. *Layer's Case*, 16 *St. Trials*, 94, 99; 1 *Leach*, 36; 2 *East's P. C.* 570; 2 *Hale*, 219, n. b; 4 *Bla. Com.* 322, n. 2, *Chit. Ed.*

Holding up hand.

There is no necessity that a prisoner, at the time of his arraignment, should hold up his hand at the bar, or be commanded so to do; for this is only a ceremony for making known the person of the offender to the court; and if he answer that he is the same person, it is all one. 2 *Hawk.* c. 28, s. 2; *R.* v. *Radcliffe*, 1 *Bla. Rep.* 3; *Fost.* 40, S. C.; 4 *Bla. Com.* 323; *T. Raym.* 408.

Peers.

It is not usual at all to require this of a peer. 2 *Hale*, 219, n. a.; 2 *Hawk.* c. 28, s. 2.

A peeress, when about to be tried by her peers, may be arraigned kneeling, and to rise after joining issue. 1 *Leach*, 146.

Reading indictment.

After this the indictment should be read to the prisoner distinctly in English, that he may understand the charge. 2 *Hale*, 219; *Dalt.* c. 185.

The indictment is, it seems, to be read, although the defendant has had a copy delivered to him. 1 *Burr.* 643. The mode in which it is read is, after saying "A. B. hold up your hand," to proceed, "you stand indicted by the name of A. B., late of, &c. for that you, on, &c." and then to go through the whole of the indictment. *Dalt.* c. 185; *post*, Sessions and Trial, Vol. V.; *Cro. C. C.* 7. The indictment is to be slowly read, if defendant wish it. 2 *Leach*, 711.

Asking defendant if guilty, &c.

After the indictment is read, the clerk of the arraigns says, "how say you A. B., are you guilty or not guilty?" 2 *Hale*, 119; 1 *Burr.* 643; *Cro. C. C.* 7. Upon this, if the prisoner confesses the charge, the confession is recorded, and nothing is done till judgment. 4 *Harg. St. Trials*, 779; *Dalt.* c. 185. But if he denies it, he answers "not guilty," upon which the clerk of assize, or clerk of arraigns replies, that the prisoner is guilty, and that he is ready to prove the accusation. *Id.* 4 *Bla. Com.* 339.

After issue is thus joined, the clerk usually proceeded to ask the prisoner "how will you be tried?" to which the prisoner replied, "by God and my country;" to which the clerk, in the humane presumption of the prisoner's innocence, rejoins, "God send you a good deliverance." 2 *Hale*, 219; 4 *Bla. Com.* 341; *Cro. C. C.* 7.

Though the prisoner persists in saying he will be tried by his *King* and his country, and refuses to put himself on his trial in the ordinary way, it will not invalidate a conviction. *R.* v. *Davis*, *Gow*, *C. N. P.* 219, and notes there.

And these unnecessary forms after the plea of not guilty are abolished by 7 & 8 Geo. IV. c. 28, s. 1, which directs that when a prisoner shall plead not guilty, he shall by such plea, without any further form, be deemed to have put himself on the country for trial, and the court shall, in the usual manner, order a jury for the trial of such prisoner accordingly.

As to standing *mute* and allowing the plea of not guilty to be entered thereon, see 7 & 8 Geo. IV. c. 28, s. 1, *post*, Plea, Vol. V. p. 105.

This being done, he writes on the indictment "*po. se.*" for *ponit se*, meaning that the defendant puts himself upon the country, and thus the form of the arraignment concludes. 2 *Hale*, 119; *Cro. C. C.* 7.

Postponement of trial.

In prosecutions for treason, as the defendant cannot be tried immediately after arraignment, he is remanded by rule to be brought up again at some fixed period to take his trial. 4 *Harg. St. Trials*, 778.

Postponement of arraignment.

It was usual to postpone the arraignment of the prisoner on an indictment for murder, at common law, until a year and a day had elapsed, unless the evidence were very clear against him, and no appeal depending. 2 *Hawk.* c. 28, s. 1. But now, by 3 Hen. VII. c. 1, the justices shall proceed to try him upon an indictment for murder or manslaughter, though within the year, and, if acquitted, he may, at their discretion, be detained to answer an

appeal; for *autrefois acquit* upon an indictment is no bar to that vindictive proceeding. Other offences, however, remain as at common law, though it is the constant practice not to wait until the termination of the year.

Several defendants.

Where several defendants are to be charged upon the same indictment, they should be all arraigned together on the first day before any of them are brought to trial, and on the next day proceed to trial with one or more of them together, as shall be found most convenient for the purposes of justice. *Kel.* 8.

Several indictments.

If there be two indictments against the same person for the same offence, as for murder and manslaughter, in respect of the same death, or an inquisition of the coroner and an indictment found by the grand jury, the proper course is to arraign him upon both at the same time, and to indorse his acquittal or attainder on them, that he may not again be disturbed by another proceeding. 2 *Hale*, 228; 1 *East's P. C.* 371; 1 *Salk.* 382. For if he be arraigned upon one only and acquitted, he must be tried upon the other, and plead his former acquittal. *Id.* But if the prisoner be arraigned upon the indictment only, there ought to be an entry of *cesset processus* on the coroner's inquest, for otherwise the prisoner might be outlawed upon it. *Id.*

Accessaries.

As to the arraignment of accessaries, see *ante*, Accessary, 26.

Effect of want of, or mistake in, arraignment.

The total want or omission of the arraignment will be a sufficient ground for reversing the judgment or attainder. 2 *Hale*, 218; 3 *Mod.* 265. But it is doubtful, whether it is absolutely necessary, in case of an appeal at least, to state it on the record. 2 *Hawk.* c. 28, s. 6. And it is said, that if it be stated in the record, that the defendant had oyer of the indictment, it shall be intended that he was arraigned formally upon it. 1 *Show.* 152; *Com. Dig. Indictment*, M.; and see *Gow*, 213.

As to the other proceedings, see *post*, Sessions and Trial, Vol. V.

Forms.

(No. 1.)

Proclamation for silence, to proceed on business on the arraignment of prisoners.

OYEZ. My lords the King's justices do strictly charge and command all manner of persons to keep silence, for they will now proceed to the pleas of the crown and arraignment of prisoners upon their lives and deaths; and all those that are bound by recognizance to give evidence against any of the prisoners which shall be at the bar, let them come forth and give their evidence, or they will forfeit their recognizance. [Then follows the usual form of arraignment as pointed out, *ante*, 254.]

(No. 2.)

Entry or description of the arraignment on the record.

AND afterwards, to wit, at the same delivery of the gaol of the said Lord the King of his county aforesaid, on the said Friday, the 6th day of August, in the said second year of the reign of the said Lord the King, before the said justices of the Lord the King last above named, and others their fellows aforesaid, here cometh the said P. H. under the custody of the said W. B. Esquire, sheriff of the county aforesaid, (in whose custody in the gaol of the county aforesaid, for the cause aforesaid, he had been before committed) being brought to the bar here in his proper person by the said sheriff, to whom he is here also committed. And forthwith being demanded concerning the premises in the said indictment above specified and charged upon him, how he will acquit himself thereof, he saith that he is not guilty thereof, and thereof for good and evil he puts himself upon the country. And J. B. Esquire, clerk of the assize for the county aforesaid, who prosecutes for the said Lord the King in this behalf, doth the like. Therefore, &c.

Arrest. (a)

In criminal cases.

THIS title is to be understood of arrests in *criminal* cases only, and not in civil cases.

In civil cases.

See the law of arrest in *civil* cases, *Tidd's Pract.*, *Arch. Pract.*, *Lee's Dict.*

What an arrest.

In law, an arrest doth signify the restraint of a man's person, depriving him of his own will and liberty, and binding him to become obedient to the will of the law; and it may be called the beginning of imprisonment. *Lamb.* 95. See further as to what constitutes an arrest, *post*, 265.

Concerning arrest in *criminal* cases it will be shown—

I. *Who may or may not be Arrested*, 256.
[9 Geo. IV. c. 31.]
II. *For what an Arrest may be made*, 257 to 259.
(1.) *Where Party found actually committing an Offence*, 257.
(2). *On Suspicion of having committed an Offence*, 259.
[5 Geo. IV. c. 83; 7 & 8 Geo. IV. c. 30, s. 29; 7 Geo. IV. c. cxlii.]
III. *By whom an Arrest may be made without Warrant*, 260 to 263.
(1.) *By Justices of the Peace without Warrant*, 261.
(2.) *By Sheriffs and Coroners without Warrant*, 261.
(3.) *By Constables without Warrant*, 261.
[7 & 8 Geo. IV. c. 29, s. 30.]
(4.) *By Watchmen, Beadles, &c. without Warrant*, 263.
(5.) *By Private Persons without Warrant*, 263.
[7 & 8 Geo. IV. c. 29.]
IV. *Time and Place of Arrest*, 265.
[29 Car. II. c. 7, s. 6.]
V. *Manner of an Arrest without Warrant*, 265.
VI. *What is to be done after an Arrest without Warrant*, 266.

I. Who may or may not be Arrested.

Who liable to.

All persons are in general liable to an arrest when accused of capital or violent offences. 4 *Bla. Com.* 289.

Peers.
Members of parliament.

Generally a peer or member of parliament shall have the privilege of peerage and parliament for himself and his servants to be freed from arrests; but for treason, felony, and breach of the peace, there can be no privilege. 4 *Inst.* 24, 25; 1 *Bla. Com.* 145; 11 *Harg. St. Tr.* 305; *Fortes.* 359.

Bodies corporate.

Bodies corporate, acting in a way that would render an individual liable to arrest, cease to retain, of course, their corporate character, and become individually responsible.

Clergymen.

By the 9 Geo. IV. c. 31, s. 23, it is enacted, "that if any person shall arrest any clergyman upon any *civil* process while he shall be performing divine service, or shall, with the knowledge of such person, be *going to* perform the same, or *returning* from the performance thereof, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall suffer such punishment by fine or imprisonment, or by both, as the court shall award;" but this does not prohibit the arrest of clergymen in criminal cases, and they may be arrested like other individuals.

Feme covert.

A married woman may be arrested on a criminal charge, the same as if she were a *feme sole*. 3 *Burr.* 1681; 1 *Hawk.* c. 1.

(a) See in general 1 Ch. C. L. 11 to 71.

In the case of *R.* v. *Woodham*, 2 *Stra.* 828, upon a motion for an information against the defendant, who was a justice of the peace, it was holden that a person in execution in the King's Bench may be there charged criminally by a justice of the peace's warrant; but that no such justice can take a prisoner of this court out of the custody of the court, and send him to the county gaol.

Persons charged in execution.

The court, however, will grant a *habeas corpus* to the warden of the Fleet to take the body of a debtor confined there before a magistrate, to be examined from time to time respecting a charge of felony or misdemeanor. *Ex parte Griffiths*, 5 *B. & A.* 730; see *post*, Habeas Corpus, Vol. II.

When the party in custody on a civil action is thus to be proceeded against criminally, the practice is for the magistrate before whom the complaint is laid to take the information of the accuser and witnesses, and to issue his warrant, which is lodged with the keeper of the place of confinement where the defendant is kept in prison. This officer, on the termination of the civil imprisonment, sends for a constable, who takes the party before a justice of the peace, by whom the accuser, witnesses, and prisoner are examined, and the latter is discharged, bailed, or committed as on an original accusation. When the party is already in gaol on a criminal charge, and fully committed for trial, it is not usual to bring him from his first custody before a magistrate on a subsequent charge; but the examination of witnesses is taken as in ordinary cases, and a warrant of detainer is sent to the gaoler in whose custody he remains. By this means it will appear on the calendar that he is charged with two offences, and if acquitted on that for which he was first committed, his discharge will be prevented, and, if the offence was committed in another county, he may be sent thither by *habeas corpus* to take his trial at the assizes. 1 *Chit. C. L.* 63.

II. For what an Arrest may be made.

And herein of an arrest,—1st. Where a party is found actually committing an offence; and—2d. Where he is merely suspected of having committed an offence.

(1.) Where Party found actually committing an Offence.

By the Common Law]—By the common law any person may do any thing reasonably necessary to prevent the perpetration of a crime, and he may detain the offender until it may be fairly presumed he has changed his purpose. 2 *Hawk.* c. 12, s. 19; 1 *Hale*, 589; 2 *Roll. Abr.* 559; *Com. Dig. Pleader*, (3 M. 22); *R. & M. C. C.* 93.

By the common law

Where person taken in the mainour.

In a case where the defendants broke and entered the plaintiff's house to prevent him from murdering his wife, the Court of Common Pleas held that they were justified. *Per Chambre*, J. *Handcock* v. *Baker and others*, 2 *Bos. & Pull.* 260.

Any person may apprehend a thief in the mainour, that is, with stolen goods actually in his possession, or the like. 1 *Show.* 24.

Any person may without warrant apprehend and carry before a magistrate a party about to expose an infant and leave it to perish; 1 *Leon.* 327; *Com. Dig. Pleader*, (3 M. 22); or a party playing with false dice, or other indictable fraud affecting the public. *Sir W. Jones*, 249; *Com. Dig. Pleader*, (3 M. 22).

If a man be found committing a felony in the night, any one may apprehend and detain him until he can be carried before a magistrate. *R.* v. *Hunt*, *R. & M. C. C.* 93.

It seems also that a man may be arrested on fresh pursuit without warrant when found committing a felony, though before his arrest he escape to some distance and has given over his intention to commit the felony. See *R.* v. *Howarth*, *R. & M. C. C.* 207, *post*, 258; *sed query*, see 2 *Hawk.* c. 12; 1 *East's P. C.* c. 5, s. 72; *R.* v. *Dyson*, 1 *Stark.* 246.

WHERE PARTY TAKEN IN OFFENCE.

But no person can in general be apprehended without warrant for a mere misdemeanor unattended with violence, as perjury or libel; 2 *Wils.* 159; 2 *Salk.* 698; *Fortes.* 140; and it seems that no private person can apprehend another for a bare breach of the peace after it is over, without a warrant, nor could a constable do so at common law, unless the breach were in his view. 2 *Hawk.* c. 12, s. 21; 1 *East's P. C.* 300; *Bac. Abr. Trespass*, (3 D).

Before a person interferes to prevent others from fighting, he should first notify his intention to prevent a breach of the peace. 2 *Hawk.* c. 12, s. 19; 1 *Hale*, 589; *R.* v. *Rickets*, 3 *Campb.* 68.

But it seems that where the circumstances are such that a man must know why a person is about to apprehend him, he need not be told why, and the arrest will be legal and the resistance illegal as much as if he had been told. *R.* v. *Howarth*, *R. & M. C. C.* 207.

Malicious injuries.

Under the Malicious Injuries Act, 7 & 8 Geo. IV. c. 30]—The stat. 7 & 8 Geo. IV. c. 30, s. 28, enacts, "that any person *found committing* any offence against this act, whether the same be punishable *upon indictment* or *upon summary conviction*, may be immediately apprehended without a warrant by any peace officer, or the owner of the property injured, or his servant, or any person authorised by him, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law." (*a*)

To justify a party in apprehending on this enactment, he must find the prisoner in the actual commission of the offence, and he must take him directly to a magistrate, and if he take him elsewhere he loses the protection of the act. *R.* v. *Curran*, 3 *C. & P.* 397; see further the case of *R.* v. *Howarth*, *R. & M. C. C.* 207, *infra*, as to the meaning of the words "found committing."

Under this act it has been held, that if the owner of property *bonâ fide* conceives he has been injured by another, within the meaning of the act, and takes the latter into custody to take him before a magistrate, he will be entitled to a notice of action, &c. within the meaning of the 41st section of the act. *Post*, **Malicious Injuries to Property**, Vol. III.; *Beechy* v. *Sides*, 9 *B. & Cres.* 806.

Larceny.

Under the Larceny Consolidation Act, 7 & 8 Geo. IV. c. 29]—The statute 7 & 8 Geo. IV. c. 29, s. 63, enacts, "that any person *found committing* any offence punishable either *upon indictment* or *upon summary conviction* by virtue of this act, *except* only the offence of angling in the day-time, may be immediately apprehended without a warrant by any peace officer, or by the owner of the property on or with respect to which the offence shall be committed, or by his servant, or any person authorised by him, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law."

With respect to felonies, this provision makes no alteration; but it extends the power of arrest to various misdemeanors. It is taken from the 1 Geo. IV. c. 56, s. 3.

See the above cases of *R.* v. *Curran*, and *Beechey* v. *Sides*, and *R.* v. *Howarth*.

Vagrants, &c.

Vagrants, &c.]—The 5 Geo. IV. c. 83, and other acts, contain regulations for arresting, &c. idle and disorderly persons, rogues, and vagabonds. See *post*, **Vagrants**, Vol. V.

In a late case it was held, that a man may be arrested under the 5 Geo. IV. c. 83, s. 4, 6, as a person found in a dwelling-house, &c. with intent to commit a felony, if he is seen in the dwelling-house but gets out of it, and is taken on fresh pursuit, and it makes no difference that he was not seen getting out of the house, and was found concealing himself, to avoid being apprehended, upon other premises near. *R.* v. *Howarth*, *R. & M. C. C.* 207; see *R.* v. *Curran*, 3 *C. & P.* 397; *supra*.

(*a*) This provision is taken from and extends that of the 1 Geo. IV. c. 56, s. 3, now repealed.

ARREST ON SUSPICION.

It was also there held, that to make such an arrest legal it is not necessary that the person should have at the time he is arrested a *continuing* purpose to commit the felony; and that he may be arrested though that purpose is wholly ended. *R.* v. *Howarth*, *R. & M. C. C.* 207; see *R.* v. *Curran*, 3 *C. & P.* 397; *supra*.

Metropolis road act.

Under the Metropolis Roads Act]—By the stat. 7 Geo. IV. c. cxlii, s. 73, it is enacted, "that the said watchmen and supervisors of the watch shall, during the time they shall be stationed on the said roads, and at all times coming to and going from their duty, use their best endeavours to assist all and every person or persons passing along the said roads, or the footpath adjoining, who shall be any ways assaulted, attacked, or ill-treated, and to prevent all mischiefs by fire, and all murders, burglaries, or robberies, and all other outrages, disorders, and misdemeanors, as well on the said roads and the footpaths adjoining, as in all houses and other buildings or grounds by the sides of or near the said roads; and for that purpose it shall be lawful for the said watchmen and supervisors, or any of them, to apprehend and secure all night-walkers, malefactors, rogues, vagabonds, and other disorderly persons who shall be found loitering, wandering, misbehaving themselves, or committing any disorder or offence on the said roads, or refusing to give a good account of themselves, or whom the said watchmen or supervisors shall have reason to suspect of any evil intentions or designs, and to search every such person, or the loading of any horse, ass, mule, cart, or other carriage, which they shall suspect to have any stolen goods thereon or therein, and shall and may confine and secure every such person, and such horse, ass, mule, cart, or other carriage, until such person can be conveniently conveyed before a justice of the peace to be examined and dealt with according to law; and all persons are hereby authorised and required to aid and assist any such watchman or supervisor in securing any such offender or person as aforesaid."

By sect. 74 of the same statute, watchmen and supervisors of the watch are put on the same footing as constables; and by sect. 155, *any person* may apprehend offenders against that act and take them to a constable or officer.

Police Acts]—As to arrests allowed by the Police Acts, see **Police**, Vol. V.

(2.) On Suspicion of having committed an Offence.

On suspicion of guilt.

On Suspicion]—In every case of treason or felony actually commited, a party may be arrested by *any* person, if there be reasonable ground to suspect him guilty. 2 *Hale*, 72; 2 *Hawk.* c. 12, 13, s. 15; 4 *Taunt.* 43; *Guppy* v. *Brittlebank*, 5 *Price*, 525.

And it seems that for every misdemeanor, or other indictable offence, and which subjects the offender to corporal punishment, though it does not amount to an actual breach of the peace, the supposed offender may on a regular *warrant* of a justice be arrested, on the ground that the law impliedly gives power to issue a warrant when it gives jurisdiction over the offence; and it has been considered that perjury and libels, (*Butt* v. *Conant*, 4 *Moore*, 195; 1 *B. & B.* 548, S. C.; *Fortesc.* 37, 358; 1 *Chit. C. L.* 13;) and nuisances, when persisted in, (*Vent.* 169; 1 *Mod.* 76;) subject the offender to such criminal process.

But as we have just seen, no person can in general be arrested without warrant for a mere misdemeanor, unattended with violence, after its commission, as perjury or libel, *ante*, 258; and it is very unusual for justices out of sessions to grant warrants in such cases, unless the offence be of such a magnitude as requires a warrant. See 4 *Moore*, 195.

No person whatever can arrest a person on a *bare surmise*, without suspicion of the party having committed the alleged offence. See 5 *Bingh.* 364; 4 *Inst.* 144.

Distinction on arrest by private

Distinction as to Arrests by Private Persons and by Constables]—There is a material distinction between arrests *without warrant* by private individuals

BY CONSTABLE.

some misdemeanors less than felony, committed in his view, apprehend the supposed offender without any warrant. 1 *Hale*, 587; 1 *East's P. C.* 303. As to what he is to do with him when arrested, see *post*, 266.

For offences committed in their view.

And in general this common law authority of a constable is applicable to tithing men, headboroughs, and borsholders. 2 *Hale*, 95; *Selw. N. P.* 3d ed. 830, n.

All constables also have by virtue of their office authority to interpose upon their own view for the purpose of *preventing* a breach of the peace or quelling an affray, and all persons who assist constables in such interposition, and by the constable's request, are protected. 1 *East's P. C.* 303.

It seems constables have not without warrant any authority to arrest upon a charge of a mere breach of the peace *after* the affray is over, (*Selw. N. P.* 3d ed. 830); and in a late case, where a constable without warrant took a man in custody upon a charge of his having assaulted and illused another, the charge not being made in the presence of the alleged offender, the arrest was considered illegal, (*R.* v. *Curvan, R. & M. C. C.* 132); and the alleged offender having escaped, and stabbed an assistant of the constable in his attempt to retake him, it was held it would not have been murder had he killed him, but only manslaughter. *Id.*

But *during* the affray, or where an offence is *threatened* in his *presence* to be committed, a constable may, to avoid a continuance of the breach of the peace, or prevent the offence, arrest the affrayer or party menacing, and detain him in custody till the affray or threat is over, or carry him as soon as he can conveniently before a magistrate. 2 *Hale*, 88; 1 *East's P. C.* 306. And if a constable is preventing a breach of the peace, any person standing in his way to prevent him so doing, the constable is justified in taking such person into custody, though not in giving him a blow. *Levy* v. *Edwards*, 1 *C. & P.* 40.

A constable may be justified in removing a person from a church for disturbing the congregation in time of divine service, although no part of such service was actually going on at the time, but he has no right to detain such person in custody afterwards for the purpose of taking him before a magistrate. *Williams* v. *Glenister*, 2 *B. & Cres.* 699; 4 *D. & R.* 217, S.C.

And for a mere trespass, for which an indictment will not lie, a party cannot be imprisoned. *Post*, 266.

For offences not committed in their view.

For Offence not committed in his View]—He has a more extensive power as to arresting persons than a private individual, for the latter cannot of his own accord without warrant arrest a person except upon his own suspicion, and not upon report or suspicion of another. 2 *Hawk.* c. 12, s. 15; 1 *East's P. C.* 300. And the latter must in all cases where he arrests without warrant be enabled to prove that a felony has been actually committed by some one. 2 *Inst.* 52, 172; *Dougl.* 359. Whereas a constable may lawfully apprehend a supposed offender without warrant upon a reasonable information and charge made by others: *Cald.* 291; 1 *East's P. C.* 300; 4 *Esp.* 80; *Holt's C. N. P.* 478; *Davis* v. *Russell*, 5 *Bing.* 354; *Beckwith* v. *Philby*, 6 *B. & C.* 637; *Samuel* v. *Payne, Dougl.* 359; *Russ. & Ry. C. C.* 329; *Cowles* v. *Dunbar*, 2 *Carr. & P.* 565: and this although no felony has been committed. *Id.*

A formal and accurate charge by another of a felony is not absolutely requisite to justify an arrest by a constable. *R.* v. *Ford, Russ. & Ry. C. C.* 329.

In general, however, a constable cannot any more than a private person *of his own accord*, and without an express charge or warrant, justify an arrest of a supposed offender upon the constable's *own suspicion*, unless he can show that a felony has been actually committed by some one as well as a reasonable ground for suspecting the party arrested of it. 4 *Esp.* 80; *Holt's C. N. P.* 478; and see *Parton* v. *Williams*, 3 *Barn. & Ald.* 330; *ante*, 260.

And there must in all cases exist a reasonable charge and suspicion. See cases, *supra*. And a constable is not justified in apprehending and imprisoning a person on suspicion of having received stolen goods on the mere assertion of one of the principal felons. 2 *Stark. Rep.* 167, *sed quære*.

BY CONSTABLE.

By Statutes]—We have already seen that by the *Malicious Injuries Act*, 7 & 8 Geo. IV. c. 30, s. 28, and the *Larceny Consolidation Act*, 7 & 8 Geo. IV. c. 29, s. 63, power is given to constables and peace officers to apprehend persons found committing the offences therein provided for, *ante*, 258; and see also the provisions of the Vagrant Act, *ante*, 258, and *post*, **Vagrant**, Vol. V.; Metropolis Act, *ante*, 259, and *post*, tit. **Police**, Vol. V. By statutes.

There are, however, authorities in favour of an exception to this rule in the case of night-walkers, and persons reasonably suspected in the night of felony. 3 *Taunt.* 14; 1 *East's P. C.* 303; 2 *Hawk.* c. 12, s. 20; 2 *Hale*, 89; 2 *Inst.* 52; *Bac. Ab. Constable*, (C.); *ante*, 260.

Neglect of Constable]—If upon a reasonable charge of felony, or other crime for which a constable may arrest without warrant, the constable refuse to arrest or make hue and cry, he may be indicted and fined. *Cro. Eliz.* 654; 2 *Hale*, 90; 1 *East's P. C.* 301; 2 *Hawk.* c. 13, s. 7. May be indicted for neglect.

Best for Constable to have a Warrant]—It is much the best for the constable in all cases not requiring immediate interference to obtain a magistrate's warrant before apprehending a party, and if he does he will be entitled to the benefit of the 24 Geo. II. c. 44, s. 8, which protects him when acting under a warrant on his granting on request a copy thereof. See **Constable**, Vol. I. Best for constable to have a warrant.

Notifying Authority]—Where a constable acts without warrant, by virtue of his office of constable, he should notify that he is a constable, or that he arrests in the King's name. See 1 *Hale*, 589; *post*, **Homicide**, Vol. III. p. 242. But it will, it should seem, be sufficient if from the circumstances the offender may collect he is a constable. And in the case of an arrest by a private person, it has been held, that where the circumstances are such that a man must know why a person is about to apprehend him, he need not be told, and the arrest will be legal and the resistance illegal, as much as if he had been told. *R.* v. *Howarth*, *R. & M. C. C.* 207. He should notify his authority.

(4.) By Watchmen, Beadles, &c. without Warrant.

Watchmen, patrols, and beadles have authority at common law to arrest and detain in prison, for examination, persons walking in the streets at night whom there is reasonable ground to suspect of felony, although there is no proof of a felony having been committed. *Lawrence* v. *Hedger*, T. 50 Geo. III. C. P. 3 *Taunt.* 14; 2 *Hale*, 96, 98; 1 *East's P. C.* 303; 2 *Inst.* 52; and see 5 Geo. IV. c. 83, s. 3; *post*, **Police**, Vol. V.; **Vagrant**, Vol. V. By watchmen, beadles, &c.

In *R. v. Bootie*, 2 *Burr.* 164, is an indictment against a constable for suffering a street-walker, taken up by a watchman, to escape.

The Metropolis Road Act gives various powers to watchmen in apprehending individuals. 7 Geo. IV. c. 142, s. 73, 74, *ante*, 259.

Other statutes give the same power to watchmen while on duty as constables have to apprehend persons suspected of a felony. 7 & 8 Geo. IV. c. 29, s. 63, *ante*, 258; 32 Geo. III. c 53, s. 17; 51 Geo. III. c. 119, s. 18; *post*, **Police**, Vol. V.

A watchman having apprehended a party may discharge himself from liability for an escape by delivering him to a constable, or he may himself take him before a magistrate. *Dalt. J.* c. 104; 2 *Burr.* 164.

Watchmen may be appointed by constables as their assistants, subject to the custom of the place for the appointment of watchmen, and a watchman thus appointed has for the time being the authority of the constable as his deputy. 1 *Bla. Com.* 357, 4th ed. 292; 1 *Chit. C. L.* 24.

(5.) By Private Persons, without Warrant.

When Arrest by, enjoined]—All persons who are *present* when a felony is committed, or a dangerous wound given, are bound to apprehend the offender, By private persons when enjoined.

BY PRIVATE PERSONS.

on pain of being fined and imprisoned for their neglect, unless they were under age at the time. 2 *Hawk.* c. 12. s. 1.

When enjoined.

Also every private person is bound to assist an officer demanding his help for the taking of a felon, or the suppressing of an affray. *Id.* s. 7.

And it is the duty of all private persons to arrest without warrant any person detected in the *attempt* to commit a felony. *R.* v. *Hunt*, *R. & M. C. C.* 93; *R.* v. *Howarth*, *R. & M. C. C.* 207. And though the offender run away, and give over his intention of committing the felony, still it seems, on fresh suit, he may be apprehended by any one. *R.* v. *Howarth*, *R. & M. C. C.* 207.

Any person may justify breaking and entering a party's house, and imprisoning him, to prevent him from murdering his wife, who cries out for assistance. 2 *B. & P.* 260.

A private person should arrest a lunatic who seems disposed to do mischief. *Bac. Ab. Trespass*, (D 3).

Before a private person interferes to prevent a breach of the peace, as an affray, he is bound to notify his intention of so doing. 1 *East's P. C.* 306. *Sed query*: for where the circumstances are such that a man must know why a person is about to arrest him, he need not be told, and the arrest will be legal, and the resistance illegal, as much as if he had been told. *R.* v. *Howarth*, *R. & M. C. C.* 207.

When permitted.

When Arrest permitted]—We have already seen that if a felony has been actually committed by some one, a private person *may* arrest, or direct a peace officer to arrest a party whom he has reasonable grounds for suspecting to have been guilty of it, though in fact such party be really innocent, *ante*, 259, 260; but he is not absolutely *bound* to do so like a peace officer.

A private person may, it is said, legally arrest in the night time a suspicious night-walker, though he be quite innocent. 1 *East's P. C.* 303.

A private person cannot without warrant apprehend another for a bare breach of the peace after it is over. 2 *Hawk.* c.12, s. 21; 1 *East's P. C.* 300; *R.* v. *Dyson*, 1 *Stark.* 246, *ante*, 257.

By the Vagrant Act, 5 Geo. IV. c. 83, s. 6, any person whatever may apprehend offenders against that act. See *post*, Vagrant, Vol. V.

In the case of a man apprehending a party on hue and cry, or detaining a person offering goods for sale or pawn, where there is reasonable suspicion of their having been stolen, there is an express enactment that he shall be indemnified, though afterwards it appears that no felony was committed. Thus by the statute 7 & 8 Geo. IV. c. 29, (the Larceny Consolidation Act,) s. 63, it is enacted, "that any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to *suspect* that any such offence, *i. e.* any offence punishable either *upon indictment* or *upon summary conviction* under this act, has been committed on or with respect to such property, is hereby *authorised*, and if in his power is *required*, to apprehend and forthwith to carry before a justice of the peace the party offering the same, together with such property, to be dealt with according to law."

Safest to obtain a warrant.

Safest for him to obtain a Warrant]—It is always safest for a private person to obtain a warrant when time will allow, because where the arrest is under a warrant no action of trespass, but only an action on the case, lies, and the latter cannot be sustained unless the plaintiff can show that the charge was without probable cause as well as malicious; and if the magistrate should erroneously issue his warrant, the party accusing will not be liable; 3 *Esp. Rep.* 166; 3 *T. R.* 185; *Boote* v. *Cooper*, 1 *T. R.* 535; but an arrest, when a warrant ought previously to have been issued, will not be rendered legal by a subsequent issuing of that authority. *Bac. Ab. Trespass*, (D 3).

IV. Time and Place of Arrest.

Time of.]—A person charged on a criminal account may be apprehended at any time in the day or night. 9 *Co. Rep.* 66; *Davis* v. *Russell*, 5 *Bing.* 354; 2 *B. Moore*, 590, S. C. Time of arrest.

The statute 29 Car. II. c. 7, s. 6, which prohibits arrests on Sunday, excepts the cases of treasons, felonies, and breaches of the peace, *post*, Lord's Day, Vol. III.

Place of]—No place affords protection to offenders against the criminal law, and they may be arrested any where and whoever they may be. See *Bac. Ab. Trespass*, (D 3). Place of arrest.

If a person having committed a felony abroad come here, he may be arrested here, and conveyed and given up to the authorities of the country against the laws of which the offence was committed. *Mure* v. *Kaye*, 4 *Taunt.* 34.

In a late case where a party against whom a true bill for perjury had been found, and a warrant for her apprehension granted, was apprehended abroad, and brought here in custody and committed to prison for want of bail, the court refused to discharge her on the ground that she had been improperly apprehended in a foreign country. *Exparte Scott*, 9 *B. & Cres.* 446.

V. The Manner of an Arrest, without Warrant.

In making the arrest, the constable or party making it should actually seize or touch the offender's body, or otherwise restrain his liberty. Manner of arrest, and what constitutes one.

The mere requiring the party to go before the justice is no arrest or imprisonment. *Dalt.* 170.

For bare words will not make an arrest, without laying hold on the person, or otherwise confining him. But if an officer come into a room, and tell the party he arrests him, and lock the door, this is an arrest; for he is in custody of the officer. 1 *Salk.* 79; 2 *Hawk.* c. 19, s. 1; *Cas. temp. Hardw.* 301; and see 2 *N. R.* 211; 1 *Man. & Ryl.* 211, 215; *M. & M.* 244; 2 *Chit. Pl.* 5th ed. 602, n. a.

Taking the Power of the County]—A private person cannot raise power to arrest or detain a felon. 1 *Hale*, 601. Taking the power of the county.

But any justice, or the sheriff, may take of the county any number that he shall think meet, to pursue, arrest, and imprison traitors, murderers, robbers, and other felons; or such as do break, or go about to break, or disturb the king's peace: and every man, being required, ought to assist and aid them, on pain of fine and imprisonment. *Dalt*, c. 171.

It is not justifiable for a justice, sheriff, or other officer, to assemble the *posse comitatus*, or raise a power or assembly of people, upon their own heads, without just cause. *Id.*

But where a justice, sheriff, or other officer, is enabled to take the power of the county, it seemeth they may command and ought to have the aid and attendance of all knights, gentlemen, yeomen, husbandmen, labourers, tradesmen, servants, and apprentices, and all other persons being above the age of fifteen years, and able to travel. *Id.*

Women, ecclesiastical persons, and such as be decrepit or diseased, shall not be compelled to attend them. *Id.*

And in such case it is referred to the discretion of the justice, sheriff, or other officer, what number they will have to attend on them, and how and after what manner they shall be armed or otherwise furnished. *Id.* See further, *post*, Hue and Cry, Vol. III.

Breaking open Doors, where no Warrant]—It seems to be the better opinion that a *private individual*, in order to justify breaking open doors *without warrant*, must in general prove the actual guilt of the party arrested, and that it will not suffice to show that a felony has actually been committed by ano- Breaking outer doors without warrant.

WHAT TO BE DONE AFTER.

ther person, or that reasonable ground of suspicion existed; but that an *officer*, acting *bonâ fide* on the positive charge of another, will be excused, and the party making the accusation will alone be liable. *Dougl.* 358; *Dick. J. Arrest*, III.; and the cases and law fully collected in 1 *Chit. C. L.* 53.

But the breaking an outer door is, in general, so violent, obnoxious and dangerous a proceeding, that it should be adopted only in extreme cases, where an immediate arrest is requisite.

In the case of a misdemeanor a demand of admittance should always be first made before breaking open outer doors. *Lannock* v. *Brown*, 2 *B. & Ald.* 592; 2 *Hawk.* c. 14, s. 1. No precise form of words of demand is necessary.

In some extreme cases even a private individual may break and enter the house of another in order to prevent him from murdering another, who cries out for assistance. *Handcock* v. *Baker*, 2 *B. & P.* 260.

When an affray is made in a house in the view or hearing of a constable, he may break open the house in order to suppress it. 2 *Hale*, 95; 1 *Hawk.* c. 63; 2 *Hawk.* c. 14.

With warrant.

As to how far outer doors may be broken open *under a warrant*, see *post*, **Warrant**, Vol. V., where the law as to breaking open doors is more fully treated of.

VI. What is to be done after the Arrest, without Warrant.

We shall consider this with reference to Arrests—1st. By Constables, Gaolers, &c.; and—2dly. By Private Persons.

By constables.

1st. *By Constables*]—When a *constable* arrests a party for treason or felony, he must take him before a magistrate to be examined as soon as he *reasonably* can. *Com. Dig. Imprisonment*, (H. 4); *Wright* v. *Court*, 4 *B. & Cres.* 596; 6 *D. & R.* 623, S. C. Where a constable detained a party three days, in order that the person, whose goods had been stolen, might have an opportunity of collecting his witnesses and bringing them to prove the felony, it was held, he was not justified in so doing. *Wright* v. *Court*, 4 *B. & Cres.* 596; 6 *D. & R.* 623, S. C.

Though the arrest be at night, or at any other time, it seems a constable is justified in a case of treason or felony in taking the party out of his house to a gaol or other place for safe custody, until he can take him before a magistrate. *Davis* v. *Russell*, 5 *Bing.* 354.

If the party resist his apprehension or attempt to escape, it seems the constable may handcuff him, or use any other reasonable and necessary means to prevent his escaping, otherwise not. *Wright* v. *Court*, 4 *B. & Cres.* 596; 6 *D. & R.* 623, S. C.

If there be any danger of a rescue, or the party be ill and unable at present to be brought before a justice, he may, as the case shall require, secure him in the stocks; or in case the quality of the prisoner or his indisposition so require it, detain him in a house till the next day, or until it may be reasonable to bring him. 2 *Hale*, 119, 120, 95. And see further as to rescue *post*, **Escape**, Vol. II. p. 6; **Rescue**, Vol. V.

If the constable or his watch hath arrested affrayers, or persons drinking in an alehouse disorderly at an unseasonable time of night, he may put the persons in the stocks, or in a prison, if there be one in the vill, till the heat of their passion or intemperance is over, though he deliver them afterwards, or till he can bring them before a justice. 2 *Hale*, 95.

Where an arrest has been made without a warrant the constable may in some cases take the party's word for his appearance before a magistrate; and this is frequently done where the charge is for an assault of a trifling nature, and the defendant is of good repute, and there is no probability of his absconding. See 1 *Esp.* 295; 2 *N. R.* 211; 1 *Ch. C. L.* 59. As to how far this may be done where there is a warrant, see, *post*, **Warrant**, Vol. V.

A party cannot be imprisoned for a mere *trespass* for which an indictment

will not lie. See *Green* v. *Bartram*, 4 *C. & P.* 308; 3 *Burr.* 1701, 1703, 1707; 8 *T. R.* 357; and see *Williams* v. *Glenister*, *ante*, 262. WHAT TO BE DONE AFTER.

By Gaolers]—It seems a gaoler will be protected in receiving a party into custody, although it appear he was wrongfully taken; because it is the duty of a gaoler to receive persons brought by a proper officer, without inquiring into the legality of the arrest. *Sir T. Jones*, 214; *Coup.* 279; 1 *T. R.* 60; 3 *Camph.* 420. See further, *post*, Gaol, Vol. II. By gaolers.

When the prisoner is brought before the magistrate, he is still considered to be in the custody of the officer, until he has been either discharged, bailed, or committed to prison. 2 *Hale*, 120.

2dly. *By Private Persons*]—When a *private person* has apprehended another for treason or felony, he should deliver him over to a constable, or carry him before a magistrate or to any gaol in the county. 1 *Hale*, 589; 2 *Hale*, 77. It is rarely the case that the private person carries the party to gaol: it is best to carry him as soon as he reasonably can before a magistrate, who will examine, and either discharge or commit him to prison. 1 *Hale*, 589; 2 *ed.* 77, 81; 2 *Hawk.* c. 13, s. 7; *R. & M. C. C.* 93; *Com. Dig. Imprisonment*, (H 4). He cannot apprehend and discharge the party at his own pleasure, except perhaps in the case of an affray or breach of the peace, when it seems he may detain the offender until his passion is over, or till there be no opportunity for his doing the threatened mischief. 2 *Hawk.* c. 13, s. 8; see *R.* v. *Curran*, 3 *C. & P.* 397. The law gives no authority even to a justice to detain a person suspected, but for a *reasonable* time till he may be examined. *Com. Dig. Imprisonment*, (H 5); *Davis* v. *Capper*, 10 *B. & Cres.* 28; *post*, Examination, Vol. II. p. 100, 101. Private persons.

We have just seen, *ante*, 266, that a person cannot justify imprisoning another for a trespass for which an indictment will not lie.

Arson. *See* **Burning**, Vol. I.; **Malicious Injuries to Property**, Vol. III.

Articles of the Peace. *See* **Surety for Peace**, Vol. V.

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Artificers. *See* **Servants**, Vol. V.; **Manufacturers**, Vol. II.

Assault.

WE will consider this title with reference, *First*, to Common Assaults in *General*; and *Secondly*, to Aggravated Assaults in *Particular* Cases.

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ASSAULTS.

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ASSAULTS IN GENERAL.

I. What an Assault.

What an assault.

An assault, (*assultus*, from the French *assayer*,) is an attempt or offer, with force and violence, to do a corporal hurt to another, whether from malice or wantonness; as by striking at him with or without a weapon, though the party striking misses his aim; so drawing a sword, throwing a bottle or glass, with intent to wound or strike, presenting a gun at a person within the distance to which the gun will carry, or pointing a pitchfork at a person standing within reach; holding up one's fist at him, in a threatening or insulting manner; or

WHAT AN ASSAULT.

with such other circumstances as denote at the time an intention (coupled with a present ability) of using actual violence against his person, will amount to an assault. 1 *Hawk.* c. 62, s. 1, 2; *Bull. N. P.* 15; 1 *Selw. N. P.* 27; 1 *East's P. C.* 406; 3 *Bla. Com.* 120.

From hence it clearly follows that one charged with an assault and battery may be found guilty of the assault, and yet acquitted of the battery; but every battery includes an assault: therefore on an indictment for assault and battery, in which the assault is ill laid, if the defendant be found guilty of the battery, it is sufficient. 1 *Hawk.* c. 62, s. 1.

If a man strike at another, but at such a distance that he cannot by possibility touch him, it is no assault. *Com. Dig. Battery*, (C).

Riding after a person and obliging him to run away into a garden to avoid being beaten, is an assault. *Mortin* v. *Shoppee*, 3 *C. & P.* 373.

If a master takes indecent liberties with a female scholar, without her consent, though she does not resist, he may be punished as for an assault. *R.* v. *Nichol*, *R. & R. C. C.* 130.

So making a female patient strip naked, under the pretence that the defendant, a medical man, could not otherwise judge of her illness, was held an assault, he himself having taken off her clothes; the jury in that case finding that the stripping of her was wholly unnecessary, and that the prisoner had no belief that it would assist him in judging of her case. *R.* v. *Rosinski*, *R. & M. C. C.* 19.

On an indictment for assaulting a female child with intent to abuse and carnally to know her, the jury found that the prisoner assaulted the child with intent to abuse her, but negatived the intention charged carnally to know her. *Holroyd*, J. held that the averment of intention was divisible, and sentenced the prisoner to twelve months' imprisonment. *R.* v. *Dawson*, 3 *Stark. C. N. P.* 62; and see *R.* v. *Evans*, 3 *Stark. C. N. P.* 35.

It is an assault in parish officers to cut off the hair of a pauper in the poor-house by force and against her will. *Forde* v. *Skinner*, 4 *C. & P.* 239.

It is an indictable offence to expose a person of tender years under the defendant's care to the inclemency of the weather. *R.* v. *Ridley*, 2 *Campb.* 650, 3; *ante*, 177.

If one has an idiot brother who is bedridden in his house, and keeps him in a dark room without sufficient warmth or covering, this will not be an assault or imprisonment. *R.* v. *Smith*, 2 *C. & P.* 449.

As to the offence of neglecting to take care of apprentices, &c. see *ante*, 177.

Words cannot amount to an assault.

It seems agreed at this day, that no words whatsoever can amount to an assault, though perhaps they may in some cases serve to explain a doubtful action. 1 *Hawk.* c. 62, s. 1; *Bull. N. P.* 15; 1 *Mod.* 3.

II. What a Battery, &c.

What a battery.

Battery (from the Saxon *batte*, a club, or *beaten*, to beat, from whence cometh also the word *battle*,) seemeth to be, when any injury whatsoever, be it never so small, is actually done to the person of a man in an angry, or revengeful, or rude, or insolent manner, as by spitting in his face, or any way touching him in anger, or violently justling him out of the way, and the like. 1 *Hawk.* c. 62, s. 2.

Striking a horse whereon a person is riding and whereby he is thrown is a battery on him. 1 *Mod.* 24; *W. Jones*, 444.

The battery must be either wilfully committed, or proceed from want of due care. 1 *Stra.* 596; *Hob.* 134.

There are many cases of accidents which cannot be set up as a defence in an action for a battery, that would certainly be a good defence upon an indictment; in civil cases the accident must have been *inevitable* to operate as an excuse. 2 *Rol. Ab.* 548; *Hob.* 134; *Moore*, 864.

But in criminal cases, it may be taken as a general rule that the same facts which would make a killing homicide by misadventure, will be a good defence to an indictment for a battery. See Homicide, Vol. III. p. 243, 244.

WHEN JUSTIFIABLE.

A *wounding* is where the violence is such that the flesh is opened; a mere scratch will constitute a wounding.

What a wounding.

III. In what cases justifiable. (a)

Self defence.

Self Defence]—Even a maihem is justifiable if committed in a party's own defence. 1 *Sid.* 246; 1 *Rol. Rep.* 19; 2 *Salk.* 642; 3 *Salk.* 46.

The mere offer of a person to strike another is sufficient to justify the latter's striking him; he need not stay till the other has actually struck him. *Bull. N. P.* 18; 2 *Roll. Abr.* 547, *l.* 37.

It was resolved in *Frances* v. *Ley*, *Cro. Jac.* 367, that when a person is assaulted or beaten in a church or churchyard, it is not lawful for him to return blows in his own defence, as he may elsewhere. And see 1 *Hawk.* c. 23, s. 28.

Defence of relations, servants, &c.

Defence of Relations, Servants, &c.]—A husband may justify a battery in defence of his wife, a wife in defence of her husband, a parent in defence of his child, a child in defence of his parent, a master in defence of his servant, and a servant in defence of his master. 2 *Roll. Abr.* 546, D.; 1 *Hawk.* c. 60, s. 23, 24.

But in all these cases the battery must be such only as was necessary to the defence of the party or his relation; for if it were excessive, if it were greater than was necessary for mere defence, the prior assault will be no justification. *Bull. N. P.* 18. Thus a man cannot justify a maihem for every assault, as if A. strike B., B. cannot justify drawing his sword and cutting of A.'s hand. *Per cur. Cooke* v. *Beal*, 1 *Ld. Raym.* 177.

Also it will be a sufficient answer to this justification, to prove that the first assault was justifiable. *Com. Dig. Pleader*, (3 M. 15); 1 *Salk.* 407; *Carth.* 280. See *Arch. Crim. Law*, 299.

When a person does not stand in either of these relations he cannot justify an interference *in behalf* of the party injured; but merely as an indifferent person to preserve the peace. 2 *Stra.* 954.

Defence of possession.

Defence of Possession]—A party may justify a battery by showing that he committed it in defence of his possession; as, for instance, to remove the prosecutor out of his close or house; (*Lutw.* 1435; *Hard.* 358;) or to prevent him from entering it; (2 *Rol. Abr.* 548, *l.* 25;) to restrain him from taking or destroying his goods, &c. (*Id.* 549, *l.* 7;) from taking or rescuing cattle, &c. in his custody upon a distress; (*Id. l.* 10; 2 *Bro. Ent.* 260;) or to retake personal property improperly detained or taken away; (8 *T. R.* 78; 2 *Roll. Rep.* 56, 208;) or the like.

In the case of a trespass in law, merely *without actual force*, the owner of the close, &c. must first *request* the trespasser to depart, before he can justify laying his hand on him for the purpose of removing him; and even if he refuse, he can only justify so much force as is necessary to remove him. 8 *T. R.* 299; see 2 *Rol. Abr.* 548, *l.* 35, 45; 2 *Salk.* 641; *Tullay* v. *Reed*, 1 *C. & P.* 6.

But if the trespasser use *force*, then the owner may oppose force to force; (*Green* v. *Goddard*, 2 *Salk.* 641; 8 *T. R.* 78; 1 *C. & P.* 6;) and in such a case, if he be assaulted or beaten, he may justify even a wounding or maihem, in self defence, as above mentioned. As to setting spring guns, see 1 *M. & P.* 607. *Post*, Spring Guns, Vol. V.

In answer to a justification in defence of his possession, it may be shown that the battery was excessive. *Skin.* 387; *Lutw.* 1436. See *Arch. Crim. Law*, 299.

Moderate correction.

Moderate Correction]—A parent may justify the correcting of his child, or a master the correcting of an apprentice, seaman, or scholar; the

(a) See in general Com. Dig. Pleader, (3 M. 15 to 25).

correction being moderate and done in a proper manner. *Com. Dig. Pleader*, (3 M. 19); 1 *Hawk.* c. 60, s. 23; c. 62, s. 2. As to what is not a moderate correction, see *ante*, Apprentice, 175; *post*, Servants, Vol. V. PROCEEDINGS FOR.

A military officer may order a correction for disobedience of orders. *Lane* v. *Degberg*, *Bull. N. P.* 19; 2 *C. & P.* 148.

Under Authority of Law]—It is a sufficient justification to show that the assault was done under the authority of the law, with or without legal process, no greater assault being committed than was necessary. See 2 *Roll. Abr.* 546; *ante*, Arrest. Under authority of law.

Amicable Contest]—It has been said that an assault may be justified on the ground that the parties agreed to wrestle with each other; (*Com. Dig. Pleader*, 3 M. 28;) but this seems questionable: and as to pugilistic fights, see *post*, Fighting, Vol. II. Amicable contest.

IV. Mode of proceeding for.

(1.) *By Action or Indictment*]—There is no doubt but that the wrongdoer is subject both to an action at the suit of the party, wherein he shall render damages, and also to an indictment at the suit of the king, wherein he shall be fined according to the heinousness of the offence. 1 *Hawk.* c. 62, s. 4. (1.) By action or indictment.

The court in which the action is brought will not in general compel the plaintiff to stay the proceedings either in the action or the prosecution by indictment. *Jones* v. *Clay*, 1 *Bos. & P.* 191. See *post*, Rolle Prosequi, Vol. III.

But in general the adoption of both proceedings is considered vexatious, and will induce the jury to give smaller damages in the action.

A private assault is not inquirable in the leet, not being a common nuisance, as all affrays are. 1 *Hawk.* c. 63, s. 1.

The legislature has discouraged actions for trifling injuries of this nature, by enacting, that in all actions of trespass for assault and battery, where the jury shall give less than 40*s.* damages, the plaintiff shall have no more costs than damages, unless the judge shall certify on the back of the record that an actual battery (and not an assault only) was proved upon the trial. 43 Eliz. c. 6, s. 22; 23 Car. II. c. 9, s. 136. And see the 58 Geo. III. c. 30, as to inferior courts. See the constructions put on these acts, *Tidd's Practice*, 9th ed.; *Arch. Pract.*

There does not appear any objection to compounding or referring to arbitration a prosecution for a common assault. See 1 *Moore*, 120; *post*, Award, Vol. I. p. 273.

(2.) *By Summary Proceedings before Justices*]—By the 9 Geo. IV. c. 31, s. 27, justices of the peace are empowered to fine for common assaults. That section of the act is as follows:—"And whereas it is expedient that a summary power of punishing persons for common assaults and batteries should be provided, under the limitations hereinafter mentioned: be it therefore enacted, that where any person shall unlawfully assault, or beat, any other person, it shall be lawful for two justices of the peace, upon complaint of the party aggrieved, to hear and determine such offence, and the offender, upon conviction thereof before them, shall forfeit and pay such fine as shall appear to them to be meet, not exceeding, together with costs (if ordered,) the sum of five pounds, which fine shall be paid to some one of the overseers of the poor, or to some other officer of the parish, township, or place, in which the offence shall have been committed, to be by such overseer, or officer, paid over to the use of the general rate of the county, riding, or division, in which such parish, township, or place shall be situate, whether the same shall or shall not contribute to such general rate; and the evidence of any inhabitant of the county, riding, or division, shall be admitted in proof of the offence, notwithstanding such application of the fine incurred thereby; and if such (2.) By proceedings before justices.

Persons committing any common assault or battery may be compelled, by two magistrates, to pay a sum not exceeding 5*l.*

Application of the money.

PROCEEDINGS FOR.

fine as shall be awarded by the said justices, together with the costs (if ordered), shall not be paid, either immediately after the conviction, or within such period as the said justices shall at the time of the conviction appoint, it shall be lawful for them to commit the offender to the common gaol, or house of correction, there to be imprisoned for any term not exceeding two calendar months, unless such fine and costs be sooner paid; but if the justices, upon the hearing of any such case of assault or battery, shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, they shall forthwith make out a certificate under their hands, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred."

Commitment for non-payment.

If the magistrates dismiss the complaint, they shall make out a certificate to that effect.

Such certificate or convictions shall be a bar to any other proceedings.

Sect. 28 of same act enacts, "that if any person against whom any such complaint shall have been preferred, for any common assault or battery, shall have obtained such certificate as aforesaid, or having been convicted shall have paid the whole amount adjudged to be paid under such conviction, or shall have suffered the imprisonment awarded for non-payment thereof, in every such case he shall be released from all further or other proceedings, civil or criminal, for the same cause."(a)

These provisions not to apply to aggravated cases.

Sect. 29 of same act provides and enacts, "that in case the justices shall find the assault or battery complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is, from any other circumstance, a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with the case, in all respects, in the same manner as they would have done before the passing of this act: provided also, that nothing herein contained shall authorise any justices of the peace to hear and determine any case of assault or battery, in which any question shall arise as to the title to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice."

Provisions for offences against this act punishable on summary conviction.

Sect. 33 of same act is as follows:—"and for the more effectual prosecution of offences punishable upon summary conviction by virtue of this act, be it enacted, that where any person shall be charged on the oath of a credible witness before any justice of the peace with any such offence, the justice may summon the person charged to appear before any two justices of the peace at a time and place to be named in such summons, and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person by delivering the same to him) the justices may either proceed to hear and determine the case *exparte*, or may issue their warrant for apprehending such person and bringing him before them, or the justice before whom the charge shall be made may, if he shall so think fit, issue such warrant in the first instance without any previous summons."

Limitation of time for summary proceedings.

Sect. 34 of same act provides and enacts, "that the prosecution for every offence punishable on summary conviction by virtue of this act shall be commenced within three calendar months after the commission of the offence, and not otherwise."

Form of conviction.

Sect. 35 of same act enacts, "that the justices before whom any person shall be summarily convicted of any offence against this act may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect as the case shall require, that is to say:—

Then follows the form of the conviction, which see *post*, (No. 6.)

No certiorari.

Sect. 36 enacts, "that no such conviction shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of his Majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same."

Act not to extend to Scotland or Ireland.

The 38th section provides that the act shall not extend to Scotland or Ireland.

(a) See a form of plea of conviction under this act, 3 Chit. Pleading, 5th ed.

HOW PUNISHED.

These provisions do not appear to prevent the prosecutor from going to the sessions and preferring his indictment in the first instance; but if he lay his complaint before a magistrate, and the case be heard before two magistrates, they may, provided it be not one of the cases within the 29th section, above stated, either fine the offender in any sum not exceeding 5*l.* or may dismiss the case, giving the accused a certificate that is to have the effect of discharging him from all future proceedings, civil or criminal, for the same assault; or if the magistrates think it a case proper for an indictment, they may act as they would have done before this statute. *Carr. C. L.* 341.

V. How Punished.

How punished.

The offence of a common assault is a misdemeanor, and is punishable on indictment by fine and imprisonment, according to the more or less aggravated nature of the case.

It is an aggravation of the offence on account of the person on whom or the place where the same is committed; as where a man assaults or threatens another for suing him; a counsel or attorney for being employed against him; a juror for his verdict; or a gaoler, constable, or other ministerial officer for keeping him in custody, and properly executing his duty. 4 *Bla. Com.* 126.

The court have no power (except in some aggravated assaults provided for by the 9 Geo. IV. c. 31,) to order the defendant to be kept to hard labour, or subjected to personal correction.

In cases where the offence more immediately affects the individual, the defendant is sometimes permitted by the court, even after conviction, to speak with the prosecutor before any judgment is pronounced, and a trivial punishment (generally a fine of a shilling) is inflicted if the prosecutor declares himself satisfied. 4 *Bla. Com.* 363, 364; 1 *Moore*, 120; *post*, 300.

And where the defendant was convicted on an indictment for ill treating a parish apprentice, and at the recommendation of the court of quarter sessions gave security for the fair expenses of the prosecution, upon an understanding that the court would abate the period of his imprisonment, the security was held to be legal and binding. *Et per* Lord *Ellenborough*, C. J.—"The security in question, given with the sanction of the court, is rather to be considered as part of the punishment suffered by the defendant in expiation of his offence, in addition to the imprisonment inflicted upon him. If we had seen any ground for suspecting the authority of the court had been used as an instrument of oppression or extortion, we should have watched the case very jealously; but nothing of that sort appears." *Beeley* v. *Wingfield*, 11 *East*, 46.

We have already seen how far magistrates may punish the offender by inflicting a penalty, *ante*, 271, 272.

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Certificate of Dismissal of such Complaint, (No. 7.)

PROCEEDINGS FOR.

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CONVICTION for, on 9 Geo. IV. c. 31, (No. 6.)
CERTIFICATE of Dismissal of such Complaint, (No. 7.)

FORMS.

(No. 1.)

Warrant for an assault.

County of } *To A. C. the constable of in the said county, and to all other* § *constables of the said county, and others whom this may concern.*

WHEREAS complaint hath been made before me, J. P. Esquire, one of his Majesty's justices of the peace in and for the said county, upon the oath of A. B. of in the said county, [labourer,] that C. D. of aforesaid, [butcher,] on the day of did violently assault and beat him the said A. B. at aforesaid in the county aforesaid: These are, therefore, in his Majesty's name, to command you forthwith to apprehend the said C. D. and to bring him before me to answer unto the said complaint, and to be further dealt with according to law. Given under my hand and seal the day of .

(No. 2.)

Commitment for an assault and for want of sureties.

—— *(to wit.) To constable, and all other his Majesty's officers of the peace whom these may concern, and to the keeper of in the county of*

WHEREAS C. D. was this day brought and charged before me, E. F. one of his Majesty's justices of the peace for the said county of on the oath of A. B. with assaulting and beating the said A. B. and with committing divers misdemeanors against his Majesty's peace. And whereas the said C. D. hath refused [or neglected] (although by me required) and doth refuse [or neglect] to find sureties as well for his personal appearance at the next [general quarter] sessions of the peace, which shall be holden in and for the said county of to answer the premises, as also in the mean-time to keep his Majesty's peace to all his liege subjects, particularly towards the said A. B.: These are, therefore, in his Majesty's name, to command you the said constable, or other peace officer, safely to convey the said C. D. and deliver him to the keeper aforesaid, requiring you the said keeper to receive and safely to keep the said C. D. until he shall find such sureties, or otherwise be discharged by due course of law. Given under my hand and seal this day of aforesaid one thousand eight hundred and .

E. F. (L. S.)

(No 3.)

Indictment for assaulting with a whip.

—— *The jurors for our Lord the King upon their oath present, that C. D. late of, &c. on, &c. with force and arms, to wit, with a certain [horsewhip] which he the said C. D. then had and held in his right hand, at the parish of, &c. in the county of made an assault upon A. B. then and there being [in his own dwelling-house there] in the peace of God and our said Lord the King, and him the said C. D. then and there did beat, strike and whip several times with the said [horsewhip], giving to the aforesaid A. B. divers severe and violent blows and strokes by the same [whip], and then and there otherwise greatly ill-treated the said A. B.; to the great damage of the said A. B., and against the peace of our said Lord the King, his crown and dignity.* [Add a count for a common assault like the next form.]

(No. 4.)

Indictment for a common assault.

—— *The jurors for our Lord the King upon their oath present, that C. D. late of, &c. on, &c. at, &c. aforesaid, in and upon A. B. then and there being in the peace of God and of our Lord the King, with force and arms an assault did make, and him the said A. B. then and there did beat [wound] and evil intreat, and then and there to him other wrongs and injuries did, to the great damage and hurt of the said A. B., to the evil example of all others, and against the peace of our Lord the King, his crown and dignity.* [If the assault be of an aggravated nature, state the facts attending it in one count, and add another count like the above.]

(No. 5.)

Complaint on 9 Geo. 4, c. 31, for an assault and battery. (a)

—— *to wit. BE it remembered, that on, &c. at, &c. A. B. of, &c. personally cometh before me, J. P. one of his Majesty's justices of the peace for the said county, and complaineth to and informeth me that C. D. of, &c. on, &c. at, &c. did unlawfully assault and beat* [assault or beat] *the said A. B.* *A. B.*

Taken and sworn before me, the day of 18 *J. P.*

(a) *Ante*, 271. It will be seen the statute does not require the complaint to be in writing or on oath.

(No. 6.)

Conviction on 9 Geo. 4, c. 31, for an assault. (a)

—— *BE it remembered, that on the day of in the year of our Lord at in the county of* [or *riding, division, liberty, city, &c.* as the case may be,] *A. O. is convicted before us* [naming the justices] *two of his Majesty's justices of the peace for the said county,* [or *riding, &c.*] *for that he, the said A. O. did* [specify the offence, and the time and place when and where the same was committed, as the case may be;] *and we, the said justices, adjudge the said A. O. for his said offence to be imprisoned in the and there kept to hard labour for the space of* [or, *we adjudge the said A. O. for his said offence to forfeit and pay the sum of*] [here state the amount of the fine imposed,] *and also to pay the sum of for costs; and, in default of immediate payment of the said sums, to be imprisoned in the for the space of unless the said sums shall be sooner paid;* [or, *and we order that the said sums shall be paid by the said A. O. on or before the day of*] *and we direct that the said sum of* [i. e. the amount of the fine] *shall be paid to of aforesaid, in which the said offence was committed, to be by him applied according to the directions of the statute in that case made and provided; and we order that the said sum of for costs shall be paid to C. D.* [the party aggrieved.] *Given under our hands the day and year first above mentioned.*

(No. 7.)

Certificate upon complaint being dismissed.

} *WE, two of his Majesty's justices of the peace for the county of*
to wit. } *do hereby certify that on the day of in the year of our Lord at* [*the police office, Union Hall,*] *in the said county of* [*Surrey,*] *W. K. of the parish of, &c. in the said county, was brought before us, the said justices, and charged with having unlawfully assaulted and beaten J. C. on the day of at the parish of, &c. in the said county, and that we, the said justices, dismissed the said complaint upon the hearing thereof. Given under our hands this day of*

R. J.
J. T.

ASSAULTS IN PARTICULAR CASES.

The legislature has in many cases of aggravated assaults imposed a severer punishment than that which could be inflicted at common law, and in some cases has made the assault a felony.

The acts now in force respecting such assaults are the 9 Geo. IV. c. 31, (which repeals and consolidates nearly all the prior acts relative to offences against the person); the 7 & 8 Geo. IV. c. 29, s. 6; the 9 Geo. IV. c. 69, s. 2; the 22 & 23 Car. II. c. 11, s. 9; and the 6 Geo. I. c. 23.

For the terms of this repeal by the 9 Geo. IV. c. 31, see *post*, **Malicious Injuries to the Person**, Vol. III.

General Clauses of 9 Geo. IV. c. 31, as to Assaults.

General clauses of 9 Geo. IV. c. 31.

General Clauses of 9 Geo. IV. c. 31]—The following are the general clauses of the 9 Geo. IV. c. 31, applicable to this division of the subject of *assaults.*

Provision for offences against this act committed at sea.

Sect. 32 enacts, "that all indictable offences mentioned in this act, [*id. est*, the 9 Geo. IV. c. 31,] which shall be committed within the jurisdiction of the admiralty of England, shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed upon the land in England, and be dealt with, inquired of, tried, and determined in the same manner as any other offences committed within the jurisdiction of the admiralty of England: provided always, that nothing herein contained shall alter or affect any of the laws relating to the government of his Majesty's land or naval forces."

(a) The act gives the form, see *ante*, 272.

GENERAL CLAUSES OF 9 GEO. 4, c. 31.

This act not to repeal any act relating to high treason, the revenue, or combinations.

Scotland or Ireland.

Accessaries.

Sect. 37 provides and enacts, "that nothing in this act contained shall affect or alter any act so far as it relates to the crime of high treason, or to any branch of the public revenue, or shall affect or alter any act for the prevention of smuggling, or any part of the act passed in the sixth year of the present reign, intituled 'An Act to repeal the laws relating to the combination of workmen, and to make other provisions in lieu thereof.'"

Sect. 38 provides and enacts, "that nothing in this act contained shall extend to Scotland or Ireland."

See the provision as to accessaries contained in the 31st sect. of the 9 Geo. IV. c. 31, *ante*, 31.

We will now consider Aggravated Assaults in Particular Cases with reference to—

I. *Assaults to do grievous Bodily Harm, &c.* 276.
[9 Geo. IV. c. 31, s. 11, 12.]
II. ——— *to Rob*, 277.
[7 & 8 Geo. IV. c. 29, s. 6.]
Forms as to, 278.
III. ——— *to commit Felony—on Peace Officers, Revenue Officers, and to raise Wages*, 278.
[9 Geo. IV. c. 31, s. 25; 6 Geo. IV. c. 80, s. 108; 7 & 8 Geo. IV. c. 53.]
Forms as to, 279.
IV. ——— *on Gamekeepers*, 281.
[9 Geo. IV. c. 69, s. 2.]
Form as to, 281.
V. ——— *on Endeavour to save Shipwrecks, &c.* 282.
[9 Geo. IV. c. 31, s. 24.]
Forms as to, 282.
VI. ——— *on Commanders of Ships, &c.* 282.
[22 & 23 Car. II. c. 11, s. 9.]
VII. ——— *on Seamen to prevent Working, and Assaults to stop Grain*, 282.
[9 Geo. IV. c. 31, s. 26.]
Forms as to, 283.
VIII. ——— *to force Seamen on Shore, &c.* 284.
[9 Geo. IV. c. 31, s. 30.]
Form as to, 284.
IX. *Other particular Assaults*, 285.

I. Assaults to Murder or do Bodily Harm.

Attempting to murder by means of poison, or of violence, other than is hereinbefore provided for, capital.

The 9 Geo. IV. c. 31, s. 11, enacts, "that if any person unlawfully and maliciously shall administer, or attempt to administer, to any person, or shall cause to be taken by any person, any poison or other destructive thing, or shall unlawfully and maliciously attempt to drown, suffocate, or strangle any person, or shall unlawfully and maliciously shoot at any person, or shall, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall unlawfully and maliciously stab, cut, or wound any person, with intent, in any of the cases aforesaid, to murder such person, every such offender, and every person counselling, aiding, or abetting such offender shall be guilty of felony, and being convicted thereof shall suffer death as a felon."

Sect. 12 enacts, "that if any person unlawfully and maliciously shall shoot at any person, or shall, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall unlawfully and maliciously stab, cut, or wound any person, with intent, in any of the cases aforesaid, to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of the party so offending, or of any of his accomplices, for any offence for which he or they may respectively be liable by law to be apprehended or detained, every such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony, and, being convicted thereof, shall suffer death as a felon. Provided always, that in case it shall appear, on the trial of any person indicted for any of the offences above specified, that such acts of shooting, or of attempting to discharge loaded arms, or of stabbing, cutting, or wounding, as aforesaid, were committed under such circumstances, that if death had ensued therefore the same would not, in law, have amounted to the crime of murder, in every such case the person so indicted shall be acquitted of felony."

Shooting at, or stabbing, cutting, or wounding any person with intent to rob, maim, &c. capital.

Proviso.

It has been thought fit to insert these enactments here in full; they and the cases applicable thereto will be more fully treated of under the title **Malicious Injuries to the Person**, Vol. III.

II. Assaults to Rob, &c.

The stat. 7 & 8 Geo. IV. c. 29, s. 6, enacts, "that if any person shall rob any other person of any chattel, money, or valuable security, every such offender, being convicted thereof, shall suffer death as a felon; and if any person shall steal any such property from the person of another, or shall *assault any other person with intent to rob him*, or shall with menaces or by force demand any such property of any other person with intent to steal the same, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years; and if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit) in addition to such imprisonment."

Assault with intent to rob.

Menaces and demands with force.

Transportation for life or imprisonment.

See the general clauses affecting this and all the provisions of the act, *post*, **Larceny**, Vol. III.

The 7 & 8 Geo. IV. c. 27, repeals that part of the 4 Geo. IV. c. 54, which relates to assaults, &c. with intent to rob.

As to robbery, see *post*, **Robbery**, Vol. V.

As to larceny from the person, see *post*, **Larceny**, Vol. III.

As to threats, see title **Threats**, Vol. V.

Where the offence of robbery was not completed, or there seems no prospect of substantiating it by evidence, the defendant should be indicted for an assault with intent to rob. If, however, on the trial of such indictment it appears that the offence of robbery was completed, defendant must be acquitted, 1 *East's P. C.* 411, 440; *post*, **Robbery**, Vol. V.

It was held on an indictment on 7 Geo. II. c. 21, (repealed by 4 Geo. IV. c. 54,) for an assault with intent to rob, that it should charge the assault to be unlawful and malicious as well as felonious, unless it also lay a felonious demand of goods in a forcible and violent manner. *R.* v. *Pegge*, 1 *East's P. C.* 420.

Also that it must charge the prisoner made the assault with intent to *rob*, and not merely to steal the goods of the prosecutor. *R.* v. *Montello*, 2 *Leach, C. C.* 702; 1 *East's P. C.* 420, S. C.

The cases of *R.* v. *Jackson*, 1 *Leach's, C. C.* 267; 1 *East's P. C.* 419, S. C.; *R.* v. *Johnson, R. & R. C. C.* 492; deciding that the indictment must state

ASSAULTS TO COMMIT FELONY, &c.

(No. 12.)

The like to commit sodomy. (a)

[Commencement as usual, as *ante*, p. 8.] *on, &c. at, &c. did assault one A. B. with intent that detestable and abominable crime called buggery, with the said A. B. then and there feloniously, wickedly, diabolically, and against the order of nature to do and commit. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 13.)

The like carnally to know a girl under ten years. (b)

[Commencement as usual, as *ante* p. 8,] *on, &c. at, &c. did assault one A. B. a girl under the age of ten years, to wit, of the age of nine years, with intent her the said A. B. then and there feloniously and unlawfully carnally to know and abuse; against the form of the statute in such case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 14.)

The like for assaulting a peace-officer or revenue-officer in execution of his duty.

[Commencement as usual, as *ante*, p. 8,] *on, &c. at, &c. in and upon one A. B.* [*a constable*, or *an officer of excise, &c.*] *did make an assault, and him the said A. B. did beat, he the said A. B. being then in the execution of his duty as such* [*constable*, or *officer of excise, &c.*] *as aforesaid; against the form of the statute in such case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 15.)

The like for assault to resist apprehension.

[Commencement as usual, as *ante*, p. 8,] *on, &c. at, &c. unlawfully did assault one A. B. with intent then and there to resist and prevent the lawful* [*apprehension*, or *detention*] *of the said C. D.* [or *of one E. F.*] *for* [*felony*]; *against the form of the statute in such case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 16.)

The like for assault in pursuance of a conspiracy to raise wages. (c)

[Commencement as usual, as *ante*, p. 8,] *on, &c. at, &c. unlawfully did assault one A. B. in pursuance of a conspiracy between the said A. B. and others, to raise the rate of their wages; against the form of the statute in such case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 17.)

Indictment for an assault to murder. (d)

—— *The jurors of our Lord the King upon their oath present that C. D. late of, &c. on, &c. at, &c. with force and arms with a certain* [*bludgeon*,] *which he the said C. D. in his right hand then and there had and held, in and upon one A. B. in the peace of God and our Lord the King then and there being, did make an assault, and him the said A. B. with the said* [*bludgeon*] *then and there did beat and wound, with intent him the said A. B. then and there feloniously, wilfully, and of his malice aforethought, to kill and murder; against the form of the statute in such case made and provided, and against the peace of our Lord the King his crown and dignity.* [Add a count for a common assault, as *ante*, 274, (No. 3.)]

(No. 18.)

Indictment for an assault with intent to commit a rape. (e)

[Commencement as usual, as in preceding form,] *in and upon one A. B. in the peace of God and our Lord the King then and there being, did make an assault, and her the said A. B. then and there did beat, wound, and ill-treat, with intent her the said A. B. violently and against her will then and there feloniously to ravish and carnally know, and other wrongs to the said A. B. then and there did, to the great damage of the said A. B. and against the form of the statute in such case made and provided, and against the peace of our Lord the King, his crown and dignity.* [Add a count for a common assault, as *ante*, 274, (No. 3.)]

(a) As to the offence of sodomy, see *post*, **Buggery**, Vol. I.

(b) As to the offence of carnally knowing children, see *post*, **Children**, Vol. I.

(c) As to the offence of conspiracy, see *post*, **Conspiracy**, Vol. I.

(d) As to the offence of murder, see *post*, **Homicide**, Vol. III.

(e) As to the offence of rape, see **Rape**, Vol. V.

subjected to a penalty of not more than 5*l.* to be recovered before two justices. *Post*, Police, Vol. V. p. 126. ASSAULTS ON CONSTABLES.

Revenue Officers]—The 6 Geo. IV. c. 80, s. 143, and 6 Geo. IV. c. 108, s. 59, relate to assaulting officers of excise and customs; and the 7 & 8 Geo. IV. c. 53, s. 43, and 6 Geo. IV. c. 108, s. 78, relate to the indictment and punishment for such offence, see *post*, Excise, Vol. II. Revenue officers.

Assault to commit a Rape]—When the offence of rape was not completed, or there was no prospect of substantiating it by evidence, the defendant should be indicted for an assault with intent to commit a rape, and defendant may be punished, as directed by the above act, with hard labour, &c. But care must be taken not to indict for the misdemeanor when the evidence will prove the felony; for if this should appear on the trial, defendant must be acquitted. 1 *East's P. C.* 411, 440; see *post*, Rape, Vol. V. Assault to commit rape.

Under a count for an assault with intent to commit a rape, defendant may be convicted of an assault with intent to abuse simply. *R. v. Dawson*, 3 *Stark.* 62; *ante*, 269.

If a master take indecent liberties with a female scholar without her consent, though she does not resist, he is liable to be punished as for an assault with intent to commit a rape. *R. v. Nichol*, *R. & R. C. C.* 130; and see further, *ante*, 269.

A boy under the age of fourteen cannot be convicted of an assault with intent to commit a rape. *R. v. Eldershaw*, 3 *C. & P.* 396.

As to the rules of evidence on examining the prosecutrix, see *post*, Evidence, Vol. II. p. 87, 88; Rape, Vol. V.

Forms as to, *List of.*

Commitment on 9 Geo. IV. c. 31, s. 25, for an Assault to commit a Felony, (No. 10.)
The like to commit a Rape, (No. 11.)
The like to commit Sodomy, (No. 12.)
The like to carnally know a Girl under Ten Years, (No. 13.)
The like for Assaulting a Peace Officer or Revenue Officer in Execution of his Duty, (No. 14.)
The like for Assault to resist Apprehension, (No. 15.)
The like for Assault in pursuance of a Conspiracy to raise Wages, (No. 16.)

Indictment for an Assault to Murder, (No. 17.)
Indictment for an Assault with Intent to commit a Rape, (No. 18.)
Indictment for Assault carnally to know a Child under Ten Years, (No. 19.)
Indictment for an Assault to commit Sodomy, (No. 20.)
Indictment for Assaulting a Constable in the Execution of his Office, (No. 21.)

(No. 10.)

[Commencement as usual, as *ante*, p. 8,] *on, &c. at, &c. in the said county, unlawfully did assault one A. B. with intent* [here state the felony generally, and if the offence be a felony created by statute, add, *against the form of the statute in such case made and provided.*] *And you the said keeper, &c.* [conclude as usual, as *ante*, p. 8, to the end.] Commitment on 9 Geo. 4, c. 31, s. 25, for an assault to commit a felony.

(No. 11.)

[Commencement as usual, as *ante*, p. 8,] *on, &c. at, &c. did assault one A. B. with intent her the said A. B. violently and against her will then and there feloniously to ravish and carnally to know, and against the form of the statute in such case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.] The like to commit a rape. (*a*)

(*a*) As to the offence of rape itself, see Rape, Vol. V.

ASSAULTS TO COMMIT FELONY, &c.

(No. 12.)

The like to commit sodomy. (a)

[Commencement as usual, as *ante*, p. 8.] *on, &c. at, &c. did assault one A. B. with intent that detestable and abominable crime called buggery, with the said A. B. then and there feloniously, wickedly, diabolically, and against the order of nature to do and commit. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 13.)

The like carnally to know a girl under ten years. (b)

[Commencement as usual, as *ante* p. 8,] *on, &c. at, &c. did assault one A. B. a girl under the age of ten years, to wit, of the age of nine years, with intent her the said A. B. then and there feloniously and unlawfully carnally to know and abuse; against the form of the statute in such case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 14.)

The like for assaulting a peace-officer or revenue-officer in execution of his duty.

[Commencement as usual, as *ante*, p. 8,] *on, &c. at, &c. in and upon one A. B. [a constable, or an officer of excise, &c.] did make an assault, and him the said A. B. did beat, he the said A. B. being then in the execution of his duty as such [constable, or officer of excise, &c.] as aforesaid; against the form of the statute in such case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 15.)

The like for assault to resist apprehension.

[Commencement as usual, as *ante*, p. 8,] *on, &c. at, &c. unlawfully did assault one A. B. with intent then and there to resist and prevent the lawful [apprehension, or detention] of the said C. D. [or of one E. F.] for [felony]; against the form of the statute in such case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 16.)

The like for assault in pursuance of a conspiracy to raise wages. (c)

[Commencement as usual, as *ante*, p. 8,] *on, &c. at, &c. unlawfully did assault one A. B. in pursuance of a conspiracy between the said A. B. and others, to raise the rate of their wages; against the form of the statute in such case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 17.)

Indictment for an assault to murder. (d)

—— *The jurors of our Lord the King upon their oath present that C. D. late of, &c. on, &c. at, &c. with force and arms with a certain [bludgeon,] which he the said C. D. in his right hand then and there had and held, in and upon one A. B. in the peace of God and our Lord the King then and there being, did make an assault, and him the said A. B. with the said [bludgeon] then and there did beat and wound, with intent him the said A. B. then and there feloniously, wilfully, and of his malice aforethought, to kill and murder; against the form of the statute in such case made and provided, and against the peace of our Lord the King his crown and dignity.* [Add a count for a common assault, as *ante*, 274, (No. 3.)]

(No. 18.)

Indictment for an assault with intent to commit a rape. (e)

[Commencement as usual, as in preceding form,] *in and upon one A. B. in the peace of God and our Lord the King then and there being, did make an assault, and her the said A. B. then and there did beat, wound, and ill-treat, with intent her the said A. B. violently and against her will then and there feloniously to ravish and carnally know, and other wrongs to the said A. B. then and there did, to the great damage of the said A. B. and against the form of the statute in such case made and provided, and against the peace of our Lord the King, his crown and dignity.* [Add a count for a common assault, as *ante*, 274, (No. 3.)]

(a) As to the offence of sodomy, see *post*, **Buggery**, Vol. I.

(b) As to the offence of carnally knowing children, see *post*, **Children**, Vol. I.

(c) As to the offence of conspiracy, see *post*, **Conspiracy**, Vol. I.

(d) As to the offence of murder, see *post*, **Homicide**, Vol. III.

(e) As to the offence of rape, see **Rape**, Vol. V.

ASSAULTS ON GAMEKEEPERS, &c.

(No. 19.)

Indictment for assault carnally to know a child under ten years.

[Commencement as in form (No. 17,) *ante*, 280,] *in and upon one A. B. an infant under the age of ten years, to wit, of the age of eight years, in the peace of God and our Lord the King then and there being, did make an assault, and her the said A. B. then and there did beat, wound, and ill-treat, with intent her the said A. B. then and there feloniously and unlawfully carnally to know and abuse, and other wrongs, &c.* [as in form (No. 18.) Add a count for a common assault, as *ante*, 274, (No. 3.)]

(No. 20.)

Indictment for an assault to commit sodomy.

[Commencement as in form (No. 17,) *ante*, 280,] *in and upon one A. B. in the peace of God and our lord the King then and there being, did make an assault; and him the said A. B. then and there did beat, wound, and ill-treat, with intent that detestable and abominable crime, (not to be named among Christians,) called buggery, with the said A. B. then and there feloniously, wickedly, diabolically, and against the order of nature, to commit and do; to the great displeasure of Almighty God, to the great damage of the said A. B., and against the form of the statute in such case made and provided, and against the peace of our Lord the King his crown and dignity.* [Add a count for a common assault, as *ante*, 274, (No. 3.)]

(No. 21.)

Indictment for assaulting a constable in the execution of his office.

[Commencement as in form (No. 17,) *ante*, 280,] *in and upon one A. B. (then being one of the constables of the parish of C. in the county aforesaid, and in the due execution of his said office then and there being,) did make an assault, and him the said A. B. so being in the due execution of his said office as aforesaid, then and there did beat, wound, and ill-treat, and other wrongs, &c.* [as in the form, ante, (No. 18.) Add a count for a common assault, as *ante*, 274, (No. 3.)]

IV. Assaults on Gamekeepers.

Assaulting gamekeepers, &c. in apprehension of offenders.

The stat. 9 Geo. IV. c. 69, s. 2, enacts, that "in case such offender (*a*) shall assault or offer any violence with any gun, crossbow, firearms, bludgeon, stick, club, or any other offensive weapon whatsoever, towards any person hereby authorised to seize and apprehend him, he shall, whether it be his first, second, or any other offence, be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond seas for seven years, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding two years, and in Scotland, whenever any person shall so offend, he shall be liable to be punished in like manner."

Transportation or imprisonment.

This provision is quite new, and offences against it may be tried at the quarter sessions or assizes, and one magistrate may commit the offender for trial; but this being a misdemeanor the accused is entitled to be admitted to bail.

The general clauses and other provisions in the act, with comments thereon, will be found, *post*, tit. **Game**, *(Night Poaching,)* Vol. II.

(No. 22.)

Indictment for assaulting a gamekeeper in the execution of his duty.(*b*)

[Commencement as in form (No. 17,) *ante*, 280,] *at, &c. in the county aforesaid, and within a certain manor called there situate, in and upon one A. B. [then and there being gamekeeper of the said manor, duly deputed, authorised, and appointed by E. F. then and yet lord of the said manor,] in the due execution of his said office of gamekeeper of the said manor then and there being, did make an assault, and him the said A. B. so being in the execution of his said office as aforesaid, then and there did beat, wound, and ill-treat, and other wrongs, &c.* [as in the form, *ante*, (No. 18.) Add a count for a common assault, as *ante*, 274, (No. 3.)]

(*a*) See *post*, **Game**, Vol. II.

(*b*) This indictment is framed as at common law, and not under the above provision.

FORCING SEAMEN ON SHORE.

in and for the said county, upon the oath of A. I. of in the said county, [yeoman,] for that he the said A. O. on the day of now last past, at in the said county, did wilfully and maliciously beat, wound, and use other violence to him the said A. I. with intent to hinder him from buying corn, [or *from exporting corn from,* &c. as the case may be,] *in the market of* [or as the case may be,] *contrary to the statute in that case made and provided: These are therefore to command you, the said constable, to convey the said A. O. to the house of correction at in the said county, and to deliver him to the keeper thereof, together with this precept: And we do also hereby command you the said keeper of the said house of correction to receive the said A. O. into your custody in the said house of correction, and him there safely to keep to hard labour for the space of* [not more than three nor less than one] *months:* [*And we do further order that you, the said keeper, do publicly and openly whip the said A. O. in the said town of in the said county, on the day of next, between the hours of and of the same day.*] [This latter clause only to be inserted where the act is done to prevent exportation.] *Herein fail you not. Given under our hands and seals the day of .*

VIII. Forcing Seamen on Shore, &c.

Master of a merchant vessel forcing a seaman on shore, or refusing to bring him home, liable to imprisonment.

The 9 Geo. IV. c. 31, s. 30, enacts, "that if any master of a merchant vessel shall, during his being abroad, force any man on shore, or wilfully leave him behind in any of his Majesty's colonies, or elsewhere, or shall refuse to bring home with him again all such of the men whom he carried out with him as are in a condition to return when he shall be ready to proceed on his homeward-bound voyage, every such master shall be guilty of a misdemeanor, and being lawfully convicted thereof shall be imprisoned for such term as the court shall award; and all such offences may be prosecuted by indictment, or by information, at the suit of his Majesty's attorney-general, in the Court of King's Bench, and may be alleged in the indictment or information to have been committed at Westminster, in the county of Middlesex; and the said court is hereby authorised to issue one or more commissions, if necessary, for the examination of witnesses abroad; and the depositions taken under the same shall be received in evidence on the trial of every such indictment or information."

Mode of trial, &c.

See the general clauses, *ante*, 275, 276.

This is a re-enactment of sect. 18 of the stat. 11 & 12 Will. III. c. 7, except that by that statute the punishment was fixed, it being three months' imprisonment.

It repeals so much of the statute 11 & 12 Will. III. c. 7, "as relates to any master of a merchant vessel who shall force any man on shore, or wilfully leave him behind, or refuse to bring home any man as therein-mentioned," and it also repeals so much of the stat. 58 Geo. III. c. 38, "as relates to the trial of offences against the act of King William the Third herein-before mentioned."

(No. 28.)

Commitment for forcing seamen on shore, or refusing to bring them home.

[Commencement as usual, as *ante*, p. 8,] *on, &c. at, &c. beyond the seas, being then master of a certain merchant vessel called did, whilst he was abroad at aforesaid,* [*unlawfully force on shore one A. B. a seaman belonging to the said vessel,* or *unlawfully and wilfully leave behind him one A. B. then a seaman belonging to the said vessel,* or *unlawfully refuse to bring home with him again one A. B. then a seaman belonging to the said vessel, whom he the said C. D. had carried out with him, and who was in a condition to return when the said C. D. was ready to proceed on his homeward bound voyage*]; *against the form of the statute, &c. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

An indictment for this offence may be readily framed from this form, and see a form, Arch. Peel's Acts, 2d ed. 117.

IX. Other Particular Assaults.

The following assaults since the 7 Geo. IV. c. 64, and 9 Geo. IV. c. 31, are not in general distinguishable from others.

Striking in palaces.

Malicious Striking in the King's Palace, whereby Blood is drawn]—This offence was punishable by the offender losing his right hand, in a manner prescribed by the stat. 33 Hen. VIII. c. 12; by perpetual imprisonment and fine and ransom at the King's pleasure; but the stat. 9 Geo. IV. c. 31, repeals so much of this statute "as relates to the punishment of manslaughter, and of malicious striking, by reason whereof blood shall be shed." By the *common law*, however, the offence of striking in the royal *presence* subjects the offender to the loss of hand. 1 *Hawk.* c. 21, s. 3; 2 *Inst.* 549; 3 *Inst.* 140.

Assaulting privy councillors.

Assaulting a Privy Councillor in Execution of his Office]—This offence of striking or wounding a privy councillor in the execution of his office was made capital by the stat. 9 Anne, c. 16. But the 9 Geo. IV. c. 31, wholly repeals the 9 Anne, c. 16, and there is no new provision affecting the offence.

Assaulting members of parliament.

Assaulting Members of Parliament and their Servants]—The 9 Geo. IV. c. 31, repeals so much of the 5 Hen. IV. c. 6, as relates to cutting the tongues or putting out the eyes of any of the King's liege people, and to any assault upon the servant of a knight of the shire in Parliament; and also so much of the 11 Hen. VI. c. 11, "as relates to any assault or affray made to any lord, knight of the shire, citizen, or burgess, being and attending at the Parliament, or other council of the King."

Assaulting clerks in orders.

Beating Clerks in Orders]—This was punishable under the 9 Edw. II. st. 1, c. 3; but so much of this statute, commonly called *Articula Cleri*, "as relates to laying violent hands on a clerk," is repealed by the 9 Geo. IV. c. 31. But it seems that under the 13 Edw. I. st. 4, the offenders may be prosecuted in the Ecclesiastical Court.

Assaults in churches.

Striking, &c. in Churches, &c.]—By the 5 & 6 Edw. 6, c. 4, s. 3, any person striking with a weapon in any church or churchyard, or drawing any weapon with intent to do so, was punishable with the loss of one ear; and if the offender had no ears, he was to be branded on the cheek with the letter F. But by the stat. 9 Geo. IV. c. 31, so much of this statute "as relates to the punishment of persons convicted of striking with any weapon, or drawing any weapon with intent to strike, as therein mentioned," is repealed. It seems that this repeal extends to the 3d section, which relates to this matter, but does not affect the offences of brawling in churchyards, and laying violent hands on any person in a church or churchyard, which are punishable by ecclesiastical censures, under sects. 1 and 2 of that stat. of Edw. VI. See *post*, Church, Vol. I.

It is no excuse for a person who strikes another in a church to show that the other assaulted him. 1 *Hawk.* c. 63, s. 28, *ante*, 270, *sed query.*

Churchwardens and, perhaps, private persons are justified in gently laying their hands on those who disturb the performance of any part of divine service, and turning them out of the church. *Id.* But not in imprisoning them, *ante*, 262. See further, *post*, Church, Vol. I.

Assaulting master woolcombers, &c.

Assaulting Master Woolcombers, &c.]—The 12 Geo. I. c. 34, s. 6, made it a felony to assault master woolcombers and weavers for not complying with illegal by-laws; and this was extended to other master manufacturers by the stat. 22 Geo. II. c. 27, s. 12; but so much of this stat. 12 Geo. I. "as creates any felony," and so much of 22 Geo. II. c. 27, "as extends to the persons therein mentioned that part of the act of 12 Geo. I. which is hereinbefore referred to," are repealed by the 9 Geo. IV. c. 31.

As to assaults in pursuance of a conspiracy to raise wages, see *ante*, 279.

OTHER PARTICULAR ASSAULTS.

Assaults by workmen on masters.

Assaults by Workmen, &c. on their Masters]—By the 5 Eliz. c. 4, s. 21, servants and workmen assaulting their masters, &c. were punishable with a year's imprisonment or more if prosecuted in the manner there pointed out; but now, by the stat. 9 Geo. IV. c. 31, so much of the stat. 5 Eliz. c. 4, "as relates to the punishment of any servant, workman, or labourer making any assault or affray as therein mentioned," is repealed.

As to assaults in pursuance of a conspiracy to raise wages, see *ante*, 279.

Assaults at gaming.

Assaults and Challenges on account of Money won at Gaming]—These assaults and challenges were punishable by the stat. 9 Anne, c. 15, s. 8, with two years' imprisonment and forfeiture of the goods, chattels, and personal estate of the offender. But the stat. 9 Geo. IV. c. 31, repeals so much of the stat. 9 Anne, c. 14, "as relates to the forfeiture and punishment of any person assaulting and beating, or challenging or provoking to fight, any other person on account of any money won as therein mentioned."

Assaults to destroy garments.

Assaults with intent to destroy Garments]—The 6 Geo. I. c. 23, s. 11, which made it a felony to assault a person with intent to spoil his garments or clothes, is repealed by the 7 Geo. IV. c. 64, s. 32.

Assemblies. *See* Riot, Vol. V.; Disorderly House, Vol. I.; Petition, Vol. V.

Assizes. (*a*)

[19 Geo. III. c. 74; 38 Geo. III. c. 52; 39 Geo. III. c. 45; 42 Geo. III. c. 91; 3 Geo. IV. c. 10; 7 Geo. IV. c. 63; 1 Will. IV. c. 70, s. 19, 20, 28.]

Assize, what.

ASSIZE (*assessio*) anciently signified in general a court where the judges or assessors heard and determined causes, and more particularly upon writs of assize brought before them by such as were wrongfully put out of their possession, which writs heretofore were very frequent; but now mens' possessions are more easily recovered by ejectments and the like: yet still the judges in their circuits have a commission of assize directed to themselves and the clerk of assize, to take assizes, and to do right upon such writs.

Altered.

To which commission of assize four other commissions are now superadded; to wit,

The circuit commissioners.

1. A commission of general gaol delivery, directed to the judges and the clerk of assize associate, which gives them power to try every prisoner in the gaol, committed for any offence whatsoever, but none but prisoners in the gaol. (*b*)

2. A commission of oyer and terminer, directed to the judges and many

(*a*) See in general 1 *Ch. C. L.* 141 to 148; *Deacon's C. L. Dig.* tit. *Assizes*; see *post*, Shire-Hall, Vol. V.

(*b*) At Stafford Lent Assizes, 1810, *Wood*, B. ordered eight prisoners, against whom no bills had been preferred, and who were committed for trial at the general quarter sessions of the peace, to be discharged out of custody; observing, that every prisoner had a right to be tried by the first competent tribunal, and that he was bound by his commission to deliver the gaol. 1 *Burn's J. Chetw. ed.* tit, *Assize*.

other gentlemen of the county, by which they are empowered to hear and determine treasons, felonies, and other misdemeanors by whomsoever committed, whether the persons to be tried be in gaol or not in gaol.

3. A commission or writ of *nisi prius*, directed to the judges and clerk of assize, by which civil causes, brought to issue in the courts above, are tried in the vacation by a jury of twelve men of the county where the cause of action arises; and on return of the verdict of the jury to the court above, the judges there give judgment.

These causes, by the course of the courts, are usually appointed to be tried at Westminster in some Easter or Michaelmas Term by a jury returned from the county wherein the cause is to be tried, but with this proviso, *(nisi prius,) unless before* the day prefixed the judges of assize come into the county in question; this they are sure to do in the preceding vacation.

4. A commission of the peace in every county of their circuit.

Sheriffs, justices, and others, to attend there.

By the precept for the general gaol delivery before-mentioned, the sheriff is commanded to attend there in person with his under-sheriff, and to give notice to all justices of the peace, mayors, coroners, escheators, stewards, and also to all chief constables and bailiffs of hundreds and liberties, that they be then and there in their own persons with their rolls, records, indictments, and other remembrances, to do those things which to their offices in that behalf appertain to be done.

Justices of peace are bound to attend the assizes.

By virtue whereof all justices of the peace, mayors, and others above-mentioned, of that county where the judges have their assizes, are bound to be present; and if they make default without lawful impediment, the judges may set a fine upon them for their neglect. *Cro. Circ. C.* 3; 4 *Bla. Com.* 270.

Constables' presentments.

Also by ancient custom, (that is, by the common law of the land,) before the coming of the judges, the high constables issue their warrants to the petty constables, headboroughs, borsholders, &c. to make presentments of all crimes and offences cognizable at the assizes, to the intent (as it seemeth) that the judges thereby may have a general information and knowledge how the peace hath been kept; which presentments, being delivered to the high constables, are by them delivered into court, and make up part of the rolls and other remembrances above-mentioned. See now as to what presentments of constables are abolished, the 7 & 8 Geo. IV. c. 38, *post*, **Constables**, Vol. I.

Which said warrants of the high constables perhaps may be best drawn upon the words of the commission of oyer and terminer, which is the largest of all the five commissions above-mentioned, and then the form thereof may be thus:—

Form of.

County of
hundred of } *To the constable of in the said county.*
or ward, &c.

THESE are to require you, the said constable, in his Majesty's name, to make out a presentment in writing of all treasons, misprisions of treasons, insurrections, rebellions, counterfeitings, clippings, washings, false coinings, and other falsities of the money of Great Britain, and of other kingdoms and dominions whatsoever; and of all the murders, felonies, manslaughters, killings, burglaries, rapes of women, unlawful meetings and conventicles, unlawful uttering of words, assemblies, misprisions, confederacies, false allegations, trespasses, riots, routs, retentions, escapes, contempts, falsities, negligences, concealments, maintenance, oppressions, champerty, deceits, and all other evil doings, offences, and injuries whatsoever, and also the accessaries of them; by whomsoever and in what manner soever done, committed, or perpetrated, within your constablewick. Which said presentment so made in writing as aforesaid, and signed by you, you are to deliver to me at in the said county, on the day of at the hour of in the forenoon of the same day, that I may have the said presentment ready to be delivered to his Majesty's justices of oyer and terminer and general gaol delivery at the next assizes to be holden for the said county. Herein fail you not, as you will answer the contrary at your peril. Given under my hand the day of in the year of our Lord .

J. B. High Constable.

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Constable's presentment pursuant to the above precept.

County of } *At a special sessions held at in the said county the day of*
hundred of } *one thousand eight hundred and .*

THE presentment of J. C. constable of the parish [or *township*] *of in the said county, for the next general assizes* [or *general quarter sessions of the peace*, as the case may be,] *to be holden at in and for the said county, made upon oath before me, one of his Majesty's justices of the peace acting in and for the said hundred and county, the day of one thousand eight hundred and .*

I, the above-named J. C. do make oath and declare, that I have none of those things given me in charge to present within my constablewick. [If any matter presentable, state the facts and circumstances.]

Taken and sworn the day and year above written, before me, J. P. *J. C. Constable.*

Time of holding assizes.

The assizes are held before the King's commissioners, among whom are usually two of the judges of the courts at Westminster, twice in every year, in every county of the kingdom, except the four northern ones, where they are held only once, and London and Middlesex, where they sit no less than eight times, in consequence of the number of offences which arise in the vicinity of the metropolis. The assizes in other counties are commonly held in the respective vacations after Hilary and Trinity Terms; and in the counties attached to the home circuit, it is usual to hold a third assize after Michaelmas Term to try prisoners.

Jurisdictions.

The same persons being entrusted with all these commissions of assize, may proceed by one where they have no jurisdiction by another, and may execute them at the same time. 2 *Hale*, 34; 2 *Hawk.* c. 5, s. 21; 4 *Bla. Com.* 270.

The commissions of assize and *nisi prius* are principally of a civil nature, but the justices have also under them, by virtue of several statutes, a criminal jurisdiction; and where an indictment of treason, felony, or misdemeanor is removed out of the county by *certiorari*, the record is sent down by *nisi prius* to be tried; and the judges of *nisi prius* may, upon that record, proceed to trial, judgment, and execution, as if they were justices of gaol delivery by virtue of the stat. 14 Hen. VI. c. 1. 2 *Hale*, 39 to 42; 3 *Bla. Com.* 40. Upon an indictment found at the sessions and transmitted to the assizes by the justices at session, though they be not returned by *certiorari*, the judges of assize should try them. *R.* v. *Wetherell, Russ. & R. C. C.* 381.

In what cases the judges may act, though out of the proper county.

By stat. 19 Geo. III. c. 74, s. 70, made perpetual by 39 Geo. III. c. 46, reciting, "that whereas the courts of assize, nisi prius, oyer and terminer, and gaol delivery, for several counties at large, are often held in or near cities or towns that are counties of themselves, and at the same time with the like courts for the said cities or towns; and inconveniences frequently arise in transacting the business of the several courts, for that the lodgings of the judges are situate either only in the county at large, or only in the county of such city or town, it is therefore enacted, that whenever the said courts for any county at large in England shall be held in or near any city or town which is also a county of itself, with the like or any of the like courts for the said city or town, the lodgings of the judges shall be construed and taken to be situate both within the county at large, and also within the county of such city or town, for transacting the business of the assizes for such county at large, and for the county of such city or town during the time that such judge or judges shall continue therein for the execution of their several commissions."

Lodgings of judges.

38 Geo. 3, c. 52.

By stat. 38 Geo. III. c. 52, s. 1, reciting, "whereas there at present exists in the counties of cities and of towns corporate within this kingdom an exclusive right that all causes and offences which arise within their particular limits should be tried by a jury of persons residing within the limits of the county of such city or town corporate; which ancient privilege, intended for other and good purposes, has in many instances been found by experience

not to conduce to the ends of justice: and whereas it will tend to the more effectual administration of justice in certain cases, if actions, indictments, and other proceedings, the causes of which arise within the counties of cities and towns corporate, were tried in the next adjoining counties, enacts, that from and after the 1st of June, 1798, in every action, whether transitory or local, which shall be prosecuted or depending in any of his Majesty's courts of record at Westminster; and in every indictment removed into the King's Bench by *certiorari;* and in every information filed by his Majesty's Attorney or Solicitor-General; or by the leave of the Court of King's Bench; and in all cases where any person or persons shall plead to or traverse any of the facts contained in the return to any writ of *mandamus*, if the *venue* of such action, indictment, or information, be laid in the county of any city or town corporate within that part of Great Britain called England, or if such writ of *mandamus* be directed to any person or persons, body politic and corporate, that it shall be lawful for the court in which such action, &c. or other proceeding shall be depending, at the instance of the prosecutor or plaintiff, or of any defendant, to direct the issue or issues joined in such action, &c. to be tried by a jury of the county next adjoining to the county of such city or town corporate; and to award proper writs of *venire* and *distringas* accordingly, if the said court shall think it fit so to do.

38 Geo. 3, c. 52.

In what case court may direct an issue to be tried by a jury of county next adjoining to city or town corporate in which venue is laid.

Sect. 2. Indictments for offences committed within the county of any city or town corporate, may be preferred to the jury of the county next adjoining.

Sect. 3. Indictments found by the grand jury, or inquisitions taken before the coroner of the county of a city or town corporate, may be ordered by the court to be filed with the proper officer of the next adjoining county, and defendants may be removed to the gaol thereof. See **Indictment**, Vol. III.

As to the judges' lodgings and other matters relative to the shire-hall, see the 7 Geo. IV. c. 63, *post*, **Shire-Hall**, Vol. V.

Shire hall. Lodgings.

By 49 Geo. III. c. 91, the judges may act in counties in which they reside or were born.

49 Geo. 4, c. 91.

By 3 Geo. IV. c. 10, intituled, An Act to enable, in certain cases, the opening and reading of commissions under which the judges sit upon the circuits after the day appointed for holding assizes, sect 1, it is enacted, "that whenever it shall so happen that commissions of assize shall not be opened and read in the presence of one of the quorum commissioners at any place specified for holding the assize on the very day appointed for such purpose, it shall and may be lawful to open and read the same in the presence of one of the quorum commissioners therein named on the following day, or if the following day shall be a Sunday, or any other day of public rest, then on the succeeding day; and such opening and reading thereof shall be as effectual to all intents and purposes as if the same had been opened and read in the presence of one of the quorum commissioners on the very day appointed for that purpose, and shall be deemed and taken to be an opening and reading thereof on the day for that purpose appointed; and all records and other proceedings under or relating to any commission which may be opened and read by virtue of this act, shall and may be drawn up, entered, and made out under the same date, and in the same form in all respects as if such commission had been opened and read on the day originally appointed for that purpose: provided always, that the judges and quorum commissioners hereby directed and required to have such commissions opened and read on the very days appointed for that purpose, unless the same shall be prevented by the pressure of business elsewhere, or by some unforeseen cause or accident."

3 Geo. 4, c. 10.

When commissions shall not be opened and read at any places specified on the day named therein, the same may be opened and read the following day, &c.

But commissions shall be opened and read on the days appointed, if not prevented.

Sect. 2. "In every case in which it shall happen that any such commission shall be opened and read under the provisions of and according to this act, the quorum commissioner before whom the same shall be opened and read shall under his hand and seal certify to the lord chancellor, lord keeper, or lords commissioners of the great seal for the time being, that the said commission was so opened, and the cause of the delay of opening and reading

When commission shall be opened under this act, the cause of delay shall be certified to the lord chancellor, &c.

ASSIZES.

the same, which certificate shall be enrolled in the High Court of Chancery."

Assizes but as one day.

The assizes are in law but as one day, and the entry of every proceeding at them refers to the first day of assize. See *R.* v. *Fletcher*, *R. & Ry. C. C.* 58.

Assizes to be held in Chester and Wales.

By 1 Will. IV. c. 70, s. 19, it is enacted, "that from and after the time herein appointed for the commencement of this act, assizes shall be held for the trial and dispatch of all matters, criminal and civil, within the county of Chester, and the several counties and county towns in the principality of Wales, under and by virtue of commissions of assize, oyer and terminer, gaol delivery, and other writs and commissions, to be issued in like manner and form as hath been usual for the counties in England; and all laws and statutes now in force relating to the execution of such commissions, when issued for counties in England, shall extend and be applied to the execution of the commissions issued for the county of Chester, and the counties of Wales, under the authority of this act."

Mode of holding assizes in Chester and Wales until his Majesty shall otherwise direct.

Sect. 20 enacts, "that until it shall be otherwise provided by law, one of the two judges appointed to hold the sessions of assizes under his Majesty's commission within the county of Chester and principality of Wales shall, in such order and at such times as they shall appoint, proceed to hold such assizes at the several places where the same have heretofore been most usually held within South Wales; and the other of such judges shall proceed to hold such assizes at the several places where the same have heretofore been most usually held in North Wales; and both of such judges shall hold the assizes in and for the county of Chester in like manner as in other counties of England."

Proclamation upon fines may be made at assizes in Chester or Wales.

Sect. 28 enacts, "that upon all fines which now are or before the commencement of this act shall be duly acknowledged in Chester or Wales, proclamation may be made at the successive assizes to be holden under his Majesty's commission within the county of Chester and principality of Wales, before any judge of such assize, during the continuance of such his commission, in the same manner and form, and with the same force and effect, as if the same had been proclaimed before the justices of Chester and Wales, or any of them; any law or usage to the contrary notwithstanding."

Attachment. (a)

THIS word, as a law term, we have immediately from the French *attacher*, to tye, or make fast. The Italian word is *attacare;* the Spanish *attacar;* and the Saxon *tæcan*, to take.

It signifies the taking of a man's body by commandment of a writ or precept; and is properly grantable in cases of contempts, against which for the most part all courts of record generally, but more especially those of Westminster Hall, and above all, the Court of King's Bench, may proceed in a summary manner, according to their discretion. 2 *Hawk.* c. 22, s. 1; 4 *Bla. Com.* 284.

In the case of *R.* v. *Bartlett*, 2 *Sess. Cas.* 176, it is said that generally the sessions have not a power to award an attachment: but the court said, they would not determine how it would have been, if they had committed the person for contempt; but the ordinary and proper method is by indictment.

As each court, however, is in general considered to be a proper judge of its own contempts, (3 *Wils.* 199,) the Court of King's Bench will not grant an attachment for a contempt to an inferior jurisdiction, but leave it to be punished by that court against which the contempt has been committed.

(a) See Deacon's Crim. L. Dig. tit. *Attachment.*

R. v. *Birchett*, 1 *Stra.* 567; 2 *Hawk.* c. 22, s. 2; *R.* v. *Mile End*, 1 *Ld. Raym.* 676.

When an order, however, is confirmed by the court above, an attachment lies for non-performance of it; and therefore the court will not take security of the party for performance of it. *Q.* v. *Chaffey*, 2 *Ld. Raym.* 858; 1 *Bott*, 472.

If a witness neglect to obey a subpœna to attend before the grand jury, on an affidavit that he was material to the prosecutor's case, and was duly served with the subpœna, the Court of King's Bench will grant an attachment against him, on which he may be taken and committed till after the trial of the offender, when an order will be made for his discharge. 8 *T. R.* 585; 6 *T. R.* 295; 3 *Burr.* 1687. And see further, *post*, **Witness**, Vol. V.

As to an attachment for non-payment of costs, see *post*, **Costs**, Vol. I.

Attainder.

[Stat. 54 Geo. III. c. 145; 5 Geo. IV. c. 84.]

THE difference between a man attainted and convicted is, that a man is said to be convicted before he hath judgment, as if a man be convicted by verdict or confession, and when he hath his judgment upon the verdict or confession, then he is said to be attainted. 1 *Inst.* 390 b.

That is to say, his blood is become (*attinctus*) *tainted*, stained, or corrupted; insomuch that by the common law, in cases of treason or felony, his children or other kindred cannot inherit his estate, nor his wife claim her dower; and the same cannot be restored or saved but by act of parliament; and therefore in divers instances, there is a special provision by act of parliament that such or such an attainder shall not work corruption of blood, loss of dower, nor disherison of heirs. 1 *Inst.* 391 b.

By *stat.* 54 Geo. III. c. 145, intituled, "An Act to take away corruption of blood save in certain cases," it is enacted, that no attainder for felony which shall take place from and after the passing of this act, save and except in the cases of the crime of high treason, or of the crimes of petit-treason or murder, or of abetting, procuring, or counselling the same, shall extend to the disinheriting of any heir, nor to the prejudice of the right or title of any person or persons other than the right or title of the offender or offenders during his, her, or their natural lives only; and that it shall be lawful to every person or persons, to whom the right or interest of any lands, tenements, or hereditaments, after the death of any such offender or offenders, should or might have appertained if no such attainder had been, to enter into the same." 54 Geo. 3, c. 145.

As to the plea of *autrefois attaint*, see *post*, **Autrefois Attaint**, p. 299.

As to attainder in general, (see 1 *Ch. C. L.* 723 to 742); as to when it ensues, (*Id.* 723); the meaning and effect of, (*Id.* 725); its consequences in forfeiture of real property, (*Id.* 727; 5 *B. & Cres.* 584); in forfeiture of personal property, (*Id.* 730); in forfeiture as altered by statutes, (*Id.* 733); to what time the forfeiture relates, (*Id.* 735); what to be done with the felon's goods, (*Id.* 736); of the loss of dower by, (*Id.* 738); corruption of blood by, (*Id.* 740); see also *Deacon, Crim. Law Dig.* tit. *Attainder*.

It may be as well to observe, that a felon attainted and ordered to be transported for a certain term of years, was not (under the 8 Geo. III. c. 15,) restored to his civil rights till after the expiration of the term for which he was ordered to be transported. Therefore, as by his attainder all personal property and rights of action accruing to him (either before or after the attainder) were vested in the crown without office found, the attainder of such a person was held to be well pleaded to an action brought by him on a bill of exchange, which had been indorsed by him after his attainder and before the term of his transportation had expired; *Bullock* v. *Dodds*, 2 *B. & A.*

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5 Geo. 4, c. 84.

258; but now by the 5 Geo. IV. c. 84, s. 26, the 8 Geo. III. c. 15, is repealed; and though a felon may not have served the whole period of the term for which he was transported, yet if he shall receive any remission of part of the term of his transportation, from the governor or lieutenant governor of New South Wales, or any other colony, he may now, whilst lawfully residing in any place, under such sentence or remission, lawfully sue for the recovery of any property acquired by him since his conviction, not only in the colonial courts, but in those of any part of his Majesty's dominions. See *Deacon's C. L. Dig.* 83.

Attaint. *See* Jurors, Vol. III.

Attaint of jurors is abolished by 6 Geo. IV. c. 50, s. 60.

Attempts and Solicitations to commit Crimes.

[3 Geo. IV. c. 114.]

Solicitations.

AT common law it is a misdemeanor to *incite* another to the commission of any indictable offence, though the solicitation does not succeed; *R.* v. *Higgins*, 2 *East's Rep.* 5; *Schofield's case*, *Cald.* 397; and see 2 *Stra.* 1074; as soliciting a servant to steal his master's goods, or the like; *Id.*; *sed vid. R.* v. *Collingwood*, 6 *Mod.* 289.

Attempts.

It also seems that an *attempt* to commit a felony or a misdemeanor is a misdemeanor, (2 *East*, 8); and an attempt to commit a statutable misdemeanor, is as much a misdemeanor as an attempt to commit a common law misdemeanor. *Russ. & R. C. C.* 107, n.

An attempt to *suborn* a person to commit *perjury* is a misdemeanor. *Cald.* 400; 2 *East*, 14.

All attempts tending to the prejudice of the community are indictable. *Per Lawrence, J.* 2 *East*, 8.

It is a misdemeanor to solicit a member of the privy council to accept a bribe for the disposal of an office, *R.* v. *Vaughan*, 4 *Burr. R.* 2494; and see *R.* v. *Plympton*, 2 *Ld. Raym.* 1377; or to offer a bribe to a juryman. *Young's case*, 2 *East*, 14, 16.

Many attempts to commit offences are by statutes made felonies, and punishable with death; as attempts to murder, maim, &c. See the respective titles, Assault, *ante*, 276 to 284; Malicious Injuries to Persons, Vol. III.

On a prosecution for a misdemeanor in inciting another to commit felony, it is not necessary for the prosecutor to show negatively that the felony was not completed, in order to sustain the charge for misdemeanor only; but he may leave it to the defendant to show, if he think fit, that the misdemeanor was merged in the greater offence; and in the absence of such proof, he may be convicted of the solicitation. *R.* v. *Higgins*, 2 *East*, 8.

3 Geo. 4, c. 114.

By the 3 Geo. IV. c. 114, the court may sentence a person having attempted to commit felony, to "imprisonment with hard labour, for any term not exceeding the term for which such court may now imprison for such offences, either in addition to or in lieu of any other punishment which may be inflicted on any such offenders by any law in force before this act."

Expenses of prosecution for.

The expenses of a prosecution for an attempt to commit a felony are allowed by 7 Geo. IV. c. 64, s. 23, *post*, Costs, Vol. I.

Forms.

(No. 1.)

Indictment for soliciting a servant to embezzle his master's goods.

—— *THE jurors for our Lord the King upon their oath present that C. D. late of, &c. on the, &c. with force and arms at, &c. did wickedly and unlawfully solicit and incite one A. B. [a domestic servant of one E. F.] feloniously to take, steal, and carry away divers, to wit, [six silver spoons,] of the value of [fourteen shillings,] of the goods and chattels of [his master] the said E. F. and to deliver to him the said C. D. the said [spoons,] against the peace of our Lord the King his crown and dignity.*

(No. 2.)

Indictment for soliciting a person to commit perjury by swearing a child to an innocent person.

—— *THE jurors for our Lord the King upon their oath present that A. B. late of, &c. being a wicked and evil disposed person, and minding and intending great injury to one C. D., and unjustly to cause and procure him to be put to great charges and expenses of his monies and to give security for the maintenance of a child, of which E. F. spinster, was on, &c. pregnant, and which by the laws of this realm was likely to become a bastard, did on the same day and year aforesaid, at, &c. aforesaid, unlawfully and wickedly solicit, instigate, persuade, and procure the said E. F. to go before one of the justices of our said Lord the King assigned to keep the peace of our said Lord the King, and to hear and determine divers felonies, trespasses, and misdeeds in the said county committed; and that she the said E. F., in consequence of such solicitation, instigation, persuasion, and procurement, did go in her own proper person before G. H., one of the justices of our said Lord the King assigned to keep the peace of our said Lord the King, and to hear and determine divers felonies, trespasses and misdeeds in the said county committed, and then and there did, &c.* [state the filiation], *whereas in truth and in fact he the said A. B. at the time when he so endeavoured to persuade, solicit, and instigate the said E. F. to make oath and swear as aforesaid, then and there well knew that the said C. D. would be put to great charges and expense of his monies if she the said E. F. would swear as aforesaid, and whereas in truth and in fact he the said A. B. at the said time when he so endeavoured to persuade, solicit, and instigate the said E. F. to make oath and swear as aforesaid, had no reasonable or probable cause whatsoever to suspect or imagine that the said C. D. was the father of such child, but on the contrary thereof the said A. B. was then and there informed by the said E. F. that he the said A. B. was the father of such child of which she the said E. F. was so pregnant as aforesaid; and whereas in truth and in fact she the said E. F. never told or informed him the said A. B. that the said C. D. was the father of such child, and whereas in truth and in fact he the said A. B. so wickedly and unlawfully endeavoured to persuade, solicit, and instigate the said E. F. to swear as aforesaid, in order that the said A. B. might be exonerated, freed, and discharged from divers expenses which might accrue to him as being the father of such child, after the same should be born of the body of her the said E. F., against the peace of our Lord the King his crown and dignity.*

Attorney.

[4 Hen. IV. c. 19; 1 Hen. V. c. 4; 3 Jac. c. 7; 7 & 8 Will. III. c. 24; 12 Geo. I. c. 29; 2 Geo. II. c. 23; 5 Geo. II. c. 18; 6 Geo. II. c. 27; 12 Geo. II. c. 13; 22 Geo. II. c. 46; 34 Geo. III. c. 14; 37 Geo. III. c. 60; 37 Geo. III. c. 90; 39 & 40 Geo. III. c. 72; 7 & 8 Geo. IV. c. 29, s. 49.]

Attorney, who.

IT is not within the intent or compass of this work to treat fully on the law relative to attornies, and the reader is referred to Mr. Tidd's Practice, vol. i. p. 60 to 90, and the index of that valuable work, title *Attorney*.

An *Attorney* is one who is appointed to do any thing in the *turn*, stead, or place of another. 1 *Inst.* 51.

5 Geo. 2, c. 18. Justice not to act as an attorney,

By stat. 5 Geo. II. c. 18, s. 2, 3, 4, no attorney or solicitor shall be capable to continue or be a justice of the peace within any county during such time as he shall continue in the business and practice of an attorney or solicitor, on pain of forfeiting 100*l*. But this is not to extend to any city or town being a county of itself, nor to any city, town, or liberty, having justices of their own. *Sed vide* 3 *Taunt.* 166.

nor under-sheriff;

Stat. 1 Hen. V. c. 4. No under-sheriff, sheriff's clerk, receiver, nor sheriff's

ATTORNEY.

bailiff, shall be attorney in the King' courts, during the time that he is in office with any such sheriff.

nor steward of a franchise;

Stat. 4 Hen. IV. c. 19. No steward, bailiff, nor ministers of lords of franchises, which have return of writs, shall be attorney in any plea within the franchise or baliwick, whereof he shall be officer.

nor persons convicted of barratry or other crime.

Stat. 12 Geo. I. c. 29, s. 4. If any person, who hath been convicted of forgery, perjury, or subornation of perjury, or common barratry, shall practise as an attorney or solicitor, or agent, he shall be transported for seven years.

To be bound for five years.

No person shall act as an attorney or solicitor, unless he shall have been bound for five years, and shall have continued in such service for that term. 2 Geo. II. c. 23, s. 5, 7, 8. *Tidd*, 9 *ed.* 66.

Penalty for practising without being admitted.

The 2 Geo. II. c. 23, s. 5, imposes a penalty of 50*l.*, to be recovered by any one, for practising as an attorney without being duly admitted as such.

By stat. 22 Geo. II. c. 46, s. 12, no person shall act as an attorney, solicitor, or agent, at any general or quarter sessions of the peace, without being duly inrolled and continuing on the roll, according to stat. 2 Geo. II. c. 23, on pain of 50*l.* to him who shall sue in twelve months, with treble costs: and if any attorney or solicitor shall permit him to make use of his name in such sessions, he shall forfeit 50*l.* in like manner.

Sect. 14. No clerk of the peace or his deputy, or any under-sheriff or his deputy, shall act as solicitor, attorney, or agent, to sue out any process at any general or quarter sessions of the peace of the county or place where he shall execute his said office respectively, on pain of 50*l.* in like manner.

By stat. 12 Geo. II. c. 13, s. 7, a person acting as attorney or solicitor in the county court, without having been legally admitted, shall forfeit 20*l.* with costs to him who shall sue in twelve months in any of his Majesty's courts of record.

Suffering names to be used by unqualified persons. Oaths to be taken by.

The 2 Geo. II. c. 23, s. 17, prohibits attorneys from acting as agents for, or suffering their names to be used by, unqualified persons.

By stat. 7 & 8 Will. III. c. 24, any attorney or solicitor acting as such before he hath taken the oath and subscribed the declaration, as other persons qualified for offices, shall incur a *præmunire*.

Practising without certificate.

Every person (attorney or notary) who shall practise in any of the said courts in his name, or in the name of any other, without obtaining such herein mentioned certificate as aforesaid, or without duly entering the same, or shall deliver in a wrong place of residence, with intent to evade the payment of the higher duty, shall forfeit 50*l.* and shall be incapable of practising. 37 Geo. III. c. 90, s. 30, and 39 & 40 Geo. III. c 72, s. 7.

Any person admitted, sworn, &c. as aforesaid, and who shall neglect to obtain a certificate in manner aforesaid, for one whole year, shall from thenceforth be incapable of practising; but he may be re-admitted on payment of the duty accrued since the expiration of his last certificate, and such penalty as the court may order. 37 Geo. 3, c. 90, s. 31.

Not to have more than two clerks.

By stat. 2 Geo. II. c. 23, s. 15, no attorney or solicitor shall have more than two clerks, who shall be bound by contract as aforesaid, at any one time.

Other defaults.

By stat. 4 Hen. IV. c. 18, if any attorney be notoriously found in any default, of record, or otherwise, he shall foreswear the court, and never after be received to make any suit in any court of the king.

And therefore, where an attorney sued out a *capias*, without an original, he was struck out of the roll, and sworn, that he be not an attorney in any of the King's courts. *Com. Dig. Attorney*, (B. 15).

So an attorney, who gave names to the sheriff to be returned upon a jury, was cast over the bar. *Id.*

So if he take money of his client, and afterwards wholly refuses to intermeddle with his business, he shall be struck out of the roll. *Id.*

Embezzlements

As to the offence of an attorney embezzling property entrusted to him, see 7 & 8 Geo. IV. c. 29, s. 49, 50, *post* Larceny, Vol. III.

his

By 3 Jac. c. 7, all attornies and solicitors shall give a true bill unto their client, subscribed with their own hands and names, before they shall charge their clients with their fees or charges.

In case of *misdemeanors*, as the defendant cannot also plead over, the judgment upon a plea of *autrefois acquit* which is in bar, whether it be on demurrer to the same, or on issue joined, is final, and sentence will be pronounced against the defendant. 2 *Ld. Raym.* 922; *R.* v. *Taylor*, M. T. [illegible]

When, on the other hand, the plea is allowed, the judgment is, that "he [illegible] without day," and he is altogether discharged from the prosecution. [illegible] 391.

Forms.

(No. 1.)

Plea of autrefois acquit.

AND the said *C. D.*, in his own proper person, cometh into court here, and having [illegible] the said indictment read, saith, that our said lord the King ought not further to [illegible] the said indictment against the said *C. D.*; because he saith that *heretofore*, to [illegible] at the *general quarter sessions of the peace, holden at* [so continuing the [illegible] of the former indictment,] it was *presented, that the said C. D., (then and* [illegible] *thereby described as C. D., late of* , *in the county aforesaid, labourer,) on* [illegible] *day of, &c.*, [continuing the indictment to the end; reciting it however in the [illegible] not in the present tense. Recite also the remainder of the record to the [illegible] the judgment, in the past tense, in like manner. Then proceed thus]: as [illegible] *remains thereof more fully and at large appears; which said judgment still remains* [illegible] *in full force and effect, and not in the least reversed or made void. And the said C. D.* [illegible] *said, that he the said C. D., and the said C. D. so indicted and acquitted as* [illegible] *aforesaid, are one and the same person, and not other and different persons; and* [illegible] *the* [*felony and larceny*] *of which the said C. D. was so indicted and acquitted as aforesaid, and the* [*felony and larceny*] *of which he is now indicted, are one and the same* [felony and larceny], *and not other and different* [*felonies and larcenies*]. *And* [illegible] *he the said C. D. is ready to verify: wherefore he prays judgment, and that by the* [illegible] *he may be dismissed and discharged from the said premises in the present indictment mentioned.*

(No. 2.)

[Continue the former plea thus]: *And as to the felony and larceny of which the said C. D. was stands indicted, he the said C. D. saith that he is not guilty thereof*; [illegible] *of this the said C. D. puts himself upon the country.*

Plea over to the felony.

[illegible] arraigns], who prosecutes [illegible] of any thing in the said [illegible] and the King ought not to [illegible] said C. D; because he [illegible], in manner and form as [illegible] he the said *A. B.* prays [illegible] the like. Therefore let a

Replication of nul tiel record.

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nt.

[illegible] no plea setting forth any [illegible]nt, unless the attainder be [illegible]ent." By this enactment [illegible] is acquit.

ATTORNEY. 37, it was decided that a prisoner when examined before magistrates on a charge of felony is not entitled, as of right, to have a person skilled in the law present as an advocate on his behalf, it being a preliminary investigation only, and not conclusive upon him.

But an attorney has a right to be present on behalf of a party accused or otherwise on the *hearing* of an information, the same being then a *judicial* proceeding. *Daubney, Gent.* v. *Cooper and others*, 10 *B. & Cres.* 237. See the case more fully noticed, *post*, **Conviction**, Vol. I.

Auction. *See post*, Excise, Vol. II.

Autrefois acquit. (*a*)

What. THIS is a plea by a person indicted of a treason or felony that he was heretofore acquitted of the same treason or felony, for one shall not be brought into danger of his life for the same offence more than once. 3 *Inst.* 213.

When pleadable. If the prisoner *could* have been legally convicted on the first indictment, upon any evidence that *might* have been adduced, his acquittal on that indictment may be successfully pleaded to a second indictment; and it is immaterial whether the proper evidence was adduced at the trial of the first indictment or not. *R.* v. *Sheen*, 2 *C. & P.* 634; *R.* v. *Clarke*, 1 *Brod. & B.* 473; 9 *East*, 437.

An acquittal upon an indictment for burglary and larceny may be pleaded to an indictment for a larceny of the same goods; because, upon the former indictment, the defendant might have been convicted of the larceny. But *if* the first indictment were for a burglary, with intent to commit a larceny, and did not charge an actual larceny, an acquittal on it would not be a bar to a subsequent indictment for the larceny; see 2 *Hale*, 245; because the defendant could not have been convicted of the larceny on the first indictment.

An acquittal upon an indictment for murder may be pleaded in bar of another indictment for manslaughter; *Fost.* 329; 2 *Hale*, 246; because the defendant might be convicted of the manslaughter on the first indictment.

So an acquittal upon an indictment for manslaughter is, it seems, a bar to an indictment for murder. *Fost.* 329.

If the charge be in truth the same, though the indictments differ in immaterial circumstances, the defendant may plead his previous acquittal with proper averments; for it would be absurd to suppose that by varying the day, parish, or any other allegation, the precise accuracy of which is not material, the prosecutor could change the rights of the defendant, and subject him to a second trial. *Keilw.* 58; 1 *Leach*, 448; 9 *East*, 437. Thus, as to the point of time, if he be indicted for a murder as committed on a certain day and acquitted, and afterwards be charged with killing the same person, on a different day, he may plead the former acquittal in bar notwithstanding this difference, for the day is not material; and this is a fact which could not be twice committed. 2 *Hale*, 179, 244; 2 *Hawk.* c. 35. And the same rule applies to accusations of other felonies, for though it is possible for several acts of the same kind to be committed at different times by the

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(*a*) See in general, 1 Ch. C. L. 452 to 461.

same person, it lies in *averment*, and the party indicted may show that the same charge is intended. 2 *Hale*, 179, 244; 2 *Hawk.* c. 35. AUTREFOIS ACQUIT.

All variations not inconsistent with the validity of both proceedings, such as differences in the day, the vill, or the quantity, may be shown to be merely technical. But if the variances are in those things which are material, *autrefois acquit* must not be pleaded; for either the first indictment was ineffectual, and, therefore, the acquittal is of no avail, or the second will prove not applicable to the evidence, and, therefore, the objection is needless. 2 *Hale*, 245.

An acquittal upon an indictment for a felony, is no bar to an indictment for a misdemeanor, and *e converso*. 2 *Hawk.* c. 35, s. 5.

An acquittal as accessary, is no bar to an indictment as principal, and *e converso*. 2 *Hale*, 244; *Fost.* 361; 2 *Hawk.* c. 35, s. 11.

So an acquittal upon an insufficient indictment, is no bar to another indictment for the same offence. 4 *Co.* 45 a. Where the defendant was formerly indicted for forging a will, which was set out in the indictment thus: "*I John Styles*," &c., and was acquitted for variance, the will given in evidence commencing "*John Styles*," without the "*I:*" it was holden that he could not plead this acquittal in bar of another indictment, reciting the will correctly, "*John Styles*," &c. *R.* v. *Cogan*, 2 *Leach*, 503.

As to the sufficiency of the discharge, which may be thus pleaded, it must be a legal acquittal by judgment upon trial, by verdict of a petty jury. 2 *Hale*, 243, 6; 2 *Hawk.* c. 35, s. 6.

And, therefore, if a man be committed for a crime, and no bill be preferred against him, or if it be thrown out by the grand jury, so that he is discharged by proclamation, he is still liable to be indicted. *Id.*

So if the facts be found specially by the coroner's inquest or grand jury, and he be thereupon discharged, he cannot plead it in bar to any subsequent prosecution; but if the special verdict be found by the petit jury, and judgment be given by the court "that he go thereof without day," this will amount to a sufficient acquittal. *Id.*

Although it was formerly thought that no acquittal in any other court could be effectually pleaded in bar to a prosecution in the Court of King's Bench, it is now settled that a legal acquittal in any court whatsoever, having competent jurisdiction to try the charge, will be sufficient to preclude any subsequent proceedings before every other tribunal. 1 *Leach*, 135, n. a.

Even an erroneous acquittal is conclusive until the judgment be reversed, so that if a judge direct a jury to acquit the prisoner on any ground, however fallacious, he is entitled to the benefit of the verdict. 2 *Inst.* 318; 2 *Hale*, 247.

If a judgment in favour of a prisoner be reversed, he may be arraigned and tried *de novo*. 2 *Hale*, 247.

A mere error in the former process, however, will not render that prosecution *nugatory*, because the reason which relates to errors in the indictment will not apply, and the defendant might legally have been convicted. *Id.* 248.

Form of Plea]—This plea is of a mixed nature, and consists partly of matter of record, and partly of matter of fact. 2 *Hale*, 241, 255; 2 *Hawk.* c. 35. Form and requisites of the plea.

It is absolutely requisite to set forth in the plea the record of the former acquittal; 1 *M. & S.* 188; 9 *East*, 438; but it is not necessary to produce the record immediately, because it is pleaded in bar, and he who pleads it hath neither the custody nor property in the record. 2 *Hawk.* c. 37, s. 65.

In order to enable the defendant to do this, if the indictment be before justices or at the assizes, he may remove the tenor of the record into Chancery, and have it sent to the court where it is to be tried by *mittimus sub pede sigilli*. 2 *Hale*, 242, 255. Or if he be arraigned in the King's Bench, and the former trial were before justices of the peace or of oyer and terminer, the court will give him a writ of *certiorari* to remove the proceedings, and respite the plea until he has, by the return, been enabled to frame it. *Id.*

AUTREFOIS ACQUIT.

The defendant is bound to produce and vouch, or refer to the record on which he relies. 2 *Hale*, 241.

If, in a plea of *autrefois acquit*, the prisoner were to insist on two distinct records of acquittal, his plea would be bad for duplicity; but *semble*, that if he insisted on the wrong, the court would, in a capital case, take care that he did not suffer by it. *R.* v. *Sheen*, 2 *C. & P.* 634.

The two records in that case were the record of acquittal of murder upon the former indictment and the record of acquittal on the coroner's inquisition.

After the statement of the record of acquittal, the matter of fact of the plea must be stated, viz. that the charges and persons are the same which were included in the former prosecution. 1 *Hale*, 255, 392. Where the variance between the indictments is not material, the identity may be maintained by averments; and the same observation applies to an immaterial difference in the addition of the party indicted. *Keilw.* 58, *ante*, 296, 297.

The plea concludes with a verification and prayer that the defendant may be dismissed the court without further day. 2 *Hale*, 392; 2 *Leach*, 715.

Pleading over to the felony.

In *Vandercomb and Abbott's case*, 2 *Leach*, 712, the court considered that it was absolutely necessary for the prisoner to plead over to the felony at the same time that he pleads his plea of *autrefois acquit*. But in *R.* v. *Sheen*, 2 *C. & P.* 634, the prisoner merely pleaded his plea of *autrefois acquit*, without pleading over to the felony. It is laid down in 2 *Curw. Hawk.* c. 23, s. 128, that a prisoner may still plead "not guilty" *after* his special plea is found against him: and in the case of *R.* v. *Welch*, *Car. C. L.* 56, O. B. 1828, the prisoner pleaded *autrefois acquit* to a charge of felony, without also pleading over to the felony. Judgment was given against him on this plea, and he after that pleaded "not guilty," and was tried and convicted.

It seems, however, that it is of very little importance whether the prisoner adds a plea of "not guilty" to his plea of *autrefois acquit* (as directed in *Arch. Cr. L.* 55); because, by so doing, his plea is not double, nor is he thereby considered to waive his special plea. 2 *Hale*, 255; *Car. C. L.* 56.

Replication.

Replication]—The replication may, if the fact of acquittal be disputed, either take issue upon the averments of identity, or aver *nul tiel record*. 2 *Hale*, 255.

In *Vandercomb & Abbott*, 2 *Leach*, 715, (n.), the counsel for the crown wished to reply *ore tenus* to the plea of *autrefois acquit*; "but the prisoner's counsel insisted that the replication must be on parchment, for that only the attorney-general could make such a replication *ore tenus*; and the court said, that it must be on parchment, for otherwise the parties would not have equal justice, as, by its being pleaded *ore tenus*, the prisoners would be deprived of the opportunity of taking advantage of any defect there might happen to be in the form of the replication. However, in the case of *R.* v. *Sheen*, 2 *C. & P.* 635, the counsel for the prosecution replied *ore tenus*, although the plea was on parchment; but he repeated the words of the replication (from notes) so slowly, that they were written down by the learned judge. *Car. C. L.* 56.

The replication concludes to the country, and no day is given to bring in the record.

If the plea be bad in point of law, it should be demurred to.

Addressing jury.

Addressing Jury]—If in the replication, the prosecutor take issue on a fact averred in a plea of *autrefois acquit*, the counsel on both sides address the jury. *R.* v. *Sheen*, 2 *C. & P.* 635.

Judgment.

Judgment]—In case of *felony*, if the plea be held bad, the judgment is *respondeat ouster*; or rather, as the defendant generally pleads over to the felony, the jury are charged again, and that at the same time with the issue on the plea of *autrefois acquit*, to inquire of the second issue, and the trial proceeds as if no plea in bar had been pleaded. 1 *Leach*, 134.

AUTREFOIS ACQUIT.

In case of *misdemeanors*, as the defendant cannot also plead over, the judgment upon a plea of *autrefois acquit* which is in bar, whether it be on demurrer to the same, or on issue joined, is final, and sentence will be pronounced against the defendant. 2 *Ld. Raym.* 922; *R. v. Taylor*, M. T. 1824.

When, on the other hand, the plea is allowed, the judgment is, that "he shall go without day," and he is altogether discharged from the prosecution. 2 *Hale*, 391.

Forms.

(No. 1.)

Plea of autrefois acquit.

AND the said C. D., in his own proper person, cometh into court here, and having heard the said indictment read, saith, that our said lord the King ought not further to prosecute the said indictment against the said C. D.; because he saith that heretofore, to wit, [at the general quarter sessions of the peace, holden at [so continuing the caption of the former indictment,] *it was presented, that the said C. D., (then and there, and thereby described as C. D., late of , in the county aforesaid, labourer,) on the day of, &c.,* [continuing the indictment to the end; reciting it however in the past, and not in the present tense. Recite also the remainder of the record to the end of the judgment, in the past tense, in like manner. Then proceed thus]: *as by the record thereof more fully and at large appears; which said judgment still remains in full force and effect, and not in the least reversed or made void. And the said C. D. in fact saith, that he the said C. D., and the said C. D. so indicted and acquitted as last aforesaid, are one and the same person, and not other and different persons; and that the [felony and larceny] of which the said C. D. was so indicted and acquitted as aforesaid, and the [felony and larceny] of which he is now indicted, are one and the same [felony and larceny], and not other and different [felonies and larcenies]. And this he the said C. D. is ready to verify: wherefore he prays judgment, and that by the court here he may be dismissed and discharged from the said premises in the present indictment specified.*

(No. 2.)

Plea over to the felony.

[Continue the former plea thus]: *And as to the felony and larceny of which the said C. D. now stands indicted, he the said C. D. saith that he is not guilty thereof; and of this the said C. D. puts himself upon the country.*

(No. 3.)

Replication of nul tiel record.

AND hereupon A. B. [the clerk of the peace or clerk of arraigns], *who prosecutes for our said lord the King in this behalf, says, that by reason of any thing in the said plea of the said C. D. above pleaded in bar alleged, our said lord the King ought not to be precluded from prosecuting the said indictment against the said C. D; because he says, that there is not any record of the said supposed acquittal, in manner and form as the said C. D. hath above in his said plea alleged; and this he the said A. B. prays may be inquired of by the country. And the said C. D. doth the like. Therefore let a jury come, &c.*

Autrefois Attaint.

THE 7 & 8 Geo. IV. c. 28, s. 4, enacts—"That no plea setting forth any attainder shall be pleaded in bar of any indictment, unless the attainder be for the same offence as that charged in the indictment." By this enactment the plea of *autrefois attaint* appears unavailable.

As to the form of the plea, &c. see *ante*, **Autrefois Acquit.**

As to attainder, see *ante*, **Attainder.**

AUTREFOIS CONVICT.

Autrefois Convict.

Where pleadable.

A MAN *convicted* of a felony may plead such conviction in bar of any subsequent indictment for the felony of which he was convicted. 2 *Hale, P. C.* 251; *Vaux's Case*, 4 *Co.* 45; 2 *Hawk.* c. 36, s. 10, 14; 1 *Stark.* 311.

This plea, like that of *autrefois acquit*, must set out the record of conviction to the allowance of judgment, inclusive, and must contain an averment either that the offences charged in the former indictment and in the present one are one and the same offence, and not other and different, or that the felony charged in the present indictment was (if at all) committed previously to the former conviction. See *ante*, 297; and further, 1 *Ch. C. L.* 461, 462.

Award.

[55 Geo. III. c. 184.]

UNDER this title will be noticed those points only which peculiarly come within the compass of this work, for the rest of the law relative to awards see the treatises of *Mr. Watson*, *Mr. Caldwell*, and *Mr. Kyd*. See also *Tidd, Pract.* 9 *ed.* 819, *&c.*

As to arbitration of disputes between masters, labourers, and workmen, see the 5 Geo. IV. c. 96, *post*, **Servants**, Vol. V.

What criminal matters may be referred.

Mr. Watson, in his treatise on Awards, p. 35, observes, that "matters of a criminal nature, for obvious reasons, are not capable of being submitted to the decision of an arbitrator. But there are many cases which may be made the subject of an indictment, as assaults, nuisances, and the like, and for which the prosecutor may proceed by action, where those reasons do not apply. It is perfectly clear that these matters may be referred before indictment, but whether an indictment found for any of these minor offences can be referred or not without express leave of the court, does not appear to be quite so clearly settled. Perhaps the clearest rule to be drawn from the cases on the subject is, that indictments for assaults, nuisances, &c. may be referred to arbitration by leave or by authority of the court where they are depending, but without such permission or authority indictments cannot be referred; and this rule will reconcile all the reported cases on the subject."

Thus in the case of *R.* v. *Rant*, reported in *Kyd on Awards*, p. 64; (and see *Elworthy* v. *Bird*, 2 *Bing.* 258; and *Elworthy & another* v. *Bird*, *M'Cleland's Exchcq. Rep.* 69;) and *Rex* v. *Coombs*, which was a reference to arbitration of two cross indictments for riot, which indictments had been found at the Middlesex sessions; the reference by bond and the submission having been made a rule of court, a motion to set aside the award having been made, *Mr. Kyd* showed cause, on the ground that the award was a nullity, as a criminal prosecution could not be made the subject of reference. He had hardly stated the fact that the submission was by bond, when the court expressed considerable surprise that a criminal prosecution should be so submitted; they observed that it was usual indeed in prosecutions of this kind before a verdict was given, or after verdict of conviction, and before sentence, for the parties to talk together by the recommendation of the court, and, if they agreed, the court set a nominal fine; but the whole was done under the inspection of the court, and their sentence formally allowed. Several instances will be found of references of indictments *by the authority of the courts where the indictments were pending*, both before and after conviction. See *Kyd*, 66, 67; *R.* v. *Cotesbatch*, 2 *D. & R.* 265.

In a recent case it was decided on demurrer that an indictment for an assault might, by leave of the Court of Quarter Sessions, be referred to arbi-

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AWARD.

or to the other's use, general releases, sufficient in the law for the releasing by each to the other of them, his heirs, executors, and administrators, of all actions, suits, arrests, quarrels, controversies, and demands whatsoever, touching or concerning the premises aforesaid, or any matter or thing thereunto relating, from the beginning of the world, until the day of last past, [viz. the day of the date of the arbitration bonds.] *In witness whereof we have hereunto set our hands,* [or *hands and seals,*] (a) *the day of .*

A. B.
C. D.

Witnesses hereof, *E. F.*
G. H.

Backing a Warrant. *See* Warrant, Vol. V.

Bail. (b)

I. *What it is,* 303.
II. *Difference between Bail and Mainprize,* 303.
III. *When a Person may be discharged without Bail,* 303.
IV. *Who may or may not be Bailed,* 303.
[3 Edw. I. c. 5; 7 Geo. IV. c. 64, s. 1.]
V. *Who may Bail,* 304.
VI. *Number, Amount, and Sufficiency of Bail,* 306.
[5 Edw. III. c. 8.]
VII. *Time of Taking, and other Proceedings as to Bail,* 306.
VIII. *Informations and Examinations,* 307.
[7 Geo. IV. c. 64, s. 2, 3, 5.]
IX. *Recognizance and other Subsequent Proceedings,* 307.
X. *Requiring Excessive Bail,* 308.
[1 Will. III. ss. 2, c. 2.
XI. *Denying Bail where it ought to be granted,* 308.
XII. *Granting it where it ought to be denied,* 309.
XIII. *Personating Bail,* 309.
[21 Jac. I. c. 26; 4 Will. III. c. 4.]
XIV. *Power of Bail,* 309.
XV. *Liability of Bail, and what a Forfeiture of Recognizance,* 310.
[38 Geo. III. c. 52.]
XVI. *Bail by Habeas Corpus.* See Habeas Corpus, Vol. II.
XVII. *Bail on Certiorari.* See Certiorari, Vol. I.
XVIII. *Forms,* 311.

(a) If it be without seal, as it may be, *and seals* must be omitted.

(b) As to bail in general in criminal cases, see 1 *Ch. C. L.* 92 to 104; 4 *Bla. Com.* c. 22; 2 *Hawk.* c. 15; 2 *Hale,* c. 15; *Bac. Ab. Bail in Criminal Cases; Petersdorff on Bail,* 475 to 536.

I. What it is.

BAIL (from the French *bailler*, to deliver,) signifies the delivery of a man out of custody, upon the undertaking of one or more persons for him that he shall appear at a day limited, to answer and be justified by the law. 1 *Hale's Sum.* 96. What.

II. Difference between Bail and Mainprize.

The difference between bail and mainprize is, that mainpernors are only surety, but bail is a custody; and therefore the bail may retake the prisoner if they doubt he will fly, and detain him and bring him before a justice, and the justice ought to commit the prisoner in discharge of the bail, or put him to find new sureties. 1 *Hale's Sum.* 96. Difference between bail and mainprize.

III. When a Person may be discharged without Bail.

If a person be brought before a justice, if after examination it appear that no felony is committed, he may discharge him; but if a felony be committed, though it appear not that the party accused is guilty, yet he cannot discharge him, but must commit or bail him. *Hale's Sum.* 98. Discharge without bail.

As to the examination, see *post*, **Examinations**, Vol. II. p. 94 to 105.

IV. Who may or may not be Bailed.

At the common law bail was allowed in all cases but homicide. *Hale's Sum.* 97. But the common law is now altered in this respect.

In Felonies]—The 7 Geo. IV. c. 64, s. 1, enacts, "that where any person shall be taken on a charge of felony or suspicion of felony, before one or more justice or justices of the peace, and the charge shall be supported by positive and credible evidence of the fact, or by such evidence as, if not explained or contradicted, shall in the opinion of the justice or justices raise a strong presumption of the guilt of the person charged, such person shall be committed to prison by such justice or justices in the manner hereinafter mentioned." Examination of prisoner before *one* justice. When strong presumption of guilt he may commit.

"But if there shall be only one justice present, and the whole evidence given before him shall be such as neither to raise a strong presumption of guilt, nor to warrant the dismissal of the charge, such justice shall order the person charged to be detained in custody until he or she shall be taken before two justices at the least: and where any person so taken, or any person in the first instance taken before two justices of the peace, shall be charged with felony or on suspicion of felony, and the evidence given in support of the charge shall in their opinion not be such as to raise a strong presumption of the guilt of the person charged, and to require his or her committal; or such evidence shall be adduced on behalf of the person charged as shall in their opinion weaken the presumption of his or her guilt; but there shall, notwithstanding, appear to them in either of such cases to be sufficient ground for judicial inquiry into his or her guilt, the person charged shall be admitted to bail by such two justices in the manner hereinafter mentioned." When he shall remand till *two* justices are present. When taken before two justices or remanded. If not a strong presumption of guilt, two justices may admit to bail.

"Provided always, that nothing herein contained shall be construed to require any such justice or justices to hear evidence on behalf of any person so charged as aforesaid, unless it shall appear to him or them to be meet and conducive to the ends of justice to hear the same." Justices not bound to hear evidence for prisoner unless for the ends of justice.

This statute partially repeals the provisions contained in the 3 Edw. I. c. 15; 23 Hen. VI. c. 9; 3 Hen. VII. c. 3; and wholly repeals the 1 & 2 Ph. & M. c. 13.

BAIL IN FELONIES.

This new enactment puts an end to the provisions of the statute 3 Edw. I. c. 15, on the subject of bail to be taken by *sheriffs* in cases of felony, and also the provisions of 1 & 2 Ph. & M. c. 13, which allowed two justices to admit a person charged with felony to bail in certain cases. One justice cannot now take bail on a charge of felony, or suspicion of felony. He must either dismiss the charge, or commit the accused, if there be positive credible proofs, or a strong presumption of guilt. And if he be of opinion there is not a strong presumption of guilt, yet at the same time that he ought not to dismiss the charge; then he must order the party to be detained until he be taken before two justices.

If the prisoner be brought before *two* or *more* justices, either in the first instance or on being ordered to be detained by a single justice, they may, if they are of opinion that there is not a strong presumption of guilt, but that still sufficient appears against him to make a judicial inquiry proper, admit him to bail. And they may admit him to bail, not only if no strong presumption of guilt is raised by the evidence adduced on the part of the accused, but also when it has been raised, but is weakened by the evidence for the accused. See *Car. C. L.* 8, 9.

In misdemeanors.

Misdemeanors]—In all cases of *misdemeanors*, except for breach of prison, justices must take bail, see 3 Edw. I. c. 15; unless the party be excluded from it by any special act, see 2 *Hale*, 127.

Persons guilty of affrays may be bailed or not, at the discretion of the magistrate; but he ought to be very cautious how he take bail if a wound has been given, from which death may probably ensue. 1 *Hawk.* c. 23, s. 19; *Bac. Ab. Bail*, (B).

No power at all is given to justices of the peace to bail any persons on process in civil actions, or for contempts to superior courts. 2 *Hawk.* c. 15, s. 64.

There are furthermore many statutes which prohibit bail and mainprise in very many cases, and allow the same in many others, which are interspersed among the several titles which treat of those matters.

And where a statute ordaineth that an offender shall be imprisoned at the King's will or pleasure, there the prisoner cannot be bailed till he hath redeemed his liberty by such fine or ransom as shall be assessed by the King's justices in his courts. *Dalt*, c. 167, p. 294, 295.

V. Who may Bail.

Justices of the peace.

Justices]—It seems to be a good general rule that so far as any persons are judges of any crime, so far they have power of bailing a person indicted before them of such crime; and upon this ground it seems clear that any two justices, one being of the *quorum*, may of *common right* bail persons indicted at the sessions, for that any two such justices may hear and determine the indictment. Also it hath been holden that any one justice hath the like power. 2 *Hawk.* c. 15, s. 54, 62.

In *felony* now no less than *two* justices can bail, *ante*, 303; but in *misdemeanors*, *one* in general can. *Dalt.* c. 12; 2 *Hawk.* c. 15, s. 54.

Where warrant backed.

Where the party is arrested under a warrant in the county in which the warrant was originally granted, the bail must be taken by two justices of that county; but where the warrant is backed, and the party thereupon arrested in another county, the party may be bailed before the justice who backed the warrant, or some other justices of the same county, (24 Geo. II. c. 55, s. 1; 45 Geo. III. c. 92, s. 1); or before justices of the county where the warrant was originally issued, at his option.

See the enactments of the 24 Geo. II. and 45 Geo. III. in full, *post*, tit. Warrant, Vol. V.

Sheriffs.

Sheriffs]—By the common law the sheriff and every constable, being con-

servators of the peace, might have bailed one suspected of felony; but this authority is transferred from them to the justices of the peace by several statutes. *Lamb.* 15. WHO MAY BAIL.

Constables]—By the Metropolis Police Act, (3 Geo. IV. c. 55, s. 29, *post*, Vol. V. p. 116, and 10 Geo. IV. c. 44, s. 9, *post*, Vol. V. p. 126,) night constables may in certain cases take bail. Police constables.

Court of King's Bench]—The Court of King's Bench, or any judge thereof, in vacation, (not being restrained or affected by the statute 3 Edw. I. c. 15, or 7 Geo. IV. c. 64, s. 1,) in the plenitude of that power which they enjoy at common law, may, in their discretion, admit persons to bail in *all cases* whatsoever, though committed by justices of the peace or others, for crimes in which inferior jurisdictions would not venture to interfere, and the only exception to their discretionary authority is, where the commitment is for a contempt, or in execution. *R.* v. *Marks*, 3 *East*, 163; 2 *Hale*, 129; 2 *Hawk.* c. 15, s. 47; *Leach*, 168; *Rudd's case*, 1 *Cowp.* 333. Court of King's Bench, or a judge thereof.

This power, however, is to be exercised in the discretion of the court, and none can claim its benefits *de jure*. 2 *Hale*, 129. The judges seldom admit a person to bail where magistrates have properly refused it, without some particular circumstances are shown to exist in his favour. *Bac. Ab. Bail*, (D).

And it is not usual for this court to bail in cases of felony, unless when in consequence of the defect of the commitment, and of the examination and depositions, it appears doubtful whether any offence has been committed. 1 *Leach*, 484; 2 *T. R.* 257; 5 *T. R.* 169. And however defectively the mittimus may have been framed, yet, if from the depositions the court can collect that a felony has been committed, they will not bail the prisoner, but remand him upon a special rule. 3 *East*, 157.

The *ill* health of the party in custody is not of itself sufficient ground to induce this court to bail him. 1 *Wils.* 29; 1 *Ch. C. L.* 99. But where he has been for some time in prison, so that his life is actually in danger thereby, the court might perhaps bail him. *Ld. Aylesbury's case*, 1 *Salk.* 103. They will not admit him to bail where the complaint is constitutional. *R.* v. *Wyndham*, 1 *Stra.* 4. Nor where the illness arises from the act of the prisoner. *Id.*

In all cases where it appears that a prisoner ought to be bailed, if he be unable to defray the expenses of being brought up to Westminster for that purpose, a rule to show cause will be granted why he should not be bailed by a magistrate in the county, with a *certiorari* to return the depositions before them. *R.* v. *Jones*, 1 *B. & A.* 209.

See further **Habeas Corpus**, Vol. II.

By 5 Edw. III. c. 8, the marshal of the King's Bench is prohibited from bailing persons indicted of felony, on pain of half-a-year's imprisonment and ransom. *F. N. B.* 2511. Marshal of King's Bench.

Other Courts at Westminster]—It seems the Courts of Common Pleas and Exchequer at any time during term, or any judge or baron in vacation, and the chancery, either in term or vacation, may, by the common law, award a *habeas corpus* for any person committed for a crime under the degree of treason or felony, and thereupon discharge him, if it shall plainly appear by the return that the commitment was illegal, or bail him if it was doubtful. In some cases the Lord Chancellor may bail for felony. 2 *Inst.* 53, 615; 4 *Inst.* 290; *Bac. Abr. Bail*; 2 *Hawk.* 115. Courts of Common Pleas and Exchequer and Chancery.

Houses of Parliament]—The House of Lords or House of Commons, during their sessions, may bail a person committed for a contempt. *Skin.* 683, 684. Houses of parliament.

When the Serjeant of the House of Commons has taken into his custody persons committed by order of the House, he cannot, upon their tendering bail, release them from confinement. 1 *Lev.* 109; *Hard.* 464.

BAIL, PROCEEDINGS AS TO.

VI. Number, Amount, and Sufficiency of Bail.

Number.

Number]—In general two bail are required, but on a *habeas corpus* on a commitment for treason or felony, the Court of King's Bench invariably require four. 2 *Hawk.* c. 15, s. 4; *R.* v. *Shaw*, 6 *D. & R.* 154.

Amount.

Amount]—In general there is no fixed sum to be adhered to in all cases for which the bail should become bound in their recognizance. The justices have a discretionary authority as to the amount of such sum, to be exercised according to the affluence and rank of the prisoner, and the nature and enormity of the offence. 2 *Hawk.* c. 15; 2 *Hale*, 125; *Dalt.* c. 14; 2 *Wils.* 159.

For a capital offence the amount demanded should not be less than 40*l.*

After the defendant has been admitted to bail, the court will not, on affidavit of aggravating facts, require the bail to be increased. *R.* v. *Salter*, 2 *Chit. Rep.* 109.

Who may be bail.

Who may be Bail]—Every housekeeper possessed of sufficient property to answer the required responsibility may be bail. The defendant's attorney may be bail for him. *R.* v. *Bowes*, *Dougl.* 466, n.

A person convicted of an infamous crime, as perjury, &c. cannot be admitted as adequate bail. *R.* v. *Edwards*, 4 *T. R.* 440.

Nor can a married woman. *Styles*, 369; 2 *Hawk.* c. 15.

The justices may examine on oath the party proposed as bail as to the value of his property. 2 *Hale*, 125; 3 *M. & S.* 1; 2 *Hawk.* c. 15.

Depositing money, &c.

It is said that justices, as a substitute for bail, may take money *in deposito*. *Moyser* v. *Gray*, *Cro. Car.* 446.

By the Declaration of Rights, 1 Will. sess. 2, c. 2, *excessive bail* ought not to be required. See *post*, 308.

As to *personating* bail, see *post*, 309.

VII. Time of taking and other Proceedings as to Bail.

Time of.

Time of Taking]—The party may at any time before trial, if the offence be bailable, be liberated on producing sufficient bail. *R.* v. *Shebbeare*, 1 *Burr.* 460; 2 *Hawk.* c. 16; 1 *Hale*, 122.

It is said that justices of the peace will sometimes send the prisoner to some private prison for a short time, to afford him an opportunity of procuring bail before he is committed for trial; but this practice, though now usual, has been disappoved of as inconvenient, and not agreeable to law. 1 *Hale*, 123.

Notice of.

Notice of Bail]—In general no notice of bail is requisite, but justices may, if they think fit, (and in strong cases it is usually done,) order that a reasonable notice of bail, usually 24 or 48 hours, according to circumstances, shall be given to the prosecutor.

The 30 Geo. II. c. 24, s. 17, which required 24 hours' notice of bail in offences, as to false pretences, &c. appears repealed by 7 & 8 Geo. IV. c. 27.

Where an indictment is found at the sessions, and the prosecutor moves for a warrant, the court, when they grant it, will make a note, by way of order, at the foot of the warrant, that the defendant shall give 24 hours' notice of bail to the prosecutor; which time the court will, in some cases, order to be extended to 48 hours, according to the circumstances stated, and a judge or justice of the peace after sessions will, upon producing a certificate of a bill having been found, grant a warrant on a similar order, the intent of which notice is, that the prosecutor may have an opportunity of inquiring

into the sufficiency of the bail, that if they are not satisfactory, he may have an opportunity of opposing them. *Cro. C. C.* 15. BAIL, PROCEEDINGS AS TO.

But where the defendant, in order to avoid being apprehended under a warrant upon indictment found or preferred, voluntarily goes before a magistrate and offers bail to answer the supposed offence, it is said that no notice of bail is requisite. *Cro. C. C.* 16.

Justification of Bail]—Justification being requisite, bail is absolute in the first instance. 2 *Bla. Rep.* 1110. Justification of.

The bail may, however, be examined on oath by the magistrates as to the sufficiency of their property. 2 *Hale*, 125.

It is said that if the magistrates be deceived, they may require fresh sureties. 2 *Hawk.* c. 15; *sed query.*

VIII. Information and Examination as to Offence.

Stat. 7 Geo. IV. c. 64, s. 2, enacts, "that justices of the peace before they shall admit to bail, and the justice or justices before he or they shall commit to prison, any person arrested for *felony*, or on suspicion of felony, shall take the examination of such person, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same or as much thereof as shall be material into writing, and the two justices shall certify such bailment in writing; and every such justice shall have authority to bind by recognizance all such persons as know or declare any thing material touching any such felony or suspicion of felony, to appear at the next court of oyer and terminer or gaol delivery, or superior criminal court of a county palatine, or great sessions, or sessions of the peace, at which the trial thereof is intended to be, then and there to prosecute or give evidence against the party accused; and such justices or justice respectively shall subscribe all such examinations, informations, bailments, and recognizances, and deliver or cause the same to be delivered to the proper officer of the court in which the trial is to be, before or at the opening of the court." Before bailing or committing a prisoner, information and examination on oath, in writing, must be taken in felony. Recognizance to be witness.

By sect. 3, "every justice of the peace, before whom any person shall be taken on a charge of *misdemeanor* or suspicion thereof, shall take the examination of the person charged, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing before he shall commit to prison or require bail from the person so charged; and in every case of bailment shall certify the bailment in writing; and shall have authority to bind all persons by recognizance to appear to prosecute or give evidence against the party accused in like manner as in cases of felony; and shall subscribe all examinations, informations, bailments, and recognizances, and deliver or cause the same to be delivered to the proper officer of the court in which the trial is to be, before or at the opening of the court, in like manner as in cases of felony." The same in misdemeanors.

By sect. 5, "if any justice or coroner shall offend in any thing contrary to the true intent and meaning of these provisions, the court to whose officer any such examination, information, evidence, bailment, recognizance, or inquisition, ought to have been delivered, shall, upon examination and proof of the offence in a summary manner, set such fine upon every such justice or coroner as the court shall think fit." Penalty on justice for omission.

See further as to the examination and manner of conducting it, *post*, **Examination**, Vol. II.

IX. Recognizance and subsequent Proceedings.

Form and Effect of]—With respect to the form of the recognizance, it is left to the discretion of justices to take it either in a certain sum, or else body for body; but where the charge is for an offence not amounting to a Form and effect of recognizance.

BAIL, RECOGNIZANCE, &c.

felony, the recognizance ought only to be expressed for the payment of a certain sum; and the taking a recognizance in any case body for body is now obsolete. 2 *Stra.* 911; 2 *Hale*, 125.

The principal and the bail usually acknowledge themselves respectively to owe to the King a named sum, which it is said should not be less than 40*l.*, to be levied of their lands and tenements, goods and chattels, if the former shall make default in the performance of the condition which is subscribed, and which requires him to appear at the place of trial to answer the charge against him. 1 *Chit. C. L.* 104.

But if the party accused be an infant, (2 *Hale*, 126), or in gaol, (*id.*) or a married woman, then the recognizance is taken only from the sureties. *Id.*

The recognizance need not be signed by any of the parties bound in the condition. *Dick. Sess.* 87; 2 *Hawk.* c. 15, s. 83.

See the form, *post*, 311, (No. 1).

If the recognizance be to answer generally, it includes every species of crime of which the culprit may be accused, and, therefore, where it is intended that the recognizance should only have relation to a particular crime, that crime should be distinctly specified. *Reg.* v. *Redpath*, 10 *Mod.* 152.

The persons of the bail are not liable under the recognizance. 2 *Stra.* 911; 2 *Hale*, 125.

Before whom taken.

Before whom taken]—As to who may take bail, see *ante*, 304 to 306.

Although the jurisdiction of the justices is in general confined to the limits of their own county, yet it is said that recognizances *voluntarily* taken before them in any other place are valid. 3 *Burr.* 14.

Deliverance on.

Deliverance]—Upon the recognizance being taken, if the defendant have appeared voluntarily, or if he be in custody of the constable, the justices discharge him as of course: but if he be in prison, the justices, upon application, issue their warrant called a *liberate*, (form of, *post*, 311, (No. 3)), to the gaoler to discharge the prisoner.

Commitment.

Commitment]—If the justices commit, see how it is to be done, *post*, **Commitment**, Vol. I.

Certifying the recognizance.

Certifying Recognizance]—The recognizance should be carefully transmitted to the proper officer of the court in which the trial is to be, so as to be delivered to him before or at the opening of the court on the first day of the assizes or sessions. See 7 Geo. IV. c. 64, s. 2, 3, *ante*, 307; 24 Geo. II. c. 55, s. 1; *post*, **Examination**, Vol. II. p. 98; **Warrant**, Vol. V.

Formerly the justices used personally to attend with the recognizance in order to certify it, but it is now handed over to the clerk of the peace or clerk of the assizes.

X. Requiring excessive Bail.

Excessive bail.

By the Declaration of Rights, stat. 1 Will. sess. 2, c. 2, excessive bail ought not to be required, and the requiring of excessive bail would in effect amount to a denial of bail.

XI. Denying Bail where it ought to be granted.

Refusing bail.

To refuse bail where the party ought to be bailed (the party offering the same) is a misdemeanor punishable not only by the suit of the party, but also by indictment. 2 *Hawk.* c. 15, s. 13; *Hale's Sum.* 97; 3 *B. & P.* 551. See 3 Edw. I. c. 15; 31 Car. II. c. 2.

The prisoner must tender the bail, or the justice is not required to grant it. 2 *Hale*, 123; 2 *Hawk.* c. 15, s. 14.

XII. Granting Bail where it ought to be denied.

Admitting bail where it ought not is punishable by the judges of assize by fine; or punishable as a negligent escape at common law. *Hale's Sum.* 97. Taking bail improperly.

If the keeper of a prison bail any not bailable, he shall lose his fee and office; if another officer, he shall have three years' imprisonment, and make fine at the king's pleasure. 3 Edw. I. c. 15.

A justice of Surrey committed a man on suspicion of stealing a mare, and bound over the owner to prosecute. Afterwards, upon examining two other persons, he admitted the party to bail. The prosecutor appeared at the assizes, and found a bill; but the party accused did not appear. And the court granted an information against the justice, declaring they should not have bailed the man themselves. *R.* v. *Clarke*, 2 *Stra.* 1216.

"If any justice of the peace shall take bail where he ought not, or wittingly or willingly take insufficient bail, and the party appear not, the said justice not only to be proceeded against according to law, but likewise to be complained of to the lord chancellor, that he may be turned out of his commission." *6th Order of the Judges to be observed by Justices of the Peace, O. B.* 16 *Car.* 2. *From Kelyng's Reports*, p. 3.

Caution should be observed that under the pretence of demanding sufficient sureties, the magistrate does not require bail to such an amount as is equivalent to an absolute refusal of bail, and in its consequences leads to a protracted imprisonment. *Ante*, 308.

XIII. Personating Bail.

By stat. 21 Jac. I. c. 26, "if any person shall acknowledge, or procure to be acknowledged, any bail in the name of any other not privy to the same, he shall be guilty of felony." Feigning bail.

In the Name of any Other]—Two people put in bail in feigned names, and because they were no such persons, they could not be prosecuted for personating bail on this statute. So the court ordered them and the attorney to be set in the pillory; which was done accordingly. *Anon.* 1 *Stra.* 384.

Bail taken before a judge is not within the statute till it be filed of record. 1 *Hale*, 696. But it is within the statute of 4 Will. c. 4, by which it is enacted, that "any who shall personate another before those who have authority to take bail, so as to make him liable to the payment of any sum of money in that suit or action, shall be guilty of felony."

XIV. Power of Bail.

The party bailed is considered, in law, as in custody of his sureties, who are considered as his keepers, and they may therefore reseize to bring him in, if they fear his escape, and take him before the justice or court, and by whom he may be committed, and thus the bail may be discharged from their recognizance; but he is at liberty to find new sureties. 2 *Hale*, 124, 7; 2 *Hawk.* c. 15, s. 3; *Com. Dig. Bail*, (Q. 2). Power of bail.

The bail may thus seize the person of the principal at any time, (as on a Sunday,) or at any place, and in surrendering the principal they may command the co-operation of the sheriff and any of his officers. *Anon.* 6 *Mod.* 231; *Rol. Rep.* 99.

XV. Liability of Bail, and what a Forfeiture of Recognizance.

What a forfeiture of recognizance, and its consequences.

By appearance the terms of the recognizance are fulfilled. 2 *Hawk.* c. 15, s. 84. If, however, the sureties are bound by recognizance, that a defendant shall appear in the King's Bench the first day of such a term, to answer to a particular information against him and not to depart till he shall be discharged by the court; and afterwards the Attorney-General enters a *nolle prosequi* as to that information, and exhibits another, on which the defendant is convicted, and refuses to appear in court after personal notice; the recognizance is forfeited by the default, for being express that the party shall not depart till he be discharged by the court, it cannot be satisfied unless he be forthcoming, and ready to answer to any other information exhibited against him before he receives his discharge, as much as to that which he was particulary bound to answer. 10 *Mod.* 152; *ante*, 308.

But in such case it seems that the recognizance will not be forfeited by the party's not appearing in court on the first day of every term after he has pleaded to the information as it may be before he has pleaded. 2 *Hawk.* c. 15, s. 84.

The 38 Geo. III. c. 52, s. 5, enacts, "that every recognizance for the appearance to answer an indictment for any offence charged to have been committed within the county of any city or town corporate, shall be forfeited, if the prosecutor shall, ten days previous to the holding of the next court of oyer and terminer and gaol delivery in the next adjoining or other county, give notice to the person bound in such recognizance of the intention to prefer such indictment in the next adjoining or other county, if the party bound in such recognizance shall not appear; but if he shall appear, then the recognizance shall be discharged, the same as if the party bound thereby had complied with the terms thereof;" and the 6th section of the same act provides, "that leaving such notice at the last place of abode of the party bound by the recognizance ten days before the holding of the sessions shall suffice, and that the recognizance shall not be estreated or returned into the exchequer until the next following session, in order that such recognizance may be discharged, in case the party bound shall show sufficient cause for discharging the same."

It seems that the defendant and his bail cannot be called upon their recognizance, except on the day on which he is bound to appear; if he is called on any other day, notice must be given of the intention. *Rep. temp. Hardw.* 237.

The bail of a person acquitted of perjury may move to be discharged from their recognizance before the acquittal is entered on the record, because it appears on the *postea*. 1 *Wils.* 315.

The bail are not entitled to have their recognizance discharged without submitting to the terms of paying the costs incurred. *R.* v. *Lyon*, 3 *Burr.* 1461; *R.* v. *Finmore*, 8 *T. R.* 409; *R.* v. *Turner*, 15 *East*, 570.

If the principal do not appear, and the recognizance be forfeited and the penalty paid by the bail, yet the principal continues amenable to the law whenever he can be taken.

It should seem, that if the bail have been compelled to pay the penalty in consequence of the recognizance becoming forfeited, they may sustain an action against him for money paid. See *Fisher* v. *Fallows*, 5 *Esp.* 171; 2 *Chit. Pl.* 5 *ed.* 319, n.

XVI. Bail by Writ of Habeas Corpus.

As to this, see *post*, **Habeas Corpus**, Vol. II.

XVII. Bail on Writ of Certiorari.

As to this, see *post*, Certiorari, Vol. I.

XVIII. Forms.

(No. 1.)

Recognizance of bail.

[*Westmoreland.*] *BE it remembered, that on the day of in the year of the reign of A. O. of* [yeoman,] *A. B. of* [yeoman,] *and B. B. of* [yeoman,] *came before us* [*John Moore, Esquire,*] *and* [*Richard Burn, Doctor of Laws,*] *two of his Majesty's justices of the peace in and for the said county, one whereof is of the quorum, and severally acknowledged themselves to owe to our said lord the King, that is to say, the said A. O.* [20*l.*] *and the said A. B. and B. B.* [10*l.*] *each, to be respectively levied of their lands and tenements, goods and chattels, if the said A. O. shall make default in the performance of the condition indorsed* [*or underwritten*].

[*John Moore,*
Richard Burn.]

The condition of this recognizance is such, that if the within [*above*] *bound A. O. shall personally appear before the justices of our sovereign lord the King assigned to keep the peace within the said county, and likewise to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at the next general quarter sessions of the peace* [or *before his Majesty's justices of gaol delivery, at the next general gaol delivery*] *to be holden in and for the said county, then and there to answer to our said sovereign lord the King, for and concerning the* [*felonious taking and stealing of the property of A. M. of yeoman,*] *with the suspicion whereof the said A. O. stands charged before us the said justices, and to do and receive what shall by the court be then and there enjoined him, and shall not depart the court without license, then the above* [*within*] *written recognizance shall be void.*

(No. 2.)

The like where the party is in prison.

[*Westmoreland.*] *BE it remembered, that on the day of in the year of the reign of before us* [*John Moore, Esquire,*] *and* [*Richard Burn, Doctor of Laws,*] *two of the justices of our said lord the King assigned to keep the peace within the said county, and one of us of the quorum, at* [*Grimeshill,*] *in the said county, did come A. B. and B. B. of in the said county,* [*yeomen,*] *and took in bail until the next gaol delivery to be holden in the said county, one A. O. of* [*labourer,*] *taken and detained in prison for suspicion of a certain felony* [*in stealing the property of*] *and took upon themselves each of the said A. B. and B. B., under the penalty of* [20*l.*] *of good and lawful money of Great Britain, of the goods and chattels, lands, and tenements, of them and each of them, to the use of our said lord the King, his heirs and successors, to be levied, if the said A. O. shall not personally appear at the said next gaol delivery before the justices of our said lord the King assigned to deliver the said gaol, to stand to right concerning the felony aforesaid, according to the law and custom of England. Given under our hands and seals, &c.*

[But the seal need not be, for they are judges of record; only it may be barely subscribed by them: or thus,]

Taken and acknowledged the day and year above written, before us the abovesaid
[*John Moore,*
Richard Burn.]

(No. 3.)

Warrant of deliverance.

[*Westmoreland.*] [*John Moore, Esquire,*] *and* [*Richard Burn, Doctor of Laws,*] *two of the justices of and one of us of the quorum, to the keeper of his Majesty's gaol at in the said county, greeting. Forasmuch as A. O. of* [*labourer,*] *hath before us found sufficient sureties to appear before the justices of gaol delivery at the next gaol delivery to be holden in the said county, to answer to such things as shall be then on the behalf of our said sovereign Lord objected against him, and namely, to the felonious taking of (for the suspicion whereof he was taken and committed to your*

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said gaol); We command you on the behalf of our said sovereign Lord, that if the said A. O. do remain in your said gaol for the said cause, and for none other, then you forbear to detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the pain that will thereon ensure. Given under our seals at [*Orton,*] *in the said county, the day of in the year .*

Lord *Hale* says, the advantage of this latter kind of bail is this, that it is not only a recognizance in a sum certain, but also a real bail, and they are his keepers, and may be punished by fine beyond the sum mentioned in the recognizance, if there be cause; and may reseize him if they doubt his escape, and have him committed, and so be discharged of the recognizance. 2 *Hale*, 127.

See forms of proceedings on *habeas corpus*, *post*, **Habeas Corpus**, Vol. II.

Bailiff. *See* **Constable**, Vol. I.

Bakers. *See* **Bread**, Vol. I.

Ballast. *See* **Rivers**, Vol. V.; **Ships**, Vol. V.

Banishment. *See* **Transportation**, Vol. V; **Judgment**, Vol. III.

Bank Books, *Evidence by.* *See* **Evidence**, Vol. II., p. 38, 39.

Bank Notes, *as to Forgery of,* *see* **Forgery**, Vol. II. *Larceny of,* *see* **Larceny**, Vol. III.

Banks, &c. of Rivers, &c. *Injuries to,* *see post*, **Malicious Injuries to Property**, Vol. III.

Banks for Savings. (*a*)

[9 Geo. IV. c. 92.]

9 Geo. 4, c. 92, consolidating laws as to saving banks.

BY the 9 Geo. IV. c. 92, intituled, "An Act to consolidate and amend the laws relating to savings banks," passed the 28th July, 1828, after reciting "that it is expedient to amend the laws relative to savings banks in England and Ireland, and to consolidate the same in one act, and to make other provisions respecting savings banks;" it is enacted, "that 57 Geo. III. c. 105, 57 Geo. III. c. 130, 58 Geo. III. c. 48, 1 Geo. IV. c. 83, 5 Geo. IV. c. 62, shall be and the same are hereby, from and after the twentieth day of November, one thousand eight hundred and twenty-eight, repealed: provided nevertheless, that nothing herein contained shall invalidate or annul any

Repeal of acts.

Not to invalidate appointments, &c. under preceding acts.

(*a*) See Mr. Tidd Pratt's work relating to.

9 Geo. 4, c. 92.

payments, receipts, or appointments made, or proceedings had, or bonds or securities taken or entered into, or drafts, powers of attorney, certificates, orders, or other instruments whatsoever, executed under the authority of any of the hereby repealed acts."

What institutions shall be entitled to the privileges and benefits of this act.

Sect. 2. "And whereas certain banks for savings have been established in England and Ireland, for the safe custody and increase of small savings belonging to the industrious classes of his Majesty's subjects, and it is expedient to give protection to such institutions and the funds thereby established, and to afford encouragement to others to form the like institutions; be it enacted, that if any number of persons have formed or shall form any society in any part of England or Ireland, for the purpose of establishing and maintaining any institution in the nature of a bank to receive deposits of money for the benefit of the persons depositing the same, to accumulate the produce of so much thereof as shall not be required by the depositors, their executors or administrators, at compound interest, and to return the whole or any part of such deposit and the produce thereof to the depositors, their executors or administrators, (deducting out of such produce so much as shall be required for the necessary expenses attending the management of such institution,) but deriving no benefit whatsoever from any such deposit or the produce thereof, and shall be desirous of having the benefit of the provisions of this act, such persons shall cause the rules and regulations established or to be established for the management of such institution to be entered, deposited, and filed in manner hereinafter directed, and thereupon shall be deemed to be entitled to and shall have the benefit of the provisions contained in this act: provided always, that the privilege of paying money into the banks of England or Ireland, and of receiving receipts for the same, shall be and the same is hereby declared to be extended to such institutions as may have formed or may hereafter form their rules and regulations according to the provisions of this act; and it shall and may be lawful for the trustees of such institutions respectively to invest any funds already accumulated by such institutions, and which shall not have been invested at the time of the passing of this act, and to receive receipts for the same in manner authorised by this act: provided nevertheless, that no such institution to be hereafter formed shall have or be entitled to the benefits of the provisions in this act contained, unless the formation of the same shall have been sanctioned and approved of by the justices of the county, riding, division, or place where such institution is intended to be held, at the general quarter sessions, and by the commissioners for the reduction of the national debt, or, on their behalf, by the comptroller-general or assistant comptroller acting under the said commissioners." (a)

Banks not to be formed unless approved by justices at sessions and commissioners of national debt.

Rules of institution to be entered in a book and be open to the inspection of depositors; and a copy thereof deposited with clerk of the peace.

Sect. 3 enacts, "that no such institution as aforesaid shall have the benefit of this act, unless the rules and regulations for the management thereof shall be entered in a book or books to be kept by an officer of such institution to be appointed for that purpose, and which book or books shall be open at all seasonable times for the inspection of the persons making deposits in the funds of such institution, and unless such rules and regulations shall be fairly transcribed on parchment, and such transcript deposited with the clerk of the peace for the county, riding, division, or place wherein such institution shall be established; which transcript shall be filed by such clerk of the peace with the rolls of the sessions of the peace in his custody, and a certificate of the inrolment thereof shall be signed by such clerk of the peace on a duplicate copy, to be provided by and returned to such institution, on payment of a fee of ten shillings in respect thereof, provided the same be returned to such institution as aforesaid within the space of ten days then next following, and not otherwise; but nevertheless, that nothing herein contained shall extend to prevent any alteration in or amendment of any such rules or regulations so entered and deposited and filed as aforesaid, or repealing or annulling the same or any of them, in the whole or in part, or making any new rules or regulations for the management of such institution, in such

Not to prevent alterations.

(a) This provision as to the formation of future savings banks is new.

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9 Geo. 4, c. 92.

manner as by the rules and regulations of such institution shall from time to time be provided, but such new rules or regulations, or such alterations in or amendments of former rules or regulations, or any order annulling or repealing any former rule or regulation, in the whole or in part, shall not be in force until the same respectively shall be entered in such book or books as aforesaid, and the transcript or transcripts thereof deposited with such clerk of the peace as aforesaid, who shall file and certify the same as aforesaid, on payment of a fee of five shillings."

Alterations to be entered and deposited in like manner.

Sect. 4 enacts, "that before a transcript of the rules and regulations, or alterations in or amendments of former rules or regulations, for the management of any institution requiring the benefit of this act, shall be deposited with the clerk of the peace for the county, riding, division, or place wherein such institution shall be established, pursuant to the directions of this act, such transcript shall be submitted by the trustees or managers for the time being of each respective institution, and at the expense of the said institution to a barrister at law to be appointed by the commissioners for the reduction of the national debt, for the purpose of ascertaining whether the same are in conformity to law, and with the provisions of this act; and that the said barrister shall give a certificate thereof, or point out in what part or parts they are repugnant thereto; and the fee to be paid to such barrister for perusing the rules, regulations, alterations, or amendments of each respective institution, and giving such certificate as aforesaid, shall not at any one time exceed the sum of one guinea; and such transcript shall be signed by two trustees, and shall, together with the certificate of such barrister as hereinbefore mentioned, be laid before the justices for such county, riding, division, or place, at the general or quarter sessions next after the time when such transcript shall have been so deposited; and it shall be lawful for such justices then and there present, after due examination thereof, to reject and disapprove of any part or parts thereof, or to allow and confirm the said transcript, or such part or parts thereof as shall be conformable to the true intent and meaning of this act, without requiring the certificate or approval of any other barrister: provided always, that the said justices shall signify such rejection or disapproval of any one or more of the rules, orders, and regulations contained in such transcript, by the words "rejected" or "disapproved" written opposite such rule or rules, order or orders, regulation or regulations, and signed by the chairman of such sessions; and such rule or rules, order or orders, regulation or regulations, as shall be so rejected or disapproved, shall not be in force from the time of such rejection or disapproval, any thing in this act, or in any such rules, orders, and regulations, to the contrary notwithstanding; provided always, that the said clerk of the peace do, within the space of ten days next after such rejection or disapproval, give notice thereof in writing to the two trustees of such institution, by whom the transcript of such rules, orders, and regulations shall be signed as aforesaid; and provided always, that nothing herein contained shall be construed to require any rule making any alteration in the hours of attendance at any such institution as aforesaid, to be laid before such barrister as aforesaid, previous to the inrolment thereof."

Rules and Regulations, before deposited with clerk of the peace, to be submitted to a barrister.(a)

Justices at session may reject any rules of institutions.

Manner of signifying such rejection.

Clerk of the peace to give notice of such rejection.

Sect. 5 enacts, "that all rules and regulations from time to time made and in force for the management of such institution as aforesaid, and duly entered in such book or books as aforesaid, and deposited with such clerk of the peace as aforesaid, shall be binding on the several members and officers of such institution, and the several depositors therein and their representatives, all of whom shall be deemed and taken to have full notice thereof by such entry and deposit as aforesaid; and the entry of such rules and regulations in such book or books as aforesaid, or the transcript thereof deposited with such clerk of the peace as aforesaid, or a true copy of such transcript examined with the original, and proved to be a true copy, shall be received as evidence of such rules and regulations respectively in all cases; and no certiorari shall be brought or allowed to remove any such rules or regulations

Rules, when entered and deposited, to be binding on members and depositors.

Copy of transcript to be received as evidence.

(a) This provision is new.

into any of his Majesty's courts of record; and every copy of any such transcript deposited with any clerk of the peace as aforesaid shall be made without fee or reward, except the actual expense of making such copy; and such copy shall not be subject to any stamp duty."

Treasurer, trustee, or manager, &c. not to derive any benefit from the institution.

Sect. 6 enacts, "that no such institution as aforesaid shall have the benefit of this act, unless it shall be expressly provided by the rules and regulations for the management thereof, that no person or persons, being treasurer, trustee, or manager of such institution, or having any control in the management thereof, shall derive any benefit from any deposit made in such institution, save only and except such salaries and allowances or other necessary expenses as shall according to such rules and regulations be provided for the charges of managing such institution, and for remuneration to officers employed in the management thereof, exclusive of the treasurer or treasurers, trustee or trustees, manager or managers, or other persons having direction in the management of such institution, who shall not directly or indirectly have any salary, allowance, profit, or benefit whatsoever therefrom, beyond their actual expenses for the purposes of such institution."

Treasurer, and other officers intrusted with receipt or custody of money, to give security.

Sect. 7 enacts, "that every treasurer, actuary, or cashier, who shall be intrusted with the receipt or custody of any sum of money subscribed or deposited for the purpose of such institution, or any interest or dividend from time to time accruing therefrom, and every officer or other person receiving any salary or allowance for their services from the funds of any savings banks, unless he shall already have given good and sufficient security, shall give good and sufficient security, to be approved of by not less than two trustees and three managers of such savings banks, for the just and faithful execution of such office or trust; and such security shall be given by bond or bonds to the clerk of the peace for the county, county of a city, or county of a town, riding, division, or place, or to the town clerk of the place where such institution shall be established, for the time being, without fee or reward; and in case of forfeiture it shall be lawful for the trustees or managers for the time being of such institution to sue upon such bond or bonds in the name of such clerk of the peace or town clerk for the time being, and to carry on such suit at the costs and charges and for the use of the said institution, fully indemnifying and saving harmless such clerk of the peace or town clerk from all costs and charges in respect of such suit; and no bond to be so given shall be subject to or charged or chargeable with any stamp duty whatever. (a)

Effects of institution vested in trustees for time being.

Sect. 8 enacts, "that all monies, goods, chattels, and effects whatever, and all securities for money or other obligatory instruments, and evidences or muniments, and all other effects whatever, and all rights or claims belonging to or had by such institution, shall be vested in the trustee or trustees of such institution for the time being, for the use and benefit of such institution, and the respective depositors therein, their respective executors or administrators, according to their respective claims and interests, and after the death or removal of any trustee or trustees, shall vest in the succeeding trustee or trustees, for the same estate and interest as the former trustee or trustees had therein, and subject to the same trusts, without any assignment or conveyance whatever; and also shall, for all purposes of action or suit, as well criminal as civil, in law or in equity, in anywise touching or concerning the same, be deemed and taken to be, and shall in every such proceeding (where necessary) be stated to be, the property of the person or persons appointed to the office of trustee or trustees of such institution for the time being, in his, her, or their proper name or names, without further description; and such person or persons shall and they are hereby respectively authorised to bring or defend, or cause to be brought or defended, any action, suit, or prosecution, criminal as well as civil, in law or equity, touching or concerning the property, right, or claim aforesaid of or belonging to or had by such

(a) It is now by virtue of this clause obligatory on every treasurer, &c. to give security, and not as heretofore, when it was not necessary unless the rules required it.

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9 Geo. 4, c. 92.

institution; and such person or persons so appointed shall and may, in all cases concerning the property, right, or claim aforesaid of such institution, sue and be sued, plead and be impleaded, in his, her, or their proper name or names, as trustee or trustees of such institution, without other description; and no such suit, action, or prosecution shall be discontinued or abate by the death of such person or persons, or his or their removal from the office of trustee or trustees as aforesaid, but the same shall and may be proceeded in by the succeeding trustee or trustees in the proper name or names of the person or persons commencing the same, any law, usage, or custom to the contrary notwithstanding; and such succeeding trustee or trustees shall pay or receive like costs, as if the action or suit had been commenced in his or their name or names, for the benefit of, or to be reimbursed from, the funds of such institution."

Liability of trustees or manager. (a)

Sect. 9 enacts, "that no trustee or manager shall be personally liable, except for his own acts and deeds, nor for any thing done by him in virtue of his office in the execution of this act, except in cases where he shall be guilty of wilful neglect or default."

Treasurer and trustees, &c. to account and deliver up effects when required.

Sect. 10 enacts, "that all and every person and persons who shall have or receive any part of the monies, effects, or funds of or belonging to such institution, or shall in any manner have been or shall be intrusted with the disposition, management, or custody thereof, or of any securities, books, or papers, or property relating to the same, his, her, or their executors, administrators, and assigns respectively, shall, upon demand made in pursuance of any order of not less than two trustees and three managers of such institution, or at any general meeting of the trustees or managers thereof, give in his, her, or their account or accounts to the said trustees or managers, or to such general meeting of such institution, or to such other person or persons who shall be nominated to receive the same, to be examined and allowed or disallowed by the said trustees or managers respectively, and shall, on the like demand, pay over all the monies remaining in his or their hands, and assign and transfer or deliver all securities and effects, books, papers, and property, in his or their hands or custody, to such person or persons as the said trustees or managers shall appoint; and in case of any neglect or refusal to deliver such account, or to pay over such monies, or to assign, transfer, or deliver such securities, effects, funds, books, papers, or property, in manner aforesaid, it shall be lawful to and for the trustee or trustees of such institution for the time being to exhibit a petition to the justices of the peace, at their general or quarter sessions of the peace for the county, riding, division, or place wherein such institution shall be established, who shall and may proceed thereupon in a summary way, and make such order therein, upon hearing all parties concerned, as to such court in their discretion shall seem just, which order shall be final and conclusive; and all assignments, sales, and transfers made in pursuance of such order, shall be good and effectual in law to all intents and purposes whatsoever."

Trustees of savings banks shall invest all money in the Bank of England or Ireland, and not in any other security.

Sect. 11 enacts, "that the several sums of money belonging to any savings bank, which the trustees of such savings bank respectively are authorised to invest under this act, or under any rules or regulations of any such savings banks, shall be paid into and invested in the Bank of England or the Bank of Ireland, as the case may require, in the names of the commissioners for the reduction of the national debt, according to the provisions of this act enabling such trustees to make investments in the names of the said commissioners, and no such sum or sums shall be paid or laid out by the trustees of such savings bank in any other manner or upon any other security whatever, except such sums of money as from time to time shall necessarily remain in the hands of the treasurer or treasurers to answer the exigencies thereof: provided always, that nothing herein contained shall restrain or prevent any depositor, or any trustee or trustees acting on behalf of any depositor or depositors of any friendly society, or any charitable or provident institution or society, from withdrawing from any such savings bank any

Not to prevent depositors from withdrawing their money from savings banks.

(a) This provision is new.

sum or sums of money which shall have been deposited by such depositor, friendly society, charitable or provident institution or society, and investing the same in any other securities;(a) provided always, that the trustees of any institution already established, or which shall take the benefit of this act in manner hereinbefore provided, shall be and they are hereby empowered to pay into the Banks of England or Ireland, as the case may be, any sum or sums of money, not being less than fifty pounds, to the account of the commissioners for the reduction of the national debt, upon the declaration of the trustees of such institution, or any two or more of them, that such monies belong exclusively to the institution for which such payment is intended to be made, whether such monies shall have been deposited therein before the passing of this act, or thereafter shall be deposited therein; and the cashier or cashiers of the Banks of England and Ireland respectively are hereby required to receive all such monies, and to place the same into the account raised in the names of the said commissioners in the books of the Banks of England and Ireland respectively, denominated 'The Fund for the Banks for Savings:' provided always, that previous to any payment being made into the Banks of England or Ireland as aforesaid, the person or persons applying for that purpose shall in all cases produce to the officer of the said commissioners, at their office in London or Dublin, as the case may be, an order under the hands of two of the trustees of such institution on the account of which such payment is to be made."

9 Geo. 1, c. 22.

Trustees empowered to pay into the Banks of England or Ireland any sum not less than 50*l.* to the account of the commissioners for the reduction of the national debt.

Previous to payments, an order of two trustees to be produced.

Sect. 12 provides, "that nothing in this act contained shall extend to prevent the trustees of any savings bank, already established or to be established, receiving any sum or sums of money from any depositor for any purpose except to be paid into the bank to the account of the commissioners for redemption of the national debt; and that it shall be lawful for such trustees to apply any such sum or sums of money in any other manner for the benefit of the several depositors, according to the rules and regulations of such savings banks respectively; any thing in this act contained to the contrary notwithstanding." (b)

Not to prevent trustees from receiving money to be applied in any other manner.

Sect. 13 enacts, "that in cases where any banks for savings have been or shall be established in any town or place, and other smaller banks have been or shall be established in the neighbourhood of such town or place as branch banks thereof, and such branch banks, by their treasurers, have paid or shall pay any sums into the bank in any such town or place as a central bank, it shall and may be lawful for the said trustees, or any two of them, of any such central bank, to pay into the Bank of England or Ireland, in manner prescribed by this act, along with the monies belonging to such central bank, any sum or sums of money belonging to and on account of any such branch bank: provided always, that the treasurer of such branch banks shall certify to the treasurer of such central bank, that the amount contributed by any one subscriber to any such branch bank in any one year does not exceed the proportions authorised by this act."

Central banks may invest the money of branch banks.

Sect. 14 enacts, "that if any order or declaration produced to the said officer for the purpose of paying monies into the Banks of England or Ireland, to the account of the said commissioners as aforesaid, shall contain any matter or thing which be false or untrue, then and in every such case the sum so paid shall be forfeited to the said commissioners."

Penalties on false declaration to obtain receipts.

Sect. 15 enacts, "that the said commissioners shall cause all the monies paid into the Banks of England and Ireland respectively, and placed to their account in pursuance of the provisions of this act, to be invested from time to time, under such regulations as the said commissioners shall direct, in the purchase of bank annuities or exchequer bills, or in either of them, in their names, and to be carried to the account herein-before provided; and the interest which shall arise from time to time and become due thereon shall in

Monies paid in on savings bank account to be invested in bank annuities or exchequer bills.

(a) This is the same as the 57 Geo. III. c. 105, s. 9; 57 Geo. III. c. 130, s. 9; and 5 Geo. IV. c. 62, s. 27; with an exception of monies remaining in hands of treasurer to answer exigencies.

(b) This provision is new.

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such draft or order, indorse and sign an order, in such form as shall or may from time to time be directed and required by the said commissioners, for the payment of the sum mentioned in the draft or order of such trustees, together with the amount of all interest due on such sum up to the day immediately preceding the day of the date of the order of such officer, and which order of such officer, previous to the issuing thereof, shall be entered and countersigned by the clerk or other proper officer making such entry, and shall be addressed to the cashiers of the governor and company of the Bank of England or Ireland, as the case may be; and such cashiers, or one of them, shall, upon the production of such order, pay the sum mentioned therein to the person or persons mentioned in the draft or order of the said trustees; and the signature of such person or persons, jointly or severally, shall be a sufficient discharge to the said commissioners, and to the said governors and company respectively; and all payments made in pursuance of such drafts or orders respectively shall be deemed and taken to be payments made by the said commissioners to the trustees of such savings bank respectively, according to the numerical order and priority of date in which the original receipts of money deposited on account of such savings banks respectively shall have been issued to the trustees thereof respectively in manner herein-before mentioned."

Drafts exceeding 5,000*l.* to be signed by four trustees, and attested by separate witnesses.

Sect. 20 provides and enacts, "that whenever the sum to be drawn for by the trustees of any savings bank shall exceed 5,000*l.*, the draft or order for that purpose shall be signed by not less than four such trustees, and that the signature of each and every of the said four trustees shall be separately attested by at least one manager of such savings banks, or by some one other credible person, and that any manager or other person attesting the signature of any one of the said four trustees shall not be an attesting witness to the signature of any other of such four trustees: provided also, that whenever the sum or sums drawn for by one or more drafts by the trustees of any savings banks in England and Ireland respectively, or by the trustees of any friendly society in England, shall exceed the sum of 10,000*l.* the amount of such draft or drafts (if more than one) shall not be payable or be paid by the officer of the said comissioners until the expiration of fourteen days next after the day when the draft or drafts for such sum or sums shall be produced to the said officer."

Draft for 10,000*l.* not to be paid until after fourteen days.

Officer not to issue in any one day orders for more than 10,000*l.* for the same bank.(*a*)

Sect. 21 provides and enacts, "that such officer shall be and he *is* hereby restrained from issuing any order or orders for payment as aforesaid, bearing the same date, upon any one day, on account of the same savings banks or friendly society, exceeding in amount the principal sum of 10,000*l.*; any thing hereinbefore contained to the contrary thereof in anywise notwithstanding: provided also, that in case any one or more trustee or trustees of any savings banks who shall have made, given, signed, and executed any such appointment, shall at any time appear in person at the office of the said commissioners in England or Ireland respectively, and require payment of any sum or sums of money which might be required by the person or persons authorised to receive the same by such appointment, or if any trustee or trustees of any savings bank shall appear in person, where no such appointment shall have been made, and if such trustee or trustees so appearing shall produce a draft or order, signed by any two or more trustees of such savings bank, for any sum under 5,000*l.*, or by any four or more trustees for sums exceeding 5,000*l.*, no such trustee or trustees being himself or themselves a party or parties who signed such draft or order, and if the identity of the person of the trustee or trustees so appearing shall be ascertained to the satisfaction of the said commissioners or their officer, it shall be lawful for the said officer to direct payment to be made to such trustee or trustees so appearing of any sum or sums required to be paid by such order or draft, in like manner as if the person or persons authorised by such appointment to receive the same had required such payment; anything hereinbefore contained to the contrary in anywise notwithstanding: provided nevertheless,

Trustees appearing in person may receive payments of drafts instead of their agents.

(*a*) This is new.

that notwithstanding the payment made to such trustees or trustee appearing in person, on the appointment of such person or persons as aforesaid, the appointment shall remain in full force and virtue until revoked by the trustees as hereinbefore mentioned."

9 Geo. 4, c. 92.

Trustees, &c. to ascertain amount of surplus fund, and distribute or appropriate the same.

Sect. 22 enacts, "that within six weeks after the twentieth day of November in the year of our Lord one thousand eight hundred and twenty-eight, the trustees and managers of the different savings banks already established in England and Ireland shall ascertain the amount of the increased stocks or funds of their respective banks up to the said twentieth day of November one thousand eight hundred and twenty-eight, and shall, as soon afterwards as conveniently can be, after retaining so much thereof as may be necessary for or towards the future purposes and management of the said savings banks respectively, appropriate the same in the manner provided for by their respective rules and regulations made before the passing of this act; or in the event of no provision having been made by such rules and regulations, then in such manner as the trustees or managers, or the major part of them, assembled at any general meeting to be convened according to the respective rules and regulations of such savings banks, shall think fit and proper; any thing herein contained to the contrary notwithstanding." (*a*)

From 20th Nov. 1828, surplus to be paid over to commissioners for reduction of national debt.

Sect. 23 enacts, "that in all cases where the joint stock or property of any savings bank, arising from deposits made under this or any former act, shall, from and after the twentieth day of November one thousand eight hundred and twenty-eight, be increased by the interest received beyond the rate of interest payable to the depositors by the rules and regulations of such savings banks, or by any other means, the said trustees or managers, after deducting all such expenses as they may deem proper, shall, within six months after the twentieth day of November in each year, ascertain, certify, and pay over to the said commissioners the amount of such increased stock and property, reserving such portion as may appear necessary to meet current expenses; and the amount of such surplus, which shall be ascertained, certified, and paid over (after such deduction as aforesaid,) shall be discharged from the account of such savings bank standing in the books of the said commissioners, and the said commissioners shall keep a separate and distinct account of such surplus so discharged from the account of the said savings banks respectively as aforesaid, and apply the same in such manner, and under such regulations, from time to time, as any other monies under the provisions of this act: provided always, that it shall and may be lawful for the trustees or managers of the said respective savings banks to claim and receive of and from the said commissioners, (who are hereby required to pay the same upon such certificate as they may appoint,) for the purposes of the institution, any sum of money equal to the whole or any part of the principal monies which may have been so discharged from the account of such savings banks as aforesaid." (*a*)

Interest not to exceed 2¼*d.* per cent. per diem.

Sect. 24 enacts, "that from and after the twentieth day of November one thousand eight hundred and twenty-eight, the interest payable to depositors by the trustees or managers of any savings bank shall not exceed the rate of two-pence farthing *per centum per diem.*" (*a*)

Savings of minors may be invested.

Sect. 25 enacts, "that in case the trustees or managers of any such institution shall receive or shall have received any deposit of money from or for the benefit of any person under the age of twenty-one years, it shall be lawful for the trustees or managers of such institution to pay such person his or her share and interest in the funds of such institution; and the receipt of such person shall be a sufficient discharge, notwithstanding his or her incapacity or disability in law to act for him or herself."

Deposits made by married women.

Sect. 26 reciting, "and whereas deposits in savings banks may have been made and may be made by married women, without notice that they are married women, and deposits may have been made and may be made by women who may have afterwards married;" enacts, "that it shall be lawful for the trustees in any savings bank to pay any sum of money in respect of any such deposit to any such woman, unless the husband of such woman, or

(*a*) This is new.

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9 Geo. 4, c. 92.

institution; and such person or persons so appointed shall and may, in all cases concerning the property, right, or claim aforesaid of such institution, sue and be sued, plead and be impleaded, in his, her, or their proper name or names, as trustee or trustees of such institution, without other description; and no such suit, action, or prosecution shall be discontinued or abate by the death of such person or persons, or his or their removal from the office of trustee or trustees as aforesaid, but the same shall and may be proceeded in by the succeeding trustee or trustees in the proper name or names of the person or persons commencing the same, any law, usage, or custom to the contrary notwithstanding; and such succeeding trustee or trustees shall pay or receive like costs, as if the action or suit had been commenced in his or their name or names, for the benefit of, or to be reimbursed from, the funds of such institution."

Liability of trustees or manager. (a)

Sect. 9 enacts, "that no trustee or manager shall be personally liable, except for his own acts and deeds, nor for any thing done by him in virtue of his office in the execution of this act, except in cases where he shall be guilty of wilful neglect or default."

Treasurer and trustees, &c. to account and deliver up effects when required.

Sect. 10 enacts, "that all and every person and persons who shall have or receive any part of the monies, effects, or funds of or belonging to such institution, or shall in any manner have been or shall be intrusted with the disposition, management, or custody thereof, or of any securities, books, or papers, or property relating to the same, his, her, or their executors, administrators, and assigns respectively, shall, upon demand made in pursuance of any order of not less than two trustees and three managers of such institution, or at any general meeting of the trustees or managers thereof, give in his, her, or their account or accounts to the said trustees or managers, or to such general meeting of such institution, or to such other person or persons who shall be nominated to receive the same, to be examined and allowed or disallowed by the said trustees or managers respectively, and shall, on the like demand, pay over all the monies remaining in his or their hands, and assign and transfer or deliver all securities and effects, books, papers, and property, in his or their hands or custody, to such person or persons as the said trustees or managers shall appoint; and in case of any neglect or refusal to deliver such account, or to pay over such monies, or to assign, transfer, or deliver such securities, effects, funds, books, papers, or property, in manner aforesaid, it shall be lawful to and for the trustee or trustees of such institution for the time being to exhibit a petition to the justices of the peace, at their general or quarter sessions of the peace for the county, riding, division, or place wherein such institution shall be established, who shall and may proceed thereupon in a summary way, and make such order therein, upon hearing all parties concerned, as to such court in their discretion shall seem just, which order shall be final and conclusive; and all assignments, sales, and transfers made in pursuance of such order, shall be good and effectual in law to all intents and purposes whatsoever."

Trustees of savings banks shall invest all money in the Bank of England or Ireland, and not in any other security.

Sect. 11 enacts, "that the several sums of money belonging to any savings bank, which the trustees of such savings bank respectively are authorised to invest under this act, or under any rules or regulations of any such savings banks, shall be paid into and invested in the Bank of England or the Bank of Ireland, as the case may require, in the names of the commissioners for the reduction of the national debt, according to the provisions of this act enabling such trustees to make investments in the names of the said commissioners, and no such sum or sums shall be paid or laid out by the trustees of such savings bank in any other manner or upon any other security whatever, except such sums of money as from time to time shall necessarily remain in the hands of the treasurer or treasurers to answer the exigencies thereof: provided always, that nothing herein contained shall restrain or prevent any depositor, or any trustee or trustees acting on behalf of any depositor or depositors of any friendly society, or any charitable or provident institution or society, from withdrawing from any such savings bank any

Not to prevent depositors from withdrawing their money from savings banks.

(a) This provision is new.

disclosing his or her name, together with his or her profession, business, occupation, calling, and residence, to the trustees or managers of such savings bank; and the trustees or managers of every savings bank are hereby required to cause the name of such depositor, together with his or her profession, business, occupation, calling, and residence, to be entered in the books of the institution."

Persons allowed to subscribe as trustees on behalf of others.

Sect. 33 enacts, "that it shall and may be lawful for the trustees or managers of any savings bank to receive from any person or persons acting as trustee or trustees on behalf of any depositor or depositors, whether such person or persons is or are himself or themselves a depositor or depositors or not, any sum or sums not exceeding the annual amount hereinafter mentioned: provided that such trustee or trustees shall make such declaration on behalf of such depositor or depositors, and subject to the like conditions, as by this act is required in the case of any person or persons making any deposit on his or her own account; and all deposits made by any such trustee or trustees shall be inserted in the books of such savings bank in the joint names of such trustee or trustees and of the person or persons on whose account such sum shall be so deposited; and the receipt and receipts of such trustee or trustees, or the survivor of them, or the executors or administrators of any sole trustee or surviving trustee, with or without the receipt of the person or persons on whose account such sum may have been deposited, shall be a good and valid discharge to the trustees or managers of the institution."

Subscribers to one savings bank shall not subscribe to any other.

Declaration to be made at the time of subscription.

Sect. 34 enacts, "that it shall not be lawful for any person or persons who shall have made any deposit in, or any subscription to, or who shall be entitled to any benefit from, the funds of any savings bank, to make any deposit in or to subscribe any sum into the funds of any other savings bank, or to open any new account in the said savings bank; and that every person desirous of making any deposit in or any subscription to any savings bank, shall at the time of making the first deposit in any savings bank, and at such other time or times as such depositor shall be required so to do by the trustees or managers of any such savings bank, sign, either by themselves, or, in case of infants under the age of seven years, by some person to be approved of by the trustees or managers, or by such other person as they shall appoint, a declaration in such form as shall be directed or approved of by the commissioners or other proper officer, that the person or persons on whose behalf any such first deposit or subscription shall be required to be made is not or are not entitled to any deposit, or any such subsequent deposit or subscription in or any benefit from the funds of any savings bank, other than that into which such deposit or subscription shall be made, or any other funds in the said savings bank; and in case any such declaration shall not be true, or if any person shall at any time have or hold or be possessed of any deposit or funds in more than one savings bank within the United Kingdom, every such person shall forfeit and lose all right and title to any deposit in or to any funds of any and every such savings bank; and the managers and trustees of such savings bank shall and they are hereby required in such case to close the account of such depositor, and to cause the sum or sums so forfeited to be forthwith paid into the Bank of England or Bank of Ireland, as the case may be, to the account of the commissioners standing in the books of the governor and company of the said banks respectively, under the title of 'The account of the commissioners for applying certain sums of money annually to the reduction of the national debt;' and the cashier or cashiers of the said governor and company is and are hereby required to receive all such sums, and to place the same to the said account, to be applied in like manner as all other money placed to the said account; and every such declaration so made shall be filed and kept and preserved by the trustees of every such savings bank; and a printed notice of such regulation and prohibition shall be affixed in the office or place appointed for the receiving of deposits to any savings bank, in such form as the said commissioners or their proper officer shall from time to time direct, or require or approve."

Penalty on false declaration, forfeiture of deposit to the sinking fund.

Declarations to be filed.

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like manner be invested in the purchase of government annuities or of exchequer bills as aforesaid."

9 Geo. 4, c. 92.

On payment of money into the bank to the account of national debt commissioners, their officer shall give a receipt for the same, carrying interest at 2½d. per cent. per diem.

Sect. 16 enacts, "that on the twentieth day of November one thousand eight hundred and twenty-eight, the interest payable on the receipts issued to the trustees of savings banks by the commissioners for the reduction of the national debt shall cease; and that from and after the said twentieth day of November, all receipts issued prior to that day shall carry interest at the rate of two-pence halfpenny *per centum per diem;* and that from and after the twentieth day of November one thousand eight hundred and twenty-eight, upon the payment of any sum or sums of money into the Banks of England or Ireland to the account of the said commissioners by the trustees of any savings bank, it shall be lawful for the officer or officers of the said commissioners in that behalf, and he and they is and are hereby authorised and empowered to issue, upon every such payment being made, a receipt, signed by one of the cashiers of the governor and company of the Bank of England or Ireland respectively, for the amount of such payment, carrying interest at the rate of two-pence halfpenny *per centum per diem* from the day of such payment inclusive, payable, with the principal, at the Banks of England and Ireland, whenever the same shall be required or drawn for in manner directed by this act; and such receipt shall be dated on the day on which the payment of any such sum or sums of money shall be made respectively; and every such receipt shall be in such form as shall be from time to time directed by the said commissioners; and the principal and interest of all sums mentioned in any receipt shall be charged and chargeable upon, and the same are hereby charged and made payable out of, all or any monies standing in any account in the names of the said commissioners, or out of any monies produced by the sale of any stock or annuities, funds or exchequer bills, standing in their names in the books of the Bank of England and Ireland respectively, as the said commissioners shall from time to time direct."

Interest due on money mentioned in receipt to be calculated half-yearly up to 20th Nov. and 20th May, and carried to account of savings banks as additional principal.

Sect. 17 enacts, "that all interest which shall become due and payable upon any sum of money mentioned in any such receipt, upon the twentieth day of November and the twentieth day of May in every year next after the date of any such receipt, shall be from time to time calculated and computed by the officer of the said commissioners, and shall in each and every year be placed to the credit of the savings bank on whose account any such sum of money was paid, within six weeks from such twentieth day of November and twentieth day of May respectively, and shall be carried to and written on the account of such savings bank, and shall become principal, and shall from thenceforth carry interest as principal money paid into the said Banks of England or Ireland respectively on the account of such savings bank; and a receipt, according to such form as the said commissioners shall approve, shall be signed by the officer of the said commissioners, and shall be issuable by the said officer half-yearly within six weeks after such twentieth day of November and twentieth day of May respectively, (and such receipts shall bear date the twenty-first day of November and twenty-first day of May respectively,) for the amount of such interest so credited and made principal as aforesaid, as if the amount thereof had been a payment made by the trustees of such savings bank to the account of the said commissioners: provided always, that no interest shall be computed or calculated on the fractional part of a pound, or any sum less than a pound, of the half-yearly balance standing in the books of the said commissioners on account of any savings bank on any twentieth day of November or twentieth day of May respectively; provided also, that it shall be lawful for the managers and trustees of any such savings bank, if they shall so think fit, to direct that all interest which shall become due and payable to each depositor on any sum of money deposited in such savings bank shall yearly, or twice in each and every year, be calculated and computed by the trustees of such savings bank, or such person or persons as they shall appoint, and shall be carried to the credit of the person or persons depositing the said sum or sums of money,

No interest on fractional parts of a pound.

Interest arising to depositors may be calculated yearly or twice a year, and carried to their credit as principal.

disclosing his or her name, together with his or her profession, business, occupation, calling, and residence, to the trustees or managers of such savings bank; and the trustees or managers of every savings bank are hereby required to cause the name of such depositor, together with his or her profession, business, occupation, calling, and residence, to be entered in the books of the institution."

Persons allowed to subscribe as trustees on behalf of others.

Sect. 33 enacts, "that it shall and may be lawful for the trustees or managers of any savings bank to receive from any person or persons acting as trustee or trustees on behalf of any depositor or depositors, whether such person or persons is or are himself or themselves a depositor or depositors or not, any sum or sums not exceeding the annual amount hereinafter mentioned: provided that such trustee or trustees shall make such declaration on behalf of such depositor or depositors, and subject to the like conditions, as by this act is required in the case of any person or persons making any deposit on his or her own account; and all deposits made by any such trustee or trustees shall be inserted in the books of such savings bank in the joint names of such trustee or trustees and of the person or persons on whose account such sum shall be so deposited; and the receipt and receipts of such trustee or trustees, or the survivor of them, or the executors or administrators of any sole trustee or surviving trustee, with or without the receipt of the person or persons on whose account such sum may have been deposited, shall be a good and valid discharge to the trustees or managers of the institution."

Subscribers to one savings bank shall not subscribe to any other.

Sect. 34 enacts, "that it shall not be lawful for any person or persons who shall have made any deposit in, or any subscription to, or who shall be entitled to any benefit from, the funds of any savings bank, to make any deposit in or to subscribe any sum into the funds of any other savings bank, or to open any new account in the said savings bank; and that every person desirous of making any deposit in or any subscription to any savings bank, shall at the time of making the first deposit in any savings bank, and at such other time or times as such depositor shall be required so to do by the trustees or managers of any such savings bank, sign, either by themselves, or, in case of infants under the age of seven years, by some person to be approved of by the trustees or managers, or by such other person as they shall appoint, a declaration in such form as shall be directed or approved of by the commissioners or other proper officer, that the person or persons on whose behalf any such first deposit or subscription shall be required to be made is not or are not entitled to any deposit, or any such subsequent deposit or subscription in or any benefit from the funds of any savings bank, other than that into which such deposit or subscription shall be made, or any other funds in the said savings bank; and in case any such declaration shall not be true, or if any person shall at any time have or hold or be possessed of any deposit or funds in more than one savings bank within the United Kingdom, every such person shall forfeit and lose all right and title to any deposit in or to any funds of any and every such savings bank; and the managers and trustees of such savings bank shall and they are hereby required in such case to close the account of such depositor, and to cause the sum or sums so forfeited to be forthwith paid into the Bank of England or Bank of Ireland, as the case may be, to the account of the commissioners standing in the books of the governor and company of the said banks respectively, under the title of 'The account of the commissioners for applying certain sums of money annually to the reduction of the national debt;' and the cashier or cashiers of the said governor and company is and are hereby required to receive all such sums, and to place the same to the said account, to be applied in like manner as all other money placed to the said account; and every such declaration so made shall be filed and kept and preserved by the trustees of every such savings bank; and a printed notice of such regulation and prohibition shall be affixed in the office or place appointed for the receiving of deposits to any savings bank, in such form as the said commissioners or their proper officer shall from time to time direct, or require or approve."

Declaration to be made at the time of subscription.

Penalty on false declaration, forfeiture of deposit to the sinking fund.

Declarations to be filed.

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such draft or order, indorse and sign an order, in such form as shall or may from time to time be directed and required by the said commissioners, for the payment of the sum mentioned in the draft or order of such trustees, together with the amount of all interest due on such sum up to the day immediately preceding the day of the date of the order of such officer, and which order of such officer, previous to the issuing thereof, shall be entered and countersigned by the clerk or other proper officer making such entry, and shall be addressed to the cashiers of the governor and company of the Bank of England or Ireland, as the case may be; and such cashiers, or one of them, shall, upon the production of such order, pay the sum mentioned therein to the person or persons mentioned in the draft or order of the said trustees; and the signature of such person or persons, jointly or severally, shall be a sufficient discharge to the said commissioners, and to the said governors and company respectively; and all payments made in pursuance of such drafts or orders respectively shall be deemed and taken to be payments made by the said commissioners to the trustees of such savings bank respectively, according to the numerical order and priority of date in which the original receipts of money deposited on account of such savings banks respectively shall have been issued to the trustees thereof respectively in manner herein-before mentioned."

Drafts exceeding 5,000*l.* to be signed by four trustees, and attested by separate witnesses.

Sect. 20 provides and enacts, "that whenever the sum to be drawn for by the trustees of any savings bank shall exceed 5,000*l.*, the draft or order for that purpose shall be signed by not less than four such trustees, and that the signature of each and every of the said four trustees shall be separately attested by at least one manager of such savings banks, or by some one other credible person, and that any manager or other person attesting the signature of any one of the said four trustees shall not be an attesting witness to the signature of any other of such four trustees: provided also, that whenever the sum or sums drawn for by one or more drafts by the trustees of any savings banks in England and Ireland respectively, or by the trustees of any friendly society in England, shall exceed the sum of 10,000*l.* the amount of such draft or drafts (if more than one) shall not be payable or be paid by the officer of the said comissioners until the expiration of fourteen days next after the day when the draft or drafts for such sum or sums shall be produced to the said officer."

Draft for 10,000*l.* not to be paid until after fourteen days.

Officer not to issue in any one day orders for more than 10,000*l.* for the same bank.(a)

Sect. 21 provides and enacts, "that such officer shall be and he is hereby restrained from issuing any order or orders for payment as aforesaid, bearing the same date, upon any one day, on account of the same savings banks or friendly society, exceeding in amount the principal sum of 10,000*l.*; any thing hereinbefore contained to the contrary thereof in anywise notwithstanding: provided also, that in case any one or more trustee or trustees of any savings banks who shall have made, given, signed, and executed any such appointment, shall at any time appear in person at the office of the said commissioners in England or Ireland respectively, and require payment of any sum or sums of money which might be required by the person or persons authorised to receive the same by such appointment, or if any trustee or trustees of any savings bank shall appear in person, where no such appointment shall have been made, and if such trustee or trustees so appearing shall produce a draft or order, signed by any two or more trustees of such savings bank, for any sum under 5,000*l.*, or by any four or more trustees for sums exceeding 5,000*l.*, no such trustee or trustees being himself or themselves a party or parties who signed such draft or order, and if the identity of the person of the trustee or trustees so appearing shall be ascertained to the satisfaction of the said commissioners or their officer, it shall be lawful for the said officer to direct payment to be made to such trustee or trustees so appearing of any sum or sums required to be paid by such order or draft, in like manner as if the person or persons authorised by such appointment to receive the same had required such payment; anything hereinbefore contained to the contrary in anywise notwithstanding: provided nevertheless,

Trustees appearing in person may receive payments of drafts instead of their agents.

(a) This is new.

claration shall be made by the person applying to make such deposit as is required in other cases of making deposits in savings banks according to the provisions contained in this act, and such person shall be considered in all respects as an original subscriber to such savings bank, and shall be liable to all such rules, regulations, and restrictions as an original subscriber to such bank." (*a*)

Depositor dying leaving any sum exceeding 50*l.* the same not to be paid until after administration.

Sect. 40 enacts, "that in case any depositor in the funds of any institution taking the benefit of this act shall die, leaving any sum or sums of money in the said funds, or any dividends or interests due thereon belonging to him or her at the time of his or her death, exceeding in the whole the sum of 50*l.* the same shall not be paid to any person or persons as representative or representatives of such depositors, but upon the probate of the will of the deceased depositor, or letters of administration of his or her estate and effects: provided always, that where the whole estate or effects of any such depositor, for or in respect of which any probate or letters of administration respectively shall be granted, shall not exceed the value of 50*l.*, no stamp duty shall be chargeable thereon, nor upon any legacy or residue or part thereof bequeathed, nor upon any share or part of the estate or effects to be paid or distributed by or under such probate or letter of administration: provided also, that in every such case the person or persons claiming such probate or letters of administration free from stamp duty under this act, shall exhibit to the court or person having authority to grant the probate or letters of administration in such case a certificate of the amount and value of the share and interest which the deceased depositor had in the funds of the said institution, which certificate shall be granted in such form and manner as shall have been settled by the rules or regulations of the institutions respectively, and shall be signed or testified by such person or persons as shall be directed therein; and every such certificate shall be taken and received by the court or person having authority to grant such probate or letters of administration as evidence of the amount and value of the shares and interests of the deceased depositor in the funds of the said institution."

No duty to be paid on probate where the estate is under 50*l.*

Certificate of amount and value of depositor's interest to be produced on claiming probate, &c.

Administration bonds, &c. for effects under 50*l.* exempted from stamp duty.

Sect. 41 enacts, "that in all cases where the whole estate and effects of the deceased depositor, for or in respect of which letters of administration shall be granted, shall not exceed the value of 50*l.* sterling, no stamp shall be chargeable upon the bond required to be given by the administrator for the due administration of the effects of such deceased depositor, nor upon any affidavit or document leading to or connected with such administration, that every such bond and affidavit shall be exempted from stamp duty in like manner and under the like regulations as are provided in and by this act with respect to such letters of administration: provided, that in case any depositor in the funds of any such institution shall die, leaving a sum of money in the fund, which with the interest thereon shall not exceed in the whole 50*l.* it shall be lawful for the trustees or managers of such institution, and they are hereby authorised and permitted in case such trustees or managers shall be satisfied that no will was made and left by such deceased depositor, and that no letters of administration will be taken out of the goods and chattels of such depositor, to pay the same at any time after the decease of such depositor, according to the rules and regulations of the said institutions; and in the event of there being no rules and regulations made in that behalf, then the said trustees or managers are hereby authorised and permitted to pay and divide the same to and amongst the person or persons entitled to the effects of the deceased intestate according to the Statute of Distributions.

Where the effects of a person dying intestate shall not exceed 50*l.* the same may be divided according to the rules of the institution, &c.

Payment to persons appearing to be next of kin declared valid.

Sect. 42 enacts, "that whenever any trustees or managers of any savings bank at any time after the decease of any depositor, have paid and divided any sum of money not exceeding 50*l.* to or amongst any person or persons

(*a*) This is taken from 5 Geo. IV. c. 62, s. 26, but it authorises *one* trustee or manager to grant the certificate, and does not require the signature of the depositor to be made in the presence of one of the trustees, &c. of the bank from which the deposit is to be drawn,

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9 Geo. 4, c. 92.

who shall at the time of such payment appear to such trustees or managers to be entitled to the effects of any deceased intestate depositor according to the Statute of Distributions, or according to the rules and regulations of any such savings banks, the payment of any such sum or sums of money shall be valid and effectual with respect to any demand of any other person or persons as next of kin of such deceased intestate depositor, or as the lawful representative or representatives of such depositor, against the funds of such savings bank, or against the treasurer or trustees or managers thereof; but nevertheless such next of kin or representatives shall have remedy for such money so paid as aforesaid against the person or persons who shall have received the same."

Remedy for next of kin.

Payments under probates of wills, &c. appearing to be in force shall be valid.

Sect. 43 enacts, "that payment of any money by any such institution as aforesaid to any person or persons having any letters of administrations or probate of any such will or testamentary disposition granted by any ecclesiastical court, and appearing to be in force, shall be valid and effectual with respect to any demand of any other person or persons as the lawful representative or representatives of such depositor against the funds of such institution, or against the treasurer, trustees, or managers thereof; but nevertheless such lawful representative or representatives shall have remedy for such money or securities for money so paid or transferred as aforesaid against the person or persons who shall have received the same."

Powers of attorney, &c. given by trustees or depositors, not liable to stamp duty.

Sect. 44 enacts, "that no power, warrant, or letter of attorney, granted or to be granted by any person or persons, or trustee or trustees of any institution established under this act, nor any power, warrant, or letter of attorney given by any depositor or depositors in the funds of such institution to any other person or persons authorising him, her, or them to make any deposit or deposits of any sum or sums of money in the said funds on behalf of the said depositor or depositors, or to sign any document or instrument required by the rules or regulations of such institution to be signed on making such deposit, or to receive back any sum or sums of money deposited in the said funds, or the dividends or interests arising therefrom, nor any receipt nor any entry in any book of receipt for money deposited in the funds of any such institution, nor for any money received by any depositor, his or her executors or administrators, assigns or attorneys, from the funds of such institution, nor any draft or order, nor any appointment of any agent or agents, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever required or authorised to be given, issued, signed, made, or produced in pursuance of this act, shall be subject or liable to or charged with any stamp duty or duties whatsoever." (a)

No draft, order, or appointment of agent, &c. liable to stamp duty.

Where disputes arise, same to be referred to arbitrators; and in case of their not agreeing, to be settled by a barrister.

Sect. 45 enacts, "that if any dispute shall arise between any such institution, or any person or persons acting under them, and any individual depositor therein, or any executor, administrator, next of kin, or creditor of any deceased depositor, or any person claiming to be such executor, administrator, next of kin or creditor, then and in every such case the matter so in dispute shall be referred to the arbitration of two indifferent persons, one to be chosen and appointed by the trustees or managers of such institution, and the other by the party with whom the dispute arose; and in case the arbitrators so appointed shall not agree, then such matter in dispute shall be referred in writing to the barrister at law so to be appointed by the said commissioners as aforesaid, who shall receive a fee of not more than one guinea; and whatever award, order, or determination shall be made by the said arbitrators or by the said barrister, shall be binding and conclusive on all parties, and shall be final to all intents and purposes, without any appeal; and the said award, order, or determination shall declare by whom the said fee payable to the said barrister shall be paid; and no submission to or award, order, or determination of the said arbitrators, or of the said barrister,

(a) This is new.

shall be subject or liable to or charged with any stamp duty or duties whatsoever." (a)

9 Geo. 4, c. 92.

Trustees of banks shall make up annually accounts of their progress, &c. and transmit the same to the commissioners for reduction of the national debt.

Sect. 46. "And for the more effectually ascertaining from time to time the actual and progressive state of the several savings banks respectively, be it enacted, that the trustees or managers of any savings bank shall annually cause a general statement of the funds of such savings bank invested in the Bank of England or the Bank of Ireland in the names of the commissioners for the reduction of the national debt, to be prepared up to the twentieth day of November in each year, showing the balance or principal sum due to all the depositors collectively in such savings bank, and a statement of the expenses incurred, and stating in whose hands such balance shall then be remaining; and every such annual statement shall be attested by two managers or two trustees, or by one manager and one trustee of such savings bank; and every such annual statement shall be countersigned by the secretary or actuary of such savings bank; and all such annual statements shall be transmitted to the office of the said commissioners for the reduction of the national debt in London or Dublin, (as the case may be,) within six weeks next after the twentieth day of November in each year; and in case the trustees of any such savings bank shall neglect or refuse to make out and transmit such account as aforesaid, or in case any such trustees shall at any time neglect or refuse to obey any orders or directions given by the said commissioners, or through their officer, pursuant to the directions of this act, it shall and may be lawful for the said commissioners to close the account of the trustees of such savings bank, and to discontinue the keeping any further account with the trustees of such savings bank, and to direct that no further sum shall be received at the Bank of England or at the Bank of Ireland from the trustees of such savings bank to the account of the said commissioners, until such time as such commissioners shall think fit: provided always, that it may be lawful for the said commissioners to re-open such account, and to allowing the growing interest of such account during the time of such discontinuance, and to authorise the receipt of money at the Banks of England or Ireland, whenever such commissioners shall think fit to do so, upon such trustees complying with the directions of such commissioners or their officer."

If trustees neglect to transmit such accounts, or to obey any orders, commissioners may close their accounts, &c.

A duplicate of such account shall be affixed in the office of the savings bank.

Sect. 47 enacts, "that the trustees or managers of every such savings bank shall cause a duplicate of every such annual statement, accompanied by a list of the trustees and managers of such institution for the time being, attested and countersigned as aforesaid, to be publicly affixed and exhibited in some conspicuous part of the office or place where the deposits of such savings bank are usually received, for the information of all persons making deposits therein, and every such duplicate shall from time to time remain so affixed and exhibited until the ensuing annual statement shall in like manner be affixed and exhibited as aforesaid; and every depositor shall be entitled to receive from the said institution a printed copy of such annual statement on payment of one penny. (b)

Accounts to be annually laid before parliament by commissioners for the reduction of the national debt.

Sect. 48 enacts, "that from and after the passing of this act the following accounts shall be prepared by the said commissioners, and shall be annually laid before both houses of parliament on or before the twenty-fifth day of March in every year, if the parliament shall be sitting, and if the parliament shall not be sitting, then within fourteen days after the commencement of the then next session of parliament; that is to say, accounts, made up to the twentieth day of November then next preceding, of the gross amount of all sums received and credited, including interest, and of all sums paid, including interest, from the sixth day of August, in the year of our Lord one thousand eight hundred and seventeen, up to such twentieth day of November, by the said commissioners, on account of the trustees of the several savings banks in England and Ireland, and also on account of any friendly

(a) So much of this as relates to disputes being referred to the barrister is new.

(b) This provision, entitling the depositor to receive a printed copy of annual statement, is new.

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9 Geo. 4, c. 92.

who shall at the time of such payment appear to such trustees or managers to be entitled to the effects of any deceased intestate depositor according to the Statute of Distributions, or according to the rules and regulations of any such savings banks, the payment of any such sum or sums of money shall be valid and effectual with respect to any demand of any other person or persons as next of kin of such deceased intestate depositor, or as the lawful representative or representatives of such depositor, against the funds of such savings bank, or against the treasurer or trustees or managers thereof; but nevertheless such next of kin or representatives shall have remedy for such money so paid as aforesaid against the person or persons who shall have received the same."

Remedy for next of kin.

Payments under probates of wills, &c. appearing to be in force shall be valid.

Sect. 43 enacts, "that payment of any money by any such institution as aforesaid to any person or persons having any letters of administrations or probate of any such will or testamentary disposition granted by any ecclesiastical court, and appearing to be in force, shall be valid and effectual with respect to any demand of any other person or persons as the lawful representative or representatives of such depositor against the funds of such institution, or against the treasurer, trustees, or managers thereof; but nevertheless such lawful representative or representatives shall have remedy for such money or securities for money so paid or transferred as aforesaid against the person or persons who shall have received the same."

Powers of attorney, &c. given by trustees or depositors, not liable to stamp duty.

Sect. 44 enacts, "that no power, warrant, or letter of attorney, granted or to be granted by any person or persons, or trustee or trustees of any institution established under this act, nor any power, warrant, or letter of attorney given by any depositor or depositors in the funds of such institution to any other person or persons authorising him, her, or them to make any deposit or deposits of any sum or sums of money in the said funds on behalf of the said depositor or depositors, or to sign any document or instrument required by the rules or regulations of such institution to be signed on making such deposit, or to receive back any sum or sums of money deposited in the said funds, or the dividends or interests arising therefrom, nor any receipt nor any entry in any book of receipt for money deposited in the funds of any such institution, nor for any money received by any depositor, his or her executors or administrators, assigns or attorneys, from the funds of such institution, nor any draft or order, nor any appointment of any agent or agents, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever required or authorised to be given, issued, signed, made, or produced in pursuance of this act, shall be subject or liable to or charged with any stamp duty or duties whatsoever." (*a*)

No draft, order, or appointment of agent, &c. liable to stamp duty.

Where disputes arise, same to be referred to arbitrators; and in case of their not agreeing, to be settled by a barrister.

Sect. 45 enacts, "that if any dispute shall arise between any such institution, or any person or persons acting under them, and any individual depositor therein, or any executor, administrator, next of kin, or creditor of any deceased depositor, or any person claiming to be such executor, administrator, next of kin or creditor, then and in every such case the matter so in dispute shall be referred to the arbitration of two indifferent persons, one to be chosen and appointed by the trustees or managers of such institution, and the other by the party with whom the dispute arose; and in case the arbitrators so appointed shall not agree, then such matter in dispute shall be referred in writing to the barrister at law so to be appointed by the said commissioners as aforesaid, who shall receive a fee of not more than one guinea; and whatever award, order, or determination shall be made by the said arbitrators or by the said barrister, shall be binding and conclusive on all parties, and shall be final to all intents and purposes, without any appeal; and the said award, order, or determination shall declare by whom the said fee payable to the said barrister shall be paid; and no submission to or award, order, or determination of the said arbitrators, or of the said barrister,

(*a*) This is new.

shall be subject or liable to or charged with any stamp duty or duties whatsoever." (a)

9 Geo. 4, c. 92.

Trustees of banks shall make up annually accounts of their progress, &c. and transmit the same to the commissioners for reduction of the national debt.

Sect. 46. "And for the more effectually ascertaining from time to time the actual and progressive state of the several savings banks respectively, be it enacted, that the trustees or managers of any savings bank shall annually cause a general statement of the funds of such savings bank invested in the Bank of England or the Bank of Ireland in the names of the commissioners for the reduction of the national debt, to be prepared up to the twentieth day of November in each year, showing the balance or principal sum due to all the depositors collectively in such savings bank, and a statement of the expenses incurred, and stating in whose hands such balance shall then be remaining; and every such annual statement shall be attested by two managers or two trustees, or by one manager and one trustee of such savings bank; and every such annual statement shall be countersigned by the secretary or actuary of such savings bank; and all such annual statements shall be transmitted to the office of the said commissioners for the reduction of the national debt in London or Dublin, (as the case may be,) within six weeks next after the twentieth day of November in each year; and in case the trustees of any such savings bank shall neglect or refuse to make out and transmit such account as aforesaid, or in case any such trustees shall at any time neglect or refuse to obey any orders or directions given by the said commissioners, or through their officer, pursuant to the directions of this act, it shall and may be lawful for the said commissioners to close the account of the trustees of such savings bank, and to discontinue the keeping any further account with the trustees of such savings bank, and to direct that no further sum shall be received at the Bank of England or at the Bank of Ireland from the trustees of such savings bank to the account of the said commissioners, until such time as such commissioners shall think fit: provided always, that it may be lawful for the said commissioners to re-open such account, and to allowing the growing interest of such account during the time of such discontinuance, and to authorise the receipt of money at the Banks of England or Ireland, whenever such commissioners shall think fit to do so, upon such trustees complying with the directions of such commissioners or their officer."

If trustees neglect to transmit such accounts, or to obey any orders, commissioners may close their accounts, &c.

A duplicate of such account shall be affixed in the office of the savings bank.

Sect. 47 enacts, "that the trustees or managers of every such savings bank shall cause a duplicate of every such annual statement, accompanied by a list of the trustees and managers of such institution for the time being, attested and countersigned as aforesaid, to be publicly affixed and exhibited in some conspicuous part of the office or place where the deposits of such savings bank are usually received, for the information of all persons making deposits therein, and every such duplicate shall from time to time remain so affixed and exhibited until the ensuing annual statement shall in like manner be affixed and exhibited as aforesaid; and every depositor shall be entitled to receive from the said institution a printed copy of such annual statement on payment of one penny. (b)

Accounts to be annually laid before parliament by commissioners for the reduction of the national debt.

Sect. 48 enacts, "that from and after the passing of this act the following accounts shall be prepared by the said commissioners, and shall be annually laid before both houses of parliament on or before the twenty-fifth day of March in every year, if the parliament shall be sitting, and if the parliament shall not be sitting, then within fourteen days after the commencement of the then next session of parliament; that is to say, accounts, made up to the twentieth day of November then next preceding, of the gross amount of all sums received and credited, including interest, and of all sums paid, including interest, from the sixth day of August, in the year of our Lord one thousand eight hundred and seventeen, up to such twentieth day of November, by the said commissioners, on account of the trustees of the several savings banks in England and Ireland, and also on account of any friendly

(a) So much of this as relates to disputes being referred to the barrister is new.

(b) This provision, entitling the depositor to receive a printed copy of annual statement, is new.

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9 Geo. 4, c. 92.

societies in England respectively, and of the gross amount of all sums, stock, funds, annuities, and exchequer bills standing in the names of such commissioners on the twentieth day of November on account of any such savings banks or friendly societies respectively, and the sums paid for the purchase of such stocks, funds, or exchequer bills, and the gross amount of the interest or dividends received thereon by the said commissioners, and the gross amount of the interest paid by such commissioners up to such twentieth day of November on all receipts issued to the trustees of any such savings bank or friendly societies in England and Ireland respectively; and also an account of all expenses incurred by the said commissioners for salaries of clerks, or other incidental charges, during the preceding year."

Savings banks shall compute interest to 20th May and 20th Nov. half-yearly or yearly.

Sect. 49. "And for the purpose of rendering the accounts of the several savings banks in England and Ireland uniform and correspondent with the accounts of the commissioners for the reduction of the national debt, it is enacted, that from and after the twentieth day of November, one thousand eight hundred and twenty-eight, the interest or dividends due to each depositor in each savings bank in England shall be computed half-yearly to the twentieth day of May and the twentieth day of November, or yearly to the twentieth day of November in each year, or up to such period nearest to such twentieth day of May or twentieth day of November as such interest shall be payable, according to the rules or regulations of such savings banks respectively, and to no other periods."

Commissioners may purchase exchequer bills.

Sect. 50 enacts, "that it shall and may be lawful for the said commissioners, and they are hereby authorised and empowered, to lay out, from time to time, (if they shall deem it expedient, and under such regulations as the said commissioners shall direct,) the whole or any part of the monies which shall be standing in their names in the books of the Banks of England and Ireland respectively, in pursuance of this act, in the purchase of exchequer bills held by the said banks respectively or by the public, as the case may be; and the said commissioners shall be entitled to receive, for the sum or sums laid out by them in exchequer bills, such an amount of 3*l. per centum* consolidated or reduced annuities, transferable at the bank of England, as the said sum or sums of money would have bought if the same had been applied to the purchase of 3*l. per centum* annuities, estimating the amount of such annuities at the quarterly average price of 3*l. per centum* annuities which shall have been purchased with the monies commonly called the sinking fund in the same quarter of the year in which such exchequer bills shall have been purchased; and the said 3*l. per centum* annuities, and the dividends arising thereon from time to time, shall constitute and form part of the funds belonging to the said commissioners on account of the said savings banks, and shall be subject to the same provisions and to the same and the like purposes as all other capital stocks and dividends standing in their names on the said account shall and may be subject and liable to; and the accountant-general of the said governor and company shall, within five days after such entry shall have been made as aforesaid, certify to the said commissioners the amount of the 3*l. per centum* annuities so placed upon their said account under the provisions of this act." (*a*)

The comptroller-general to certify to the treasury, quarterly, the amount of principal and interest paid for exchequer bills.

Sect. 51 enacts, "that the comptroller-general or assistant comptroller acting under the said commissioners shall, at the end of every quarter of the year in which such exchequer bills shall have been purchased by or on account of the said commissioners as aforesaid, certify to the lords commissioners of his Majesty's treasury the amount of the principal and interest paid for the same (and also the amount and description of 3*l. per centum* annuities which might have been purchased with such principal and interest, estimated at the quarterly average price of 3*l. per centum* annuities as aforesaid); and thereupon it shall and may be lawful for the said lords commissioners of his Majesty's treasury, or any three or more of them, and they are hereby authorised and required, by warrant under their hands, from time to time to order and direct the said governor and company of the Bank of England to direct

(*a*) This is new.

9 Geo. 4, c. 92.

their accountant-general to enter and place to the credit of the said commissioners, upon the account standing in their names in the books of the said bank, under the title of "The Fund for the Banks for Savings," the amount of the 3*l. per centum* consolidated or reduced annuities (as the case may be) contained from time to time in every such certificate; the first half-yearly payment of the dividend whereof shall commence from the day on which the last half-yearly dividends were due and payable on the said 3*l. per centum* consolidated or reduced annuities, as the case may be." (*a*)

3*l.* per centum annuities created by purchase of exchequer bills to be chargeable upon the consolidated fund.

Sect. 52 enacts, "that the 3*l. per centum* annuities which shall be created from time to time by the purchase of exchequer bills under and by virtue of this act, shall be deemed and taken to be, and shall from time to time be added to, and shall form part of the capital of the 3*l. per centum* consolidated or reduced annuities (as the case may be) transferable at the Bank of England, and the dividends arising thereon shall, as the same shall become due, be charged upon and be payable out of, and the same are hereby made chargeable upon, the consolidated fund of the United Kingdom of Great Britain and Ireland." (*a*)

Exchequer bills to be delivered to the paymaster of exchequer bills, to be cancelled, &c.

Sect. 53 enacts, "that it shall be lawful for the said commissioners to cause all or any part of the exchequer bills purchased by them, or on their account, under the provisions of this act, to be delivered to the paymasters of exchequer bills, to be cancelled, within five days after the expiration of the quarter of the year in which such bills shall have been so purchased; and the said paymasters are in such case hereby required, upon the delivery thereof, to cancel the same accordingly; and it shall and may be lawful to the said commissioners to exchange from time to time any part of such exchequer bills, not so delivered to be cancelled, for new bills of the like amount (if they shall deem it expedient to do so), according to the usual course of the exchequer, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding." (*a*)

Commissioners may sell any part of the bank annuities.

Sect. 54 provides and enacts, "that it shall and may be lawful for the said commissioners, and they are hereby authorised and empowered, to sell from time to time, if they shall deem it expedient, any part of the said bank annuities which shall be standing in their names in the books of the Bank of England and Ireland respectively, in pursuance of the said recited acts or this act, and to apply the whole or any part of the monies produced by such sale or sales in the purchase of exchequer bills, in the same manner and under the same regulations and provisions as any other monies are authorised by this act to be so invested by the said commissioners." (*a*)

Treasury may issue exchequer bills on application of commissioners for the reduction of the national debt, for payments to savings banks.

Sect. 55 enacts, "that it shall and may be lawful for the said commissioners, or for the proper officer or officers of the said commissioners, from time to time, to make application to the lord high treasurer or to the commissioners of his Majesty's treasury of the United Kingdom of Great Britain and Ireland, stating and certifying what sum of money may be required for satisfying any demands which shall from time to time be made upon the said commissioners for the reduction of the national debt by the trustees of any savings bank or friendly society in England or Ireland, and thereupon it shall and may be lawful for the lord high treasurer or commissioners of the said treasury, or any three of them, in case they shall think fit and proper so to do, by warrant under their hands, to cause or direct any number of exchequer bills to be made out at the receipt of his Majesty's exchequer in Great Britain, for such sum or sums of money as shall be from time to time stated and certified in any such application of the said commissioners, or their officer or officers under the direction of the said commissioners, or for any part of any such sum or sums; and such exchequer bills shall be made out in the same or like manner, form, and order, and according to the same or like rules and directions, as are prescribed and directed in and by an act made in the forty-eighth year of the reign of his late Majesty King George the Third, intituled, 'An Act for regulating the issuing and paying of exchequer bills.' "

48 Geo. 3, c. 1.

(*a*) This is new.

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9 Geo. 4, c. 92.

Banks of England or Ireland may make advances to commissioners upon such exchequer bills.

Sect. 56 enacts, "that it shall and may be lawful for the governor and company of the Bank of England and Bank of Ireland respectively from time to time to advance to the said commissioners for the reduction of the national debt such sum or sums of money, on the credit of such exchequer bill or bills issued to or purchased by the commissioners under the provisions of this act as aforesaid, at such time or times, and under such regulations for the purposes of this act, as shall be agreed upon by the said commissioners and the said governor and company of the Banks of England and Ireland respectively, and at such times as the said commissioners shall from time to time require; any law or statute to the contrary thereof in anywise notwithstanding."

How such exchequer bills shall be paid off by commissioners for reduction of the national debt.

Sect. 57 enacts, that the principal sum of every such exchequer bill which shall have been issued to the said commissioners upon their application, for the purposes hereinbefore directed, upon which any sum of money shall have been so advanced by the governor and company of the Banks of England or of Ireland respectively, under the provisions of this act, shall, together with all interest due thereon, be discharged from time to time by the said commissioners for the reduction of the national debt, in such portions as the said commissioners shall deem fit and expedient, with and out of any monies invested from time to time by the trustees of any savings banks or friendly societies in England or Ireland respectively, and carried to the credit of the said commissioners on account of any such savings banks or friendly societies, or by the sale of any bank annuities, or with and out of the monies or funds commonly called the sinking fund, standing in the names of the said commissioners in the books of the governor and company of the Banks of England or Ireland respectively, or by all or either of such means of repayment as the said commissioners shall deem most proper and convenient; and that immediately upon any such payment being made bythe said commissioners for the reduction of the national debt, exchequer bills to the amount of the principal sum so paid off and discharged shall be delivered up to the said commissioners by the governor and company of the Bank of England or Bank of Ireland respectively; and the said commissioners shall forthwith cause the said exchequer bills to be delivered to the paymasters of exchequer bills, to be cancelled: provided always, that whenever the principal sum of any such exchequer bill or bills shall have been discharged and paid off by any sum or sums of money advanced from the sinking fund, and under the provisions of this act, the said commissioners shall cause their agent or proper officer to transfer from any account standing in the names of the said commissioners in the books of the governor and company of the Bank of England, or from any accounts standing in their names in the books of the Bank of Ireland, under or by virtue of this act, or of any act or acts relating to savings banks or friendly societies, as the case may be, into the account standing in the names of the said commissioners in the books of the Bank of England or Bank of Ireland respectively, under the title of 'the Account of the Commissioners appointed by Act of Parliament for applying certain Sums of Money annually to the Reduction of the National Debt,' such an amount of stock as shall produce, by computation, the principal sum and interest of all such exchequer bills so paid off and discharged; and the said computations shall be made by the proper officer or officers of the said commissioners, according to the price at which such stock shall have been purchased by the said commissioners on the day of transferring the said amount of stock as aforesaid; and upon every such transfer of stock being made as hereinbefore directed, the accountant-general of the governor and company of the Bank of England or Bank of Ireland respectively shall thereupon transmit to the office of the said commissioners for the reduction of the national debt a certificate of every such transfer, containing the amount and description of stock so transferred."

Regulations to be observed when such bills are paid off by advances from the sinking fund.

Commissioners for reduction of the national debt may keep a balance in the Bank of England for drafts which may be drawn.

Sect. 58. "And whereas it is expedient to provide more effectually in certain cases for the payment of any draft or drafts which may be drawn upon the said commissioners by the trustees of any savings bank in Ireland in pursuance of this act; be it enacted, that it shall and may be lawful for the said commissioners, if they shall so think fit, and they are hereby

9 Geo. 4, c. 92.

authorised and empowered, to pay into the bank of England, from time to time, any sum or sums of money to be placed to their credit in account with the governor and company of the Bank of Ireland, on account of the fund for the banks for savings, under such regulations as shall or may be agreed upon from time to time between the said commissioners and the said governor and company of the Bank of Ireland; and all sums of money so placed to the said commissioners' credit as aforesaid shall be carried to the account of the said commissioners, by the cashiers of the said governor and company of the Bank of Ireland, standing in the books of the said bank under the title of 'The Fund for the Banks for Savings,' and shall be subject and shall be applied to the several purposes hereinbefore mentioned, as if every such sum and sums of money had been originally paid into the Bank of Ireland to the said account under the provisions of this act." (*a*)

Receipts, &c. shall be in the form approved by commissioners.

Sect. 59 enacts, "that all receipts, orders, certificates, indorsements, accounts, returns, or instruments, or other matters or things whatsoever, which shall be required for carrying into execution this act, shall be made in such form and manner, and containing such particulars, and under such regulations as shall from time to time be directed, or required, or approved of by the said commissioners, or their officer or officers."

Indemnity to commissioners, and Banks of England and Ireland.

Sect. 60 enacts, "that this act shall be and the same is declared to be a full and sufficient indemnity and discharge to the commissioners for the reduction of the national debt, and to the governor and company of the Bank of England and Bank of Ireland respectively, and their officers, for all things to be done or required, or permitted to be done, pursuant to this act."

Commissioners may employ clerks, &c.

Sect. 61 enacts, "that it shall and may be lawful for the said commissioners for the reduction of the national debt, and they are hereby authorised and empowered to appoint a barrister at law, and employ such and so many of the clerks and other officers as shall be necessary for carrying into execution the purposes of this act; and that it shall and may be lawful for the lord high treasurer or the commissioners of his Majesty's treasury of the United Kingdom of Great Britain and Ireland for the time being, and they are hereby authorised and empowered to settle and appoint such allowances as shall be proper for the services, pains, and labour of such clerks, or other persons to be appointed and employed by the said commissioners, in manner and for the purposes aforesaid; and out of the fund upon which the establishment of the said commissioners is chargeable by any act now in force, to pay and discharge all such allowances and all other incidental charges which shall necessarily attend the execution of this act, in such manner as to them shall seem just and reasonable."

Treasury may pay them and discharge incidental expenses.

Act to extend to all savings banks in England and Ireland.

Sect. 62 enacts, "that this act shall extend to all savings banks established, or hereafter to be established, in England and Ireland, and not elsewhere; and be deemed a public act, and shall be judicially taken notice of as such by all judges, justices, and other persons whomsoever, without the same being specially shown or pleaded.

Mr. Tidd Pratt, in his work on Savings Banks, gives the following Table as to the funds of Savings Banks.

(*a*) This is new.

THE YEAR ENDING 20TH NOVEMBER, 1828.

This Form of the GENERAL STATEMENT *of the Funds of the Savings Banks is to be filled up and produced at the National Debt Office, within Six Weeks after the 20th November,* 1828, *pursuant to* 9th Geo. 4, *cap.* 92, *sec.* 46.

Drs. The Trustees of the Savings Bank established at _____ *Crs.*

Charge.				*Discharge.*			
To Balance due on the 20th November, 1827, including Interest. . .				By Principal paid to Depositors			
In the year ending 20th November, 1828. To Sums deposited. . . .				Interest do.			
To Interest on Monies invested with the Commissioners for the Reduction of the National Debt. . . .				In the year ending 20th Nov. 1828. Charges of Management, viz.			
				Salaries.			
				Rent and Taxes.			
				Printing and Stationary.			
				Balance on 20th Nov. 1828. Invested with the Commissioners for the Reduction of the National Debt, including Interest.			
				Do. in the Hands of _____			
				_____			
				_____			
				Treasurer or Banker			

The Rate of Annual Interest allowed to the Depositors is_____per Cent.

State the Names of the Treasurer and Officers who have given Security.

Name.	*Amount of Security.*

The aforegoing Account is to be accompanied by the following Statement.

The Balance due on the 20th Nov. 1828, brought forward.

State the No. of Depositors.	Total amount of each class.
_____ whose respective Balances on the 20th Nov. 1828, (including Interest) did not exceed 20*l.* each.	
_____ Do. were above 20 and not exceeding 50 do.	
_____ Do. were above 50 and not exceeding 100 do.	
_____ Do. were above 100 and not exceeding 150 do.	
_____ Do. were above 150 and not exceeding 200 do.	
_____ Do. . (*exceeding* 200*l. if any*).	
_____ Total No. of Depositors.	
_____ Charitable Societies.	
_____ Friendly Societies.	
_____ Total No. of Accounts.	
Surplus. . . .	
Deduct from Surplus. To be appropriated according to the Rules and Regulations of the said Bank, per 9 Geo. 4, cap. 92, sec. 22.	
Retained for the future purposes and Management of the said Bank, per ditto.	

Amount of Surplus Fund remaining on 20th November, 1828. .

We do hereby certify to the Commissioners for the Reduction of the National Debt, that the foregoing is a true Account, and that the Surplus Fund or Increased Stock of the above Savings Bank, on the 20th of November, 1828, amounted to the Sum of _____

Witness our Hands this_____day of_____, 182

_____ } Two Trustees (or) Two
_____ } Managers (or) a Trustee and a Manager, of the said Savings Bank.

Witness_____ { Secretary or Actuary.

Bankers.

Making frames, &c. for paper, with names on, *post*, **Forgery**, Vol. II.
Embezzlement by, *post*, **Larceny**, Vol. III.

DERIVATION OF A BANKRUPT.

Bankrupt.

[1 & 2 Geo. IV. c. 115; 6 Geo. IV. c. 16.]

Derivation.

UNDER this title will only be noticed that portion of the bankrupt laws as come within the compass of this work. For further information the reader is referred to the works of Messrs. *Eden, Deacon, Archbold, Montague, Espinasse, Cullen, and Cooke.*

We shall here notice only—

I. *The Derivation and Description of a Bankrupt*, 333.

II. *The Consequences of not Surrendering or of Embezzling the Effects*, 334.

III. *Persons disturbing Commissioners*, 336.

IV. *Perjury by Bankrupts, &c.* 336.

V. *Provisions relative to Proof of Bankruptcy Proceedings, &c.* 336.

VI. *Forms*, 339.

I. Derivation and Description of a Bankrupt.

Lord Coke says, that *banque*, in French, signifies the same as *mensa* in Latin; and that *route* is a sign or mark, as we say a cart rout is the sign or mark where the cart hath gone; and that metaphorically a *bankrupt*, or *banqueroute*, is taken for him that hath wasted his estate, and removed his *banque*, so as there is left but a mention thereof. 4 *Inst.* 277.

And it is observable that the title of the first English statute concerning this offence, stat. 34 & 35 Hen. VIII. c. 4, "An Act against such persons as do make bankrupt," is a literal translation of the French words *qui font banque route.*

But as the first bankers came to us from Italy, it seemeth more probable that they brought their name along with them; and consequently that the word *bankrupt* or *banqueroute* cometh from the Italian *banco rotto*, the *bench* being *broken*. The *banker* himself was so called from the *bench* or table which he used with his name inscribed, and when he failed, his bench was broken. Which word *rotto* is what remaineth in that country of the Latin *ruptus;* all which, both word and metaphor, we preserve in our language, when we say, that a person is *bankrupt*, or that such a one is broken.

But whatever be the derivation of the word, a bankrupt has been defined to be a trader who secretes himself, or does certain other acts, tending to defraud his creditors. Throughout the three first statutes, the bankrupt is uniformly called an offender, and the original policy of the bankrupt laws seems to have been to prevent and defeat the frauds of criminal debtors. The bankrupt being deemed an offender, and being completely divested of the disposition of his property, those statutes at the first would naturally be considered penal statutes. As trade however increased, the risks and calamities incident to commercial speculation were found to augment proportionably, and at length a bankrupt ceased to be considered as a criminal. Accordingly the fourth statute on the subject (21 Jac. c. 19) stated, at its very commence-

BANKRUPT.

ment, that "all and singular the aforesaid statutes and laws heretofore made against bankrupts, and for relief of creditors, shall be in all things largely and beneficially construed and expounded for the aid, help, and relief of the creditors of such person or persons as already be, or hereafter shall become bankrupt;" and at this day the bankrupt laws are considered to be a system calculated for the benefit of trade, and founded on the principles of humanity, as well as justice. To that end they confer some privileges, not only on the creditors, but also on the bankrupt or debtor himself; on the creditors, by compelling the bankrupt to give up all his effects to their use, without any fraudulent concealment; on the debtor, by exempting him from the rigour of the general law, whereby his person might be confined at the discretion of his creditor, though he in truth should be destitute of any means to discharge the debt; whereas the system of laws in relation to bankrupts, taking into consideration the sudden and unavoidable accidents to which men in trade are liable, has secured to them personal freedom and some pecuniary emoluments, upon condition that they surrender up their whole estate for the benefit of those who, in confidence of the bankrupt's solvency, have become his creditors.

The description of a bankrupt will be found in the 2d and 3d sections of the 6 Geo. IV. c. 16.

II. Non-surrender and Embezzlement by Bankrupts.

Bankrupt not surrendering, and submitting to be examined,

By the 6 Geo. IV. c. 16, s. 112, it is enacted, "that if any person against whom any commission has been issued, or shall hereafter be issued, whereupon such person hath been, or shall be declared bankrupt, shall not, before three of the clock upon the forty-second day after notice thereof, in writing, to be left at the usual place of abode of such person, or personal notice in case such person be then in prison, and notice given in the London Gazette of the issuing of the commission, and of the meetings of the commissioners, surrender himself to them, and sign or subscribe such surrender, and submit to be examined before them, from time to time, upon oath, or, being a Quaker, upon solemn affirmation; or if any such bankrupt, upon such examination, shall not discover all his real or personal estate, and how and to whom, upon what consideration, and when he disposed of, assigned, or transferred any of such estate, and all books, papers, and writings relating thereunto (except such part as shall have been really and *bonâ fide* before sold or disposed of in the way of his trade, or laid out in the ordinary expense of his family); or if any such bankrupt shall not, upon such examination, deliver up to the commissioners all such part of such estate, and all books, papers, and writings relating thereunto, as be in his possession, custody, or power, (except the necessary wearing apparel of himself, his wife, and children); or if any such bankrupt shall remove, conceal, or embezzle any part of such estate, to the value of ten pounds or upwards, or any books of account, papers, or writings relating thereto, with intent to defraud his creditors, every such bankrupt shall be deemed guilty of felony, and be liable to be transported for life, or for such term, not less than seven years, as the court before which he shall be convicted shall adjudge, or shall be liable to be imprisoned only, or imprisoned and kept to hard labour in any common gaol, penitentiary-house, or house of correction, for any term not exceeding seven years."

or not making discovery of his estate and effects;

or not delivering up his goods, books, &c.

or removing or embezzling to the value of 10*l.* guilty of felony, &c.

Decisions, &c. on the enactment.

Decisions, &c. on Enactment]—In embezzlement by bankrupts, it is of the essence of the offence that the goods embezzled be of the value fixed by the act, which is now ten pounds. And, therefore, an indictment upon this statute will be held bad, unless the property be particularly specified, and a distinct value put upon the articles enumerated. See *Forsyth's case*, *R. & R. C. C.* 277.

This law has been considered so severe, that in cases where it appeared the absence of the defendant was occasioned rather by ignorance or accident than design, the lord chancellor has superseded the commission, in order to

prevent the commencement of proceedings under it. 1 *Atk.* 222; 18 *Ves.* 18; 3 *Ves.* 238. NON-SURRENDER, &c.

A bankrupt who was in prison for debt did not surrender to his commission, nor did he apply to have the time for his surrender enlarged, nor did he apply to be brought up to surrender under sect. 119 of the Bankrupt Act, 6 Geo. IV. c. 16, nor did he give notice to commissioners that he was in prison: held, that under these circumstances he was not indictable under s. 112 of the stat. 6 Geo. IV. c. 16, for not surrendering to his commission, even though the imprisonment could be shown to have been conclusive. *R.* v. *Mitchell*, 4 *C. & P.* 251.

If a bankrupt surrender to his commission, and at the time of such surrender refuse to answer particular questions concerning his property, but takes the oath, and assigns as his reason for not answering, that he intends to dispute the commission, the refusal to such answer would not be a capital offence within the act, but subject him only to a committal to prison by the commissioners. *Page's case*, *R. & R. C. C.* 392; 3 *Moore*, 656; 1 *B. & B.* 308; 7 *Price*, 616, S. C. *infra*.

The bankrupt will not be guilty of felony if he surrender before the last moment of the time allowed him, though indeed it is both his interest and his duty to do so as soon as possible. 2 *Burr.* 1124; *Coup.* 156.

Indictment for]—The *indictment* must set forth the proceedings accurately. It should state the commission was *duly* awarded, and the mere allegation, that it was issued out and awarded will not suffice. 1 *Leach*, 10. It must not be stated that it issued out of Chancery. 1 *Rose*, *B. C.* 222; 1 *Campb.* 58. Indictment for.

The words of the statute must be attended to, and every fact necessary to constitute the offence must be duly stated. See 1 *Leach*, 10. An averment must be introduced that the commissioners did hold a sitting, in which they should be named; and a notice, requiring the bankrupt *to surrender to the commissioners at Guildhall*, will be too uncertain. 1 *Leach*, 10. See *Gow*, 210.

The indictment for embezzling the effects must particularly specify the property embezzled, and a distinct value must be put on the articles enumerated. *Forsyth's case*, *R. & R. C. C.* 277.

In an indictment against a bankrupt, he was charged in feloniously making default in not submitting to be examined: it was made a question, whether this was sufficient without charging him with a refusal to surrender and submit to examination. *R.* v. *Page*, 3 *Moore*, 656; 1 *B. & B.* 308, S. C.

Evidence on]—All the proceedings by which the prisoner was made a bankrupt, as well as the notices requiring him to surrender, must be proved. 1 *Atk.* 211. Evidence.

Therefore, the trading, the petitioning creditor's debt, the act of bankruptcy, the issuing of the commission, and all proceedings under it, must be strictly shown in evidence. 3 *Campb.* 96.

By the 6 Geo. IV. c. 16, s. 96, no commission, adjudication, or assignment, or certificate, &c. shall be received as evidence, unless entered on record, as therein mentioned. See the section, *post*, 337.

The 95th section empowers the chancellor to appoint an officer to enrol the proceedings. See *post*, 337.

The 97th section makes office copies evidence. See *post*, 338.

In order to prove the notice in the gazette, the production of the gazette itself will be sufficient, without proving its being bought of the gazette printer, or where it came from. *Forsyth's case*, *R. & R. C. C.* 277. *Post*, Vol. II. p. 37.

On an indictment for concealing effects, if the evidence be that the bankrupt on his last examination stated that a book given in by him contained an account of all his effects, it is incumbent on the prosecutor to produce the book, or account for it, that it may be seen whether that book mentions the property or not. *Evans's case*, *R. & R. C. C.* 70.

BANKRUPT, PERJURY, EVIDENCE, &c.

The defendant may procure an acquittal by proving that he was an infant at the time of contracting the debts mentioned in the indictment, for though such obligations are only voidable by him at his election, no man can be made a bankrupt for debts which he was not compellable to discharge. 1 *Ld. Raym.* 443.

III. Persons disturbing Commissioners.

Commissioners of bankruptcy may direct the messenger to take into custody any person making a disturbance, or interrupting them in the exercise of their duty, and the person shall be taken before a magistrate.

Stat. 1 & 2 Geo. IV. c. 115, s. 21, (which is not repealed), enacts, "that the commissioners acting under any commission of bankruptcy shall have full power and authority, and they are hereby empowered and authorised to order and direct the messenger or messengers acting under their authority in any such commission, to take into custody any person or persons who shall commit or be guilty of any riot or disturbance, or who shall interrupt the said commissioners in the exercise of their duty, and to have such person or persons taken before any alderman or magistrate acting in the commission of the peace, to be dealt with according to law; and the warrant of such commissioners shall be a full authority and indemnity to such messenger or messengers in so doing."

IV. Perjury by Bankrupts.

The 6 Geo. IV. c. 16, s. 36, 37, empowers the commissioners to examine bankrupts and other persons.

Punishment of perjury and false affirmation.

The 99th section enacts, "that any bankrupt or other person who shall, in any examination before the commissioners, or in any affidavit or deposition authorised or directed by the present or any act hereby repealed, wilfully and corruptly swear falsely, being convicted thereof, shall suffer the pains and penalties in force against wilful and corrupt perjury; and where any oath is hereby directed or required to be taken or administered, or affidavit to be made by or to any party, such party, if a Quaker, shall or may make solemn affirmation, and such Quaker shall incur such danger or penalty for refusing to make such solemn affirmation in such matters, when thereto required, as is hereby provided against persons refusing to be sworn; and all Quakers who shall, in any such affirmation, knowingly and wilfully affirm falsely, shall suffer the same penalties as are provided against persons guilty of wilful and corrupt perjury; and all persons before whom oaths or affidavits are hereby directed to be made, are respectively empowered to administer the same, and also such solemn affirmation as aforesaid." See form of indictment, *post*, 343.

As to perjury in general, see *post*, Perjury, Vol. V.

V. Provisions in Bankrupt Act relative to Evidence, &c.

In actions for acting under commission, no proof required of petitioning creditor's debt, trading, or act of bankruptcy, unless upon notice.

Sect. 90. "That in any action by or against any assignee, or in any action against any commissioner or person acting under the warrant of the commissioners, for any thing done as such commissioner, or under such warrant, no proof shall be required, at the trial, of the petitioning creditor's debt or debts, or of the trading or act or acts of bankruptcy respectively, unless the other party in such action shall, if defendant, at or before pleading, and, if plaintiff, before issue joined, give notice in writing to such assignee, commissioner or other person, that he intends to dispute some and which of such matters; and in case such notice shall have been given, if such assignee, commissioner or other person shall prove the matter so disputed, or the other party admit the same, the judge before whom the cause shall be tried may (if he thinks fit) grant a certificate of such proof or admission; and such assignee, commissioner or other person shall be entitled to the costs, to be taxed by the proper officer, occasioned by such notice, and such costs shall, if such assignee,

Certificate by judges. Costs.

commissioner or other person shall obtain a verdict, be added to the costs, and, if the other party shall obtain a verdict, shall be deducted from the costs which such other party would otherwise be entitled to receive from such assignee, commissioner or other person."

6 Geo. 4, c. 16.

The same in suits in equity.

Sect. 91. "That in all suits in equity by or against the assignees, no proof shall be required at the hearing of the petitioning creditor's debt or debts, or of the trading or act or acts of bankruptcy respectively, as against any of the parties in such suit, except such parties as shall, within ten days after rejoinder, give notice in writing to the assignees of his or their intention to dispute some and which of such matters; and where such notice shall have been given, if the assignees shall prove the matter so disputed, the costs occasioned by such notice, to be taxed by the proper officer, shall, if the court see fit, be paid by the party or parties so giving such notice as aforesaid, and the service of such notice may be proved by affidavit upon hearing of the cause."

Depositions conclusive in actions or suits by assignees for any debt of the bankrupt, unless he dispute the commission, &c.

Sect. 92. "That if the bankrupt shall not (if he was within the United Kingdom at the issuing of the commission) within two calendar months after the adjudication, or (if he was out of the United Kingdom) within twelve calendar months after the adjudication, have given notice of his intention to dispute the commission, and have proceeded therein with due diligence, the depositions taken before the commissioners at the time of, or previous to the adjudication of the petitioning creditor's debt or debts, and of the trading and act or acts of bankruptcy, shall be conclusive evidence of the matters therein respectively contained, in all actions at law or suits in equity, brought by the assignees for any debt or demand for which the bankrupt might have sustained any action or suit."

Office for registering proceedings in bankruptcy.

Sect. 95. "That all things done pursuant to the act passed in the fifth year of King George the Second, and hereby repealed, whereby it was enacted, that the lord chancellor should appoint a place where all matters relating to commissions of bankruptcy should be entered of record, and should appoint a person to have the custody thereof, be hereby confirmed; and the lord chancellor shall be at liberty from time to time, by writing under his hand, to appoint a proper person, who shall by himself or his deputy (to be approved by the said lord chancellor) enter of record all matters relating to commissions, and have the custody of the entries thereof; and the person so to be appointed, and his deputy, shall continue in their respective offices so long as they shall respectively behave themselves well, and shall not be removed, except by order in writing under the hand of the lord chancellor on sufficient cause therein specified."

No commission, &c. received in evidence unless entered of record.

Sect. 96. "That in all commissions issued after this act shall have taken effect, no commission of bankruptcy, adjudication of bankruptcy by the commissioners, or assignment of the personal estate of the bankrupt, or certificate of conformity, shall be received as evidence in any court of law or equity, unless the same shall have been first so entered of record as aforesaid; and the person so appointed to enter matters of record as aforesaid shall be entitled to receive for such entry of every such commission, adjudication of bankruptcy, assignment, or order for vacating the same respectively, having the certificate of such entry indorsed thereon respectively, the fee of two shillings each, and for the entry of every certificate of conformity, having the like certificate indorsed thereon, six shillings; and every such instrument shall be so entered of record upon the application of, or on behalf of any party interested therein, and on payment of the several fees aforesaid, without any petition in writing presented for that purpose; and the lord chancellor may, upon petition, direct any depositions, proceedings, or other matter relating to commissions of bankruptcy, to be entered of record as aforesaid, and also appoint such fee and reward for the labour therein of the person so appointed as aforesaid, as the lord chancellor shall think reasonable; and all persons shall be at liberty to search for any of the matters so entered of record as aforesaid; provided that on the production in evidence of any instrument so directed to be entered of record, having the certificate thereon, purporting to be signed by the person so appointed to enter the same, or by his deputy, the same shall, without

Fees for entry.

Lord chancellor may direct other matters to be entered.

Liberty to search.

ENACTMENTS AS TO EVIDENCE, &c.

any proof of such signature, be received as evidence of such instrument having been so entered of record as aforesaid."

6 Geo. 4, c. 16.

Evidence of entry.

Office copies evidence.

Costs of producing original instrument when not allowed.

Sect. 97. "That in every action, suit or issue, office copies of any original instrument of writing, filed in the office or officially in the possession of the lord chancellor's secretary of bankrupts, shall be evidence to be received of every such original or writing respectively; and if any such original instrument or writing shall be produced on any trial, the costs of producing the same shall not be allowed on taxation, unless it appears that the production of such original instrument or other writing was necessary."

Commissions, deeds, and other instruments relating to estates and effects of bankrupts, not liable to stamp duties.

Sect. 98. "That after this act shall have come into effect all commissions of bankrupt, and also all deeds, conveyances, assignments, surrenders, admissions and other assurances of, or to, or relating solely to any freehold, leasehold, copyhold, or customary messuages, lands or tenements, or any mortgage, charge or incumbrance upon, or any estate, right or interest of and in any messuages, lands, tenements or personal estate, being the estate of or belonging to any bankrupt or bankrupts, or part or parcel thereof, and which after the execution of such deeds, conveyances, assignments, surrenders or assurances respectively shall, either at law or in equity, be or remain the estate and property of such bankrupt or bankrupts, or the assignee or assignees appointed or chosen by virtue of the commission issued against him or them respectively, and also all powers of attorney, writs of supersedeas and procedendo, certificates of conformity, affidavits and all other instruments and writings whatsoever relating solely to the estate or effects of any bankrupt or bankrupts, or any part thereof, or to any proceedings under any commission of bankrupt, and all advertisements inserted in the London Gazette relating solely to matters in bankruptcy, shall not be liable to any stamp duty or any other government duty whatsoever, and all sales of any real or personal estate of any bankrupt or bankrupts shall not be liable to any auction duty."

Sales not liable to auction duty.

VI. Forms, *List of.*

WARRANT of a Justice of the Peace to apprehend a Bankrupt, (No. 1.)
COMMITMENT thereon, (No. 2.)
COMMITMENT against a Bankrupt for concealing his effects, on 6 Geo. IV. c. 16, s. 112, (No. 3.)
COMMITMENT against him on like statute for not surrendering, (No. 4.)
INDICTMENT on 6 Geo. IV. c. 16, s. 112, against a Bankrupt for concealing his effects, (No. 5.)
INDICTMENT on like act against a Bankrupt for not surrendering, and for not giving Information as to his Effects, (No. 6.)
INDICTMENT on 6 Geo. IV. c. 16, s. 99, against a Bankrupt for Perjury on his Examination, (No. 7.)

(No. 1.)

Warrant to apprehend a bankrupt.

County of } *To*
to wit. }

WHEREAS a certificate under the hands and seals of hath this day been produced before me, , setting forth that a commission of bankruptcy is issued against , under which the said , on the day of , now last past, was proved, before the major part of the commissioners authorised by the said commission, to have become a bankrupt, and was duly adjudged and declared to be a bankrupt accordingly: and whereas application hath been made to me by , by order of the said commissioners, for apprehending the said : These are therefore to require you, on sight hereof, to take and apprehend the said , and bring him before me or some other of his Majesty's justices of the peace for the said county, to be proceeded against according to law. Given under my hand and seal this day of, &c. R. B. (L. S.)

(No. 2.)

Commitment thereon.

[Commencement as usual, as *ante*, p. 8, (No. 1):] *for that the said C. D. is the same person against whom a commission of bankruptcy under the great seal had been awarded and issued, under which the said C. D., on, &c., now last past, was proved before the major part of the commissioners authorised by the said commission to have become a bankrupt, and duly adjudged and declared by them to be a bankrupt accordingly, as appears to me by a certificate under the hands and seals of the major part of the commissioners in the said commission named, and him therefore safely keep in your custody, till he shall be removed by order of the said commissioners or the major part of them by warrant under their hands and seals. And for so doing this shall be your sufficient warrant. Given under my hand and seal this day of 18 .*

(No. 3.)

Commitment against bankrupt for concealing his effects, on 6 Geo. 4, c. 16, s. 112.

[Commencement as usual, as *ante*, p. 8, (No. 1.)]: *for that he the said C. D. on, &c. at, &c. after he had been found a bankrupt, upon a commission of bankrupt duly awarded and issued against him, did feloniously remove, conceal, and embezzle part of his estates, to the value of 10l. and upwards, with intent to defraud his creditors, against the statute in such case made and provided, and you the said keeper, &c.* [as usual, as *ante*, p. 8, (No. 1.), to the end.]

(No. 4.)

Commitment against bankrupt for not surrendering, on like statute.

[Commencement as usual, as *ante*, p. 8, (No. 1.)]: *for that the said C. D. feloniously omitted to surrender himself to a certain commission of bankrupt, duly awarded and issued against him on, &c. at [Guildhall, in the city of London,] being the day and place appointed in the London Gazette, for the purpose of surrendering himself to the said commission, and finishing his examination, contrary to the statute in such case made and provided, and you the said keeper, &c.* [as usual, as *ante*, p. 8, (No. 1.), to the end.]

(No. 5.)

Indictment against a bankrupt for concealing his effects, on 6 Geo. 4, c. 16, s. 112. (a)

THE jurors of our lord the King upon their oath present, that C. D., late of, &c. before and on, &c. [day of act of bankruptcy, or about it,] *from thence continually until the issuing out of the commission of bankrupt hereafter mentioned was a dealer and chapman, and a trader according to the provisions of an act passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled "An Act to amend the laws relating to bankrupts," and during all that time did use and exercise the trade of a dealer and chapman, and was a trader according to the provisions of that act, to wit, at, &c.* [venue], *and that the said C. D. so as aforesaid using and exercising the said trade, and so being such dealer and chapman and a trader as aforesaid according to the provisions of the said act, on the day and year aforesaid, at, &c.* [venue] *aforesaid, became and was indebted to one A. B. a subject of this realm, in the sum of* [100l.] *and upwards for a just and true debt, due and owing from the said C. D. to the said A. B. and being so indebted and so using and exercising the said trade, and being such dealer and chapman and a trader as aforesaid according to the provisions of the said act, and being a subject of this realm, and the said debt to the said A. B. being then due, in arrear, and unsatisfied, he the said C. D. on the day and year aforesaid, at, &c.* [venue] *aforesaid, became and was a bankrupt, within the true intent and meaning of the statute made and then in force concerning bankrupts; And the jurors aforesaid, on their oath aforesaid, do further present, that thereupon, afterwards, to wit, on, &c.* [date of commission], *at, &c.* [venue], *the said A. B. then being such creditor of the said C. D. as aforesaid, on the petition of the said A. B. duly made and exhibited in writing to the right honourable J. S. Lord L. then being lord high chancellor of Great Britain, a certain commission of bankruptcy under the great seal of the United Kingdom of Great Britain and Ireland, grounded upon the said statute, was duly awarded and issued against the said C. D. bearing date at Westminster, to wit, the day and year last aforesaid, directed to certain commissioners therein named, to wit, J. J. &c.,* [names of the commissioners as in the commission], *in and by which said commission our said*

Petitioning creditor's debt.

Act of bankruptcy.

Commission issued.

(a) See the enactment, *ante*, 334, There being no printed form for this offence upon the new bankrupt act, it is thought useful to insert one in this work.

FORMS.

lord the King did name, assign, and appoint, constitute, and ordain them the said J. J. &c. the special commissioners of our said lord the King, thereby giving full power and authority to them four, or three of them, [if a country commission, say *the said J. J.* or *J. K. to be one,*] *to proceed according to the said statute, and take such order and direction, with the body of the said C. D. as also with all his lands, tenements and hereditaments, both within this realm and abroad, as well copy or customary-hold as freehold, which he had in his own right before he became bankrupt, as also with all such interest in any such lands, tenements and hereditaments as the said C. D. might lawfully depart with; all his money, fees, offices, annuities, goods, chattels, wares, merchandise, and debts, wheresoever they might be found or known, and to make sale thereof or otherwise order the same for satisfaction and payment of the creditors of the said C. D. and to do and execute all and every thing and things whatsoever towards and for all other intents and purposes, according to the ordinance and provision of the said statute, thereby willing and commanding the said commissioners, four or three of them, to proceed to the execution and accomplishment of that his commission, according to the true intent and meaning of the said statute, with all diligence and effect* (a), *as in and by the said commission will more fully appear. By virtue of which said commission, and by force of the said statute concerning bankrupts, the said J. J. &c. the major part of the said commissioners named in the said commission,* [*having severally and respectively duly taken the oath prescribed and appointed to be taken by commissioners of bankrupts, according to the form of the said statute, and having then and there entered and kept a memorial thereof, signed by them respectively, among the proceedings in the said commission,*] *afterwards, to wit, on the day of A. D. aforesaid, at, &c.* [venue] *aforesaid, did in due form of law find that the said C. D. since the 1st day of September, A. D. 1826, had become a bankrupt within the true intent and meaning of the said statute before the date and issuing forth of the said commission, and did then and there declare and adjudge him to be a bankrupt accordingly. And the jurors aforesaid, on their oath aforesaid, do further present, that afterwards, to wit, on the said, &c. notice in writing, signed by them the said J. J. &c. the major part of the said commissioners in the said commission named, appointed and authorised, was, according to the direction of the statute in such case made and provided, delivered to the said C. D. personally* (b), *to wit, at, &c.* [venue] *aforesaid, that the said commission of bankrupt had been issued against him the said C. D. and that he had been thereupon declared bankrupt, and the said C. D. was by them the said commissioners last named thereby required and commanded personally to be and appear and surrender himself to and before the major part of the commissioners in the said commission named, on the* [1st] *day of* [*October*] *in, &c. aforesaid, the* [2d] *day of* [*October*] *in the same year, and the* [21st] *day of* [*October*] *in the same year, at* 12 *of the clock at noon of each of the said days, at* [*the sessions-house in M.*] *in the said county of* [*K.*] *then and there to be examined, according to the directions of the said statute, and thereupon to make a full discovery and disclosure of all his estate and effects, and in all things to conform himself to the said statute made concerning bankrupts. And afterwards, to wit, on, &c. notice was also given and published, according to the said statute, in the London Gazette, to wit, at, &c.* [venue] *aforesaid, that* [let this agree with the notice] *a commission of bankrupt was awarded and issued forth against the said C. D. and that he being declared a bankrupt, was thereby required to surrender himself to the commissioners in the said commission named, or the major part of them, on the said 1st, 2d, and 21st days of October, in, &c. aforesaid, at* 12 *of the clock at noon, on each of those days, at* [*the sessions-house in M.*] *and make a full discovery and disclosure of his estate and effects, and at the last sitting, the said bankrupt was thereby required to finish his examination. And the jurors aforesaid, on their oath aforesaid, do further present, that afterwards, to wit, on the said* [1st] *day of* [*October*], *in the year aforesaid, the major part of the said commissioners named, authorised, and appointed in and by the said commission, to wit, the said J. J. &c. did meet at* [*the sessions-house in M. aforesaid*] *in the county of* [*K.*] *aforesaid, and did proceed under and in the execution of the said commission, and they the last-mentioned commissioners did then and there examine the said C. D., and the said C. D. then and there appeared and submitted himself to be examined by the said last-mentioned commissioners, but not being then and there prepared to make a full disclosure and discovery of his estate and effects, then and there desired further time for the doing thereof, which was then and there granted to him accordingly; and that*

Finding defendant a bankrupt.

Notice to the bankrupt to appear, &c.

Notice in the Gazette.

First sitting of the commissioners.

(a) Let these statements agree with the commission itself.

(b) When the bankrupt is not in prison, a service, by leaving the notice at the usual place of his abode, will do. See the section, *ante*, 334.

afterwards, to wit, on the said 2d day of October, in the year aforesaid, at [the sessions-house in M.] aforesaid, the major part of the commissioners named and authorised in and by the said commission, to wit, the said J. J. &c. did meet, pursuant to the said notice, and did proceed under and in the prosecution of the said commission, that the said C. D. did not then and there make any disclosure or discovery of his estate and effects. And the jurors, on their oath aforesaid, further do present, that afterwards, to wit, on the said 21st day of October, in the year aforesaid, at [the said sessions-house in M.] aforesaid, in the county of [K.] aforesaid, the major part of the said commissioners named, appointed, and authorised in and by the said commission, to wit, the said J. J. &c. did meet in pursuance of the said notice, and did proceed under and in execution of the said commission; and the said C. D. then and there appeared and submitted himself, and was examined by the said last-mentioned commissioners touching his estate and effects, but the said bankrupt not being able satisfactorily to answer all such questions as the said last-mentioned commissioners had put to him, touching his the said C. D.'s estate and effects without a further investigation of his books and papers, they the said last-mentioned commissioners did therefore then and there adjourn the said bankrupt's last examination until the 22d day of October then instant, at that place, at twelve o'clock at noon of the same day, and whereof the said C. D. then and there had notice. At which time and place, that is to say, on the said 22d day of October, in the year of the reign aforesaid, at [the sessions-house aforesaid, in M.] aforesaid, in the county of [K.] aforesaid, the major part of the said commissioners named, appointed, and authorised in and by the said commission, to wit, the said J. J. &c. did meet and did proceed under and in the execution of the said commission, and thereupon the said C. D. then and there duly appeared before the said last-mentioned commissioners, in order to finish his examination pursuant to the said notice in the London Gazette for that purpose given, and they the said last-mentioned commissioners did then and there enter into the final examination of the said C. D. pursuant to the same notice. And the said C. D. did then and there upon his corporal oath, the (said last-mentioned commissioners then and there having sufficient and competent power and authority to administer the same oath to the said C. D. in that behalf,) say, depose, and swear (amongst other things) that the book marked A. which was then produced and delivered up by the said C. D. together with the goods and things seized by and under the said commission, did contain and were a full and true disclosure and discovery of all his the said C. D.'s estate and effects both real and personal, and how, and in what manner, to whom and upon what consideration, and at what time or times he had disposed of, assigned, or transferred any of his goods, wares, and merchandizes, money, or other estate and effects, and all books, papers, and writings relating thereto, of which he was possessed, or in or to which he was any ways interested or entitled, or which any person or persons before had or then had in trust for him, or to his use at any time before or after the issuing of the said commission, or whereby the said C. D. or his family had or might have or expect any profit, possibility of profit, benefit, or advantage whatsoever, except only such part of his estate and effects as had been really and bonâ fide before sold and disposed of in the way of his trade and dealings, and except such sums of money as had been laid out in the ordinary expense of himself and family, and that at the time of that (his the said C. D.'s) examination, he had delivered up to the said commissioners named, or the major part of them, or unto the assignees chosen under the said commission, all such part of his goods, wares, and merchandizes, money, estate, and effects, and all books, papers, and writings relating thereto, as were then in his custody, possession, or power, (the necessary wearing apparel of himself and children only excepted;) and the said C. D. then and there further said, that he had not removed, concealed, or embezzled any part of his estate real or personal, or any books of accounts, papers, or writings relating thereto, with an intent to defraud his creditors; and the said C. D. then and there further said, that he had not any plate in his possession got. And the jurors aforesaid, on their oath aforesaid, do further present, that the said C. D. did not, upon such his said examinations as aforesaid, or either of them, before the major part of the said commissioners in the said commission named, appointed, and authorised, after he the said C. D. became bankrupt, and after the issuing of the said commission as aforesaid, fully and truly disclose and discover all his estate and effects of which he was possessed, or in or to which he was interested or entitled before or after the time of the issuing the said commission as aforesaid against him, except such part of his estate and effects as had been really and bonâ fide sold and disposed of in the way of his said trade and dealing, and except such sums of money as had been laid out in the ordinary expenses of his family; nor did he the said C. D. upon such his said last-mentioned examination, or before or afterwards, deliver up to the said commissioners, or the major part of them, or unto the assignees chosen under the said commission, all such part of his goods, wares, and merchandizes, money, estate, and effects, and all

Second meeting of commissioners.

Third sitting, from which an adjournment.

Fourth sitting, adjourned last examination.

Swearing of defendant.

Embezzlement by the defendant.

FORMS.

books, papers, and writings relating thereto, as were at the time of his said examinations, or either of them, in his custody, possession, or power (the necessary wearing apparel of himself, his wife, and children only excepted,) but he the said C. D. not regarding the laws and statutes of the realm, nor the pains and penalties therein contained, after he became a bankrupt, and after the issuing of the said commission against him, and after he was so adjudged and declared a bankrupt as aforesaid, and had notice thereof as aforesaid, to wit, on, &c. with force and arms, at, &c. [venue] *aforesaid, wilfully, fraudulently, and feloniously, and with intent to defraud his the said C. D.'s creditors in that behalf, did remove, conceal, and embezzle part of his said personal estate to the value of 10l. and upwards, the same or any part thereof not being the necessary wearing apparel of himself, his wife, or children, that is to say, twenty silver spoons, twenty silver forks, &c. and twenty pieces of plate,* [here describe the property generally, see *ante*, 334,] *of the value of 500l. with intent to defraud his the said C. D.'s creditors, against the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity.* [Add one or more other counts as the case may suggest. There would be no occasion in such counts to repeat any of the proceedings previous to the finding of defendant a bankrupt. It would be best to refer to them as being stated in the first count.]

(No. 6.)

Indictment on 6 Geo. 4, c. 16, s. 112, against a bankrupt for not surrendering, and for not giving information respecting his effects.(*a*)

[State the trading, petitioning creditor's debt, bankruptcy, issuing of the commission, and the finding the defendant a bankrupt, as in the form, (No. 5), *ante*, 339, and then proceed as follows]: *And the jurors aforesaid, on their oath aforesaid, do further present, that afterwards, to wit, on, &c. notice in writing, signed by the said J. J., &c. the major part of the said commissioners in and by the said commission named and authorised, was, according to the direction of the statute in such case made and provided, delivered to the said C. D. personally, to wit, at, &c.* [venue] *aforesaid, [he the said C. D. then being in prison(b)] that the said commission of bankruptcy had been awarded and issued against the said C. D. and that the major part of the commissioners in and by the said commission named and authorised, had declared the said C. D. a bankrupt, and the said C. D. was by them the said three commissioners lastly above named, thereby summoned and required personally to be and appear before the commissioners in the said commission named, or the major part of them, on the first, second, and twenty-first days of October then next, at [the house of called] in, &c. aforesaid, at eleven of the clock in the forenoon, on each of the same days, then and there to be examined, and to make a full and true discovery and disclosure of all the estate and effects of the said C. D. according to the direction of the statute made and then in force concerning bankrupts. And afterwards, to wit, on, &c. notice was also given and published, according to the statute in that case made and provided, in the London Gazette, to wit, at, &c. aforesaid, that a commission of bankrupt was awarded and issued forth against the said C. D. and that he being declared a bankrupt, was thereby required to surrender himself to the commissioners in the said commission named, or the major part of them, on the first, second, and twenty second days of October then next, at eleven o'clock in the forenoon, on each of the same days, at [the house, &c.] in, &c. aforesaid, and make a full discovery and disclosure of his estate and effects, and at the last sitting the said bankrupt was thereby required to finish his examination. And the jurors aforesaid, on their oath, do further present, that afterwards, to wit, on, &c. the said major part of the said commissioners named and authorised in and by the said commission, to wit, the said J. J., &c. did meet at [the said house, &c. aforesaid,] in, &c. aforesaid, and did then and there further proceed in the execution of the said commission, pursuant to the notice so given and published in the London Gazette as aforesaid for that purpose. And that afterwards, to wit, on, &c. at [the the said house, &c. aforesaid,] in, &c. aforesaid, the said major part of the commissioners named and authorised in and by the said commission, to wit, the said J. J., &c. did meet pursuant to the said notice so given as last aforesaid, and did proceed further in the execution of the said commission, but that the said C. D. did not then surrender himself to them the said commissioners last named. And the jurors aforesaid, on their oath aforesaid, do further present, that afterwards, to wit, on the said, &c. the major part of the said commissioners in and by the said com-*

Notice to bankrupt.

Notice in Gazette.

First meeting of commissioners.

Second meeting.

Third meeting and adjournment.

(*a*) There being no printed form in any work for this offence in the new act, it is thought advisable to insert this.

(*b*) Or if not in prison, a notice left at his usual place of abode will do. See the section, *ante*, 334.

FORMS.

mission named and authorised, to wit, the said J. J., &c. did meet at [the said house, &c. aforesaid,] in, &c. aforesaid, pursuant to the said notice so given in the London Gazette as aforesaid, and the said last-mentioned major part of the said commissioners, to wit, the said J. J., &c. did thereupon at the said last-mentioned meeting at, &c. aforesaid, on the said, &c. defer the taking of the examination of the said C. D. until the twentieth day of October then instant, and did thereby accordingly adjourn the said last-mentioned meeting to the said twentieth day of October in the year last aforesaid, at eleven o'clock in the forenoon of the same day at [the said house, &c.] in, &c. aforesaid, for the purpose last aforesaid. And the jurors, &c. do further present, that afterwards, to wit, on the said, &c. the said J. J., &c. there being the major part of the said commissioners in and by the said commission named and authorised, did meet at [the said house, &c. aforesaid,] at, &c. aforesaid, pursuant to the adjournment last aforesaid, and the said C. D. then and there was brought and appeared before the said last named three commissioners, yet the said C. D. did not then and there or at any of the meetings or times aforesaid, or at any time whatsoever, before three of the clock, upon the forty-second day after he had the said notice in writing as aforesaid, surrender himself to the said commissioners named in the said commission, or the major part of them, and sign and subscribe such surrender, and submit to be examined upon oath (he the said C. D. not being then or at any of the times aforesaid, of the people called Quakers,) by and before such commissioners or the major part of them by such commission authorised, but he the said C. D. did wilfully and feloniously make default and omit and refuse to surrender and submit to be examined as aforesaid, with an intent to defraud his creditors, against the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity. [Add other counts as the case may suggest, and see note at end of form, *ante*, 342.]

The non-surrender and concealment.

(No. 7.)

[State the trading, petitioning creditors' debt, bankruptcy, issuing of the commission, the finding the defendant a bankrupt, the notice to him, and the notice in the Gazette, as in form, (No. 5,) *ante*, 339, and then proceed as follows:] *And the jurors aforesaid, on their oath aforesaid, do further present, that the said C. D. afterwards, to wit, on the said, &c. at* [place appointed for the meeting] *aforesaid, to wit, at, &c.* [venue] *aforesaid, came in his proper person, and then and there surrendered and submitted himself to be examined touching his estate and effects, by and before the said J. J., &c. being the major part of the said commissioners in the said commission named and authorised, in order to make a full discovery and disclosure of his said estate and effects, and to finish his examination pursuant to the said notice so given as aforesaid, and the said C. D. was then and there accordingly examined and duly sworn, and did take his corporal oath upon the Holy Gospel of God, before the said J. J., &c. (they the said J. J., &c. then and there having competent power and authority to administer an oath to the said C. D. in that behalf.) And the said C. D. being so sworn,(a) he the said C. D. not having the fear of God before his eyes, but being moved and seduced by the instigation of the Devil, and not regarding the laws and statutes of this realm, nor fearing the punishment therein contained, did then and there, to wit, on the day and year last aforesaid, at, &c.* [venue] *aforesaid, falsely, and maliciously, wickedly, wilfully, and corruptly, on his oath aforesaid, before the commissioners last aforesaid, answer, swear, and depose, that he the said C. D. had no plate in his possession, (thereby then and there meaning that he the said C. D. had no plate in his possession at the time of issuing the said commission of bankrupt,) whereas, in truth and in fact, the said C. D. had divers quantities of plate in his possession at the time of issuing the said commission of bankrupt, to wit, twenty silver spoons, twenty silver forks, &c. to wit, at, &c. aforesaid. And the jurors aforesaid, on their oath aforesaid, do further present, that at the time and on the occasion of the said C. D. so deposing and swearing as aforesaid, it became and was material to ascertain the truth of the matters so by him deposed to and sworn as aforesaid. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said C. D. on the said, &c. at, &c.* [venue] *aforesaid, on*

Indictment on 6 Geo. 4, c. 16, s. 99, against bankrupt for perjury, on his examination before the commissioners.

(a) In some forms is here inserted an averment that defendant was interrogated certain questions, and afterwards that he answered them, and in such answers committed perjury; see 2 Chit. C. L. 403; but as the *substance* of the perjury may be stated, this is unnecessary, and leads to an unnecessary length of form.

FORMS.

his said oath before the said J. J. &c. (so as aforesaid having competent power and authority to administer the said oath to the said C. D. in that behalf,) of his wicked mind, did falsely and in manner and form aforesaid, commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of our said Lord the King and his laws, to the evil example of all others, and against the peace of our said Lord the King his crown and dignity. And the jurors aforesaid, on their oath aforesaid, do further present, that the said C. D. not being able satisfactorily to answer all such questions as were put to him, touching his estate and effects, without a further investigation of his books and papers, the said J. J., &c. so being such commissioners as aforesaid, did, at the request of the said C. D. and with the consent of his creditors then present, adjourn the said C. D.'s last examination, from, &c. until, &c. at, &c. [place of adjournment] *aforesaid, to wit, at, &c.* [venue] *aforesaid. And the jurors aforesaid, on their oath aforesaid, do further present, that the said C. D. afterwards, to wit, on the said, &c. at, &c.* [place of meeting] *aforesaid, to wit, at, &c.* [venue] *aforesaid, again came in his proper person, and then and there again surrendered and submitted himself to be examined touching his estate and effects, by and before the said J. J. &c. being the major part of the said commissioners in the said commission named and authorised, in order to make a full discovery and disclosure of his estate and effects, and to finish his examination; and the said C. D. was then and there accordingly examined and duly sworn, and did take his corporal oath, upon the Holy Gospels of God, before the said J. J., &c. (they the said J. J., &c. then and there having competent power and authority to administer an oath to the said C. D. in that behalf,) and the said C. D. being so sworn as last aforesaid, then and there produced to and before the said last-named commissioners, certain accounts in writing, marked respectively with the letters A. and B. and signed by the said C. D. purporting to contain an account of all the credits, debts, and losses in trade of the said C. D. in which said account marked with B. and purporting to contain an account of the debts and losses in trade of the said C. D. there were and are the following items, (that is to say,)* [*Paid to G. B. of* 100*l. for goods (thereby then and there meaning that he the said C. D. had paid for certain goods, before then purchased by him the said G. B.)*] [here set out the other items contained in the said account complained of, with innuendoes.] *And the said C. D. then and there, to wit, on the day and year last aforesaid, at, &c.* [venue] *aforesaid, falsely and maliciously, wilfully and corruptly, on his oath last aforesaid, before the said last-mentioned commissioners, swore, and deposed, that the said accounts so produced and signed by the said C. D. purporting as aforesaid, were just and true accounts, whereas, in truth and in fact, the said accounts so produced and signed by the said C. D. purporting as aforesaid, were not just and true accounts: but on the contrary thereof, the said account marked with the letter B. so produced and signed by him the said C. D. purporting as aforesaid, was false in this, to wit, that* [*he the said C. D. had not paid the sum of* 100*l. or any part thereof for any goods purchased by him the said G. B.; and the said last-mentioned account was also false in this, to wit, that,* [here negative the remaining items if minute in like manner.] *And so, &c.* [conclude as in preceding count.]

Second count, assigning perjury on an adjourned examination.

Baptism, Proof of. *See* **Evidence**, Vol. II. p. 38; **Parish Registers**, Vol. V.

Barking Trees. *See* **Malicious Injuries to Property**, Vol. III.; **Larceny**, Vol. III.

Barns. *See* **Burning**, Vol. I.; **Malicious Injuries to Property**, Vol. III.

Baron and Feme. *See Index*, **Husband and Wife.**
As to Evidence by, see **Evidence**, Vol. II. p. 66 to 68.
As to Offences by, see **Wife**, Vol. V.

Baron Court.

THE *Court Baron* is a court which every lord of the manor (anciently called a *baron*) hath within the precinct of that manor. The business thereof is to inquire of matters concerning the lord and tenant in their *civil* capacity only, as of the death of tenants since the last court, of alienations, surrenders, encroachments, trespasses, escheats, forfeitures, and such like. But with this court is frequently held, by grant or prescription, a *Court Leet;* the jurisdiction whereof extendeth to all *criminal* matters within the precinct, for the preservation of the King's peace; for which see title Leet, Vol. III.

Barratry.

I. *What it is*, 345.
II. *How punished*, 345.

I. What it is.

THIS word *Barratry* we have received either from the *Danes* or *Normans*, or both: for *barrata* in the *Danish* and *baret* in the *Norman*, do equally signify a quarrel or contention.

And a *barrator*, in legal acceptation, doth signify a *common mover, exciter, or maintainer of suits or quarrels, either in courts or in the country.* 1 *Inst.* 368; 1 *Hawk.* c. 81, s. 1.

A common mover]—It seems clear that no one can be a barrator in respect of one act only; but every indictment for such crime must charge the defendant with being a *common barrator.* 1 *Hawk.* c. 81, s. 5; 8 *Rep.* 36.

Mover, exciter, or maintainer]—Yet it seemeth that an attorney is in no danger of being judged guilty of an act of barratry, in respect of his maintaining another in a groundless action, to the commencing whereof he was no way privy. 1 *Hawk.* c. 81, s. 1.

Also it hath been holden that a man shall not be judged a barrator in respect of any number of false actions brought by him in his own right; for in such cases he is liable to costs. 1 *Hawk.* c. 81, s. 4.

In Courts]—Either courts of record, or not of record, as in the county, hundred, or other inferior courts. 1 *Inst.* 368.

Or in the Country]—In three manners: 1. In disturbance of the peace. 2. In taking or keeping possession of lands in controversy, not only by force, but also by subtlety and deceit, and most commonly in suppression of truth and right. 3. By false inventions, and sowing calumniations, rumours, and reports, whereby discord and disquiet may grow between neighbours. 1 *Inst.* 368.

II. How punished.

[34 Edw. III. c. 1; 12 Geo. I. c. 29.]

By stat. 34 Edw. III. c. 1, the justices of the peace shall have power to restrain all barrators, and to pursue, arrest, take, and chastise them, according to their trespass or offence. 34 Edw. 3, c. 1.

BARRATRY.

And although this statute does not create the offence, but supposes it at common law, and only appoints the punishment, yet an indictment of barratry, concluding *against the form of the statute*, is holden to be good, and agreeable to many precedents. *Cro. Eliz.* 148; 1 *Hawk.* c. 81, s. 10.

But it hath been resolved that such indictment is not good, without also concluding *against the peace;* for this is an essential part of it, as being an offence by the common law; *Id.* s. 12; the omission, however, would now be cured after judgment by the 7 Geo. IV. c. 64, s. 20, *post*, Indictment, Vol. III.

And it hath been holden that an indictment of this kind may be good, without alleging the offence at any certain *place;* because from the nature of the thing, consisting of the repetition of several acts, it must be intended to have happened in several places: for which cause it is said that a trial ought to be by a jury from the body of the county. *Id.* s. 11.

This case, and that of a common scold, seem to be the only offences for which a general indictment will lie, without showing any of the particular facts in the indictment; for barratry is an offence of a complicated nature, consisting in the repetition of divers acts in disturbance of the peace, and it would be too prolix to enumerate them in the indictment; and therefore experience hath settled it to be sufficient to charge a man generally as a common barrator, and before the time to give the defendant a note of the particular matters which are intended to be proved against him; for otherwise it will be impossible to prepare a defence against so general and uncertain a charge, which may be proved by such a multiplicity of different instances; and therefore the court generally will not suffer the prosecution to go on in the trial of the indictment, without such note being given to the defendant. 1 *Hawk.* c. 81, s. 13; 2 *Hawk.* c. 25, s. 59; 1 *T. R.* 754.

As to the kind and manner of punishment, it is said that if the offender be a common person, he shall be fined and imprisoned, and bound to his good behaviour, and if he be of any profession relating to the law, he ought also to be further punished, by being disabled to practise for the future. 1 *Hawk.* c. 81, s. 14.

12 Geo. 1, c. 29. And by stat. 12 Geo. I. c. 29, s. 4, if any person, who hath been convicted of common barratry, shall practise as an attorney or solicitor, he shall be transported for seven years.

Barrister. *See* **Sessions**, Vol. V.; **Evidence**, Vol. II. p. 68.

Bastards.

CONCERNING the *Settlement* of Bastard Children, and the *Removal* of unmarried Women with child, see title **Poor**, Vol. IV.

I. *Who a Bastard, and how proved*, 347 to 351.

II. *Maintenance of*, 351 to 376.

1. *By Securing reputed Father*, 352 to 356.
[6 Geo. II. c. 31; 49 Geo. III. c. 68.]

2. *Security to indemnify Parish*, 356 to 359.
[54 Geo. III. c. 170.]

3. *Recognizance to appear*, 359.
[49 Geo. III. c. 68.]

4. *Order of Filiation and Maintenance*, 359 to 376.
Order by two Justices, or by Sessions, 359 to 365.
Form of Order, 365 to 370.
Appeal against Order, 370 to 372.
Removing it into King's Bench to quash it, 372.
Mode of enforcing the Order, 373.
[18 Eliz. c. 3; 3 Car. c. 4; 13 & 14 Car. II. c. 12; 6 Geo. II. c. 31; 49 Geo. III. c. 68.]

III. *Punishment of the Mother and reputed Father*, 376.
[18 Eliz. c. 3; 50 Geo. III. c. 51.]

IV. *Right of Parents to Custody of Bastard*, 377.

V. *Concealment of Birth of a Bastard Child*. 379.

VI. *Capacity of a Bastard as to Inheritance*, 379.

VII. *Forms*, 380.

I. Who a Bastard, and Proof of.

Who a bastard where no marriage.

WHO A BASTARD]—A bastard by our *English* laws, is one that is not only begotten, but born out of lawful matrimony. The civil and canon laws do not allow a child to remain a bastard if the parents afterwards intermarry; and herein they differ most materially from our law; which, though not so strict as to require that the child shall be *begotten*, yet makes it an indispensable condition, to make it legitimate, that it shall be born after lawful wedlock. 1 *Bla. Com.* 454; 2 *Inst.* 96.

If a woman grossly *enceinte* marry, it is the child of the husband; for when they testify their consent by a public marriage before the birth of the child, it is a public acknowledgment that the child is his, for at that time the child is one with the mother, and therefore in taking the mother, he takes the child with her. 1 *Roll. Abr.* 358.

In 1 *Inst.* 244, it is said, that if the issue be born within a month or a day after marriage between parties of full lawful age, the child is legitimate.

Where the parents have married so recently before the birth of the child that it could not have been begotten in wedlock, the marriage of the parties is the criterion adopted by the law, in such cases of antenuptial generation, for ascertaining the actual parentage of the child. For this purpose it will not examine when the gestation began, looking only to the recognition of it by the husband in the subsequent act of marriage. *Per Lord Ellenborough*, C. J. R. v. *Luffe*, 8 *East*, 207, 208, S. C.; *post*, 350.

As all children born before matrimony are bastard, so are all children born so long after the death of the husband, that by the usual course of gestation they could not be begotten by him. But this being a matter of some uncertainty, the law is not exact as to a few days. *Cro. Jac.* 451; see *post*, 349.

Marriage void.

The illegitimacy may be shown by proving the marriage *void* by a prior marriage, want of age, want of reason, want of consent of parent or guardian, where such consent is necessary, or the non-observance of the solemnities required by the Marriage Act. 2 *Phil. Evid.* 235; see **Marriage**, Vol. III.

Proof of illegitimacy.

PROOF OF ILLEGITIMACY]—It is to be observed in the first place, that children born during unlawful marriage are presumed to be legitimate, but this presumption may be removed by competent proof of their illegitimacy. 1 *Phil. Evid.* 158, 7 ed.

We will consider how the presumption of legitimacy may be removed; *first*, in cases where the husband *is alive* when the child is born; and *secondly*, when he is *dead* before it is born; and *lastly*, by what *witnesses* it may be rebutted.

(1.) When husband alive at birth.

(1.) *In Cases where Husband Alive when Child Born—By Want of Access*] —If the husband has had access to the wife, the issue will be legitimate,

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although the woman be proved to have been ever so unfaithful to the nuptial bed. *R.* v. *Brown*, 2 *Stra.* 811.

By want of access.

Access will in general be presumed where there has been an opportunity for it, even though there has been a voluntary separation between husband and wife, and it generally requires strong and difficult evidence to show it has not taken place. *R.* v. *Luffe*, 8 *East*, 207; 1 *Bla. Com.* 457; 1 *Phil. Evid.* 154, 6 ed.; *Morris* v. *Davis*, 3 *C. & P.* 215, 427.

Formerly, if the husband were within the four seas, no proof of *non-access* to his wife was admitted, but the child was deemed to be his: but as this notion was built on no rational foundation, it is now departed from; and though the husband and wife are both in England, if there be sufficient proof that he had no access to her, the child will be a bastard. This was determined in the case of *Pendrel* v. *Pendrel*, 2 *Stra.* 925; *Andr.* 9; which was an issue out of chancery to try whether the plaintiff were the heir at law of one *Thomas Pendrill.* It was agreed by court and counsel, on the trial at Guildhall, before Lord Chief Justice *Raymond*, that the old doctrine of *being within the four seas* was not to take place, but the jury were at liberty to consider of the point of access, which they did, and found against the plaintiff. And the Court of Chancery acquiesced in the determination. And see 1 *Phil. Evid.* 158, 7 ed.

Husband beyond seas.

The *usual proofs* of non-access are by showing that the child was conceived and born when the husband continued *beyond* the four *seas*; *R.* v. *Alberton*, 1 *Ld. Raym.* 395; 2 *Salk.* 483; *Co. Lit.* 244; but he need not be proved to have been so absent during the active period of gestation. *R.* v. *Luffe*, 8 *East*, 207.

Divorce.

Proof of a *divorce* a *mensa et thoro* will be *primâ facie* evidence of non-access, for obedience to the ecclesiastical sentence will be presumed. *St. George* v. *St. Margaret*, 1 *Salk.* 123; 1 *Bla. Com.* 457; *B. N. P.* 112; but such *primâ facie* evidence may be rebutted by proof of access. *Id.*

Physical impossibility.

Proof of Physical Impossibility on the part of the husband to procreate the child will be sufficient proof of its illegitimacy; as if the husband be only eight years of age. 1 *Roll. Abr.* 359; or if he is diseased, infirm, or bedridden. *Foscraft's case*, 1 *Roll. Abr.* 359; 1 *Bott*, 445; *R.* v. *Cuff*, 8 *East*, 200.

In *Lomas* v. *Holmden*, 2 *Stra.* 940, the defendants to prove illegitimacy were admitted to give evidence of inability from a bad habit of body. But their evidence not going to an *impossibility*, but an *improbability* only, that was not thought sufficient. And see *per Lord Ellenborough*, 8 *East*, 207.

Direct proof of non-access.

Direct Proof of non-access will of course be sufficient to establish the illegitimacy. *R.* v. *St. Bride*, 1 *Stra.* 51; *Pendrel* v. *Pendrel*, 2 *Stra.* 925, 1073; *R.* v. *Maidstone*, 12 *East*, 550; *Morris* v. *Davies*, 3 *Car. & P.* 427, 215.

Neither is it necessary in this case (at least where the parties have been long dead) to establish non-access by witnesses who can prove him *constantly* resident away from his wife.

Thus, proof that the husband left Norwich and went to reside in London, that his wife remained behind and lived with another man as his wife for years, during which time the child in question was born; that this child always went by the adulterer's name, and was reputed illegitimate in the family; has been held sufficient evidence of illegitimacy, though it did not clearly appear where the real husband had been from the time of conception to that of delivery. *Thompson* v. *Saul*, 4 *T. R.* 356.

So also proof of the husband's being beyond seas until within a fortnight of his wife's delivery, the child will be considered a bastard. *R.* v. *Luffe*, 8 *East*, 193; *R.* v. *Maidstone*, 12 *East*, 550.

And this point has been since established by the opinion of the judges in the case of a claim to the *Earldom of Banbury*, which involved a question of legitimacy in the person from whom the claimant derived his title. *Case of the Banbury Claim of Peerage*, 2 *Selw. N. P.* 731; S. P. reported in *Sim. & Stuart's Rep.* vol i. 153; 1 *Phil. Evid.* 158, 7 ed.

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The case of the *Banbury Peerage* was much cited in the case of *Head* v. *Head*, 1 *Turner's Ch. Rep.* 141; 1 *Sim. & Stuart's Rep.* 159. The Lord Chancellor there said, that "according to his recollection of that case, it was the opinion of the judges that where personal access is established, sexual intercourse is to be presumed, and that that presumption must stand until removed by clear and satisfactory evidence; whether that evidence apply directly to the period at which personal access has been proved, or whether it may be called satisfactory if it apply not to that period, but to antecedent and subsequent periods."

2d. Where husband dead at birth.

2dly. *In Cases where Husband Dead at Birth*]—It is a general rule, that if the child comes into the world within the usual period of gestation, it is to be considered legitimate; if beyond that period, illegitimate. *Radwell's case*, *Co. Litt.* 124 b.

"The usual period of gestation is nine calendar months, but there is very commonly a difference of one, two, or three weeks. A child may be born alive at any time from three months, but we have seen none born with powers of coming to manhood or of being reared before seven months or near that time; at six months it cannot be. I have known a woman bear a living child in a perfectly natural way, fourteen days later than nine calendar months; and I believe two women to have been delivered of a child alive in a natural way, above ten calendar months from the hour of conception." *Harg. & But. Co. Litt.* 123 b. *Information from Dr. Hunter.*

In a case where the wife was a lewd woman and she was delivered of a child forty weeks and ten days after the death of the husband, it was held legitimate. *Hale's MSS.; Stark. Evid. Part. IV.* 221, *n. a.* So where the child was born forty weeks and eleven days after the death of the first husband. *Hale's MSS.; Cro. Jac.* 541; *Godb.* 281.

If a man die, and his widow soon after marry again, and a child is born within such time as renders it dubious, from the course of nature, to which husband it belongs, the issue is said to be more than ordinarily legitimate, and may, upon arriving at the years of discretion, choose which of the fathers it pleases. 1 *Bott*, 444.

3d. What witnesses may prove illegitimacy, and how.

3dly. *What Witnesses may prove Illegitimacy, and how*]—Any persons usually competent, and the father and mother, may be called to prove the illegitimacy.

Father's evidence.

In *St. Peter's* v. *Old Swynford*, 2 *Sess. Cas.* 298, the *father* was permitted to bastardise the son; the chief justice declaring that he saw no reason why the father should be thought an incompetent witness, for his evidence in that case could no way discharge himself, but he would remain liable to maintain the bastard.

So in the case of *R.* v. *Bramley*, 6 *T. R.* 330, Lord *Kenyon*, C. J. said, "The evidence of the wife to prove that she and her supposed husband were never legally married was certainly admissible, though the justices at the sessions were to judge of the effect of it. In the case of *R.* v. *St. Peter's*, (*Burr. S. C.* 25, and *Bull. N. P.* 112,) it was expressly held that the supposed husband was a competent witness to disprove the marriage. There are also many other cases in which it has been decided that the parents may be called with respect to the legitimacy of their issue; and if they may be called to prove that they are legitimate children, there is no reason why they should be considered as incompetent when called upon to prove that the children are illegitimate. But in all these cases such testimony is open to great observation."

Wife's evidence.

But where the child is born in wedlock, the non-access of the husband ought to be proved otherwise than upon the wife's oath only; as in the following case:—

R. v. *Reading*, 2 *Sess. Ca.* 175. The defendant Reading was adjudged, by an order of bastardy, to be the putative father of a bastard child begotton of the wife of one Almont, of Sherborn. The said woman, on the appeal, gave evidence that the said Reading had carnal knowledge of her body in or

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about August, 1732, and several times since; and that her husband had no access to her from May, 1731, to the time of her examination in that court, being the 3d of October, 1733, and that the said Reading was the father of the said child. And the question, on removal of the same into the K. B. was, whether the wife in this case should be admitted as a witness for or against her husband, and to bastardise her own child? And the whole court were of opinion, that the wife could be a witness to *no other fact but that of incontinence*, and that this she must be admitted to be witness to from the necessity of the thing; but not to the absence of her husband, which might properly be proved by other witnesses; and they likened it to the case of hue and cry, where the person robbed shall be admitted a witness of the fact of robbery, but not to prove any other matter relating thereto, as in what hundred the place was, and the like, because they may be proved by others.

Where a child appears to have been born in wedlock, the evidence of the parents, especially of the mother, who is the offending party, is inadmissible to prove the non-access of her husband, and bastardise the issue. This is a rule founded in decency, morality, and policy. *Goodright dem. Stevens* v. *Moss*, 2 *Cowp.* 591.

And it has been held, that a woman cannot give evidence of the non-access of her husband to bastardise her issue, although he be dead at the time when the wife is examined, for the rule is grounded upon the general principle of public policy affecting the children born during marriage, as well as the parties themselves. *R.* v. *Kea*, 11 *East*, 132.

Lord *Ellenborough*, C. J. there said, that "the wife may be examined as to access of some other person, but not as to the non-access of her husband; that must be proved *aliunde*." *MS.* See Evidence, Vol. II. p. 67.

On examination of the wife and on *other proof*.

In the case of *R.* v. *Bedall*, *Andr.* 8; 2 *Stra.* 1076; the order reciting that on the examination of the mother, *and on other proof*, it appeared that her husband had no access to her, was held to be good; for there the woman's oath is not set forth as the only evidence, but *other proof*, which must be intended legal proof.

Order made as well on the oath of the wife *as otherwise* good.

R. v. *Luffe*, 8 *East*, 193. By an order of bastardy, dated Aug. 20, 1806, it was *inter alia* stated, "whereas it appeared unto us the said justices, as well upon the oath of the said Mary Taylor *as otherwise*, that her husband hath been beyond the seas, and that she did not see her said husband, nor *had access to him* from the 9th of April, 1804, until the 29th of June last past, and whereas it hath also appeared to us, the said justices, as well upon the complaint, &c. as upon the oath of the said M. T. that she, the said M. T. on or about the 13th of July now last past was delivered of a male bastard child, in the said parish of B. and that the said male bastard child is *likely to become chargeable*, &c. we, therefore, *upon examination* of the cause and circumstance of the premises, *as well upon the oath of the said M. T. as otherwise*, do hereby adjudge, &c. There were three objections made to this order, *viz.* 1st, that the wife was admitted to prove the non-access of her husband; 2dly, that this being the child of a married woman, the justices had no jurisdiction to make an order of affiliation, unless the child appeared to have been actually chargeable, and not merely likely to become so; 3dly, that the non-access of the husband was not proved to have continued during the whole time of the wife's pregnancy, which was necessary to bastardise the issue. It was held *by* the court, that the words "as otherwise" should be intended as evidence given upon oath: that it did not appear to what particular facts the wife deposed, or what was proved by other evidence; and then the rule laid down in *R.* v. *Bedall* applied, that if there were other witnesses besides the wife, and she were competent to prove any part of the case, the court would intend, in support of an order framed like the present, that she was examined only as to those facts which she was competent to prove: as to the second objection, it is a consequence which follows of course from establishing the *bastardy* of the child that is born out of *lawful matrimony*. A child born by adulterous intercourse is as much within the provision of the act of Geo. II. as one which is born of a single woman. As to the third objection, that as it appeared that the husband returned within access of the wife about a fort-

night before the child was born, he must be presumed to be the father of it: by the law of the land no man can be a bastard who is born after marriage, *unless for special matter*. The fact of access or non-access may be gone into. Circumstances which shew a natural impossibility that the husband could be the father of the child of which the wife is delivered, whether arising from his being under the age of puberty, or from his labouring under disability occasioned by natural infirmity, or from the length of time elapsed since his death, are grounds on which the illegitimacy of the child may be founded; that on the ground of *improbability*, however strong, they (*the court*) should not venture to proceed, but only upon such as showed absolute physical impossibility; that the general presumption would prevail, except a case of plain natural impossibility were shown, and to establish as an exception a case of such extreme impossibility as the present could not do harm. See *supra*, as to the latter objection.

The fact of access or non-access may be gone into.

The parents' declaration, on oath or otherwise, may be adduced as evidence *after their decease*, of the fact of marriage and of the time of birth; *Anon.* 12 *Vin.* 247; *R.* v. *Bramley*, 6 *T. R.* 330; 1 *Phil. Evid.* 240, and authorities there cited; and so is the declaration or memorandum of a surgeon deceased as to the latter fact; see 10 *East*, 120; 2 *Vin. Abr. Evid.* T. b. 91, *post*, Evidence, Vol. II. p. 30, 31.

Declarations by parents, &c.

II. Maintenance of Bastards.

And herein,—1st. Of the Maintenance of Bastards at Common Law; and, —2dly. Of their Maintenance by Statute.

(1.) *At Common Law*]—At *common law* the father is not liable for his child's support unless he enter into some express or implied promise to become so; 5 *Esp.* 131; and therefore a third person who may relieve the child even from absolute want cannot sue the father for remuneration. *Id. per Le Blanc*, J. 4 *East*, 84; *Sir T. Raym.* 260; 1 *Car. & P.* 1, 5; 2 *Car. & P.* 82; *Furrillio* v. *Crowther*, 4 *D. & R. M. C.* 1; 7 *D. & R.* 612, *S. C.* In the latter case, where the putative father had made various payments for maintenance, and then refused to continue its support until the mother obtained an order of filiation, it was held, that no action would lie at the suit of the mother for arrears of maintenance.

(1.) At common law.

The common law considers moral duties of this nature, like others of imperfect obligation, as better left in their performance to the impulse of nature. *Id.*

A parent, however, may, *under circumstances*, be indicted at common law for not supplying an infant with necessaries, &c. See *R.* v. *Friend*, *Russ. C. C.* 20; 2 *Campb.* 650, *ante*, 177.

Where a bastard child is born, for whose support the parents neglect to provide necessaries, the parish officers are obliged to do it without an order of justices for that purpose. *Hags* v. *Bryant*, 1 *H. Black.* 253.

(2.) *By Statutes*]—Particular *statutes* have been passed in order to compel parents to maintain their children, and at the same time to relieve the parish from that burthen.

(2.) By statutes.

Such statutes are the 43 Eliz. c. 2, s. 7; 7 Jac. I. c. 4, s. 8; 59 Geo. III. c. 12, s. 31, 32; and 5 Geo. IV. c. 83, s. 3, 4; which relate to *legitimate* children, and will be found fully noticed hereafter in *post*, title Poor, Vol. IV.

The statutory provisions concerning the maintenance of *bastards* are the 18 Eliz. c. 3; 7 Jac. I. c. 4; 3 Car. I. c. 4; 13 & 14 Car. II. c. 12; 6 Geo. II. c. 31; 49 Geo. III. c. 68; which we will now notice.

The usual steps to be taken to secure the maintenance of the bastard child, are—by securing the reputed parent,—making him give a security to indemnify the parish,—or making him enter into recognizances to appear at the sessions,—and making an order of maintenance on him.

(1.) Securing the reputed Father.

Where woman *delivered* of bastard.

Where Woman delivered]—By stat. 6 Geo. II. c. 31, s. 1, reciting "whereas the laws now in being are not sufficient to provide for the securing and indemnifying parishes and other places from the great charges frequently arising from children begotten and born out of lawful matrimony," it is enacted, "that if any single (*a*) woman shall be *delivered* of a bastard child, which shall be chargeable or likely to become chargeable to any parish or extra-parochial place (*b*), [or shall declare herself to be with child, and that such child is likely to be born a bastard, and to be chargeable to any parish or extra-parochial place,] and shall, [in either of such cases,] in an examination (*c*) to be taken in writing, upon oath, before one or more justice or justices of the peace of any county, riding, division, city, liberty, or town corporate, wherein such parish or place shall lie, charge any person with having gotten her with child; it shall and may be lawful to and for such justice or justices, upon application made to him or them by the overseers of the poor of such parish, or by any one of them, or by any substantial householder of such extra-parochial place, to issue out his or their warrant or warrants (*d*) for the immediate apprehending of such person so charged as aforesaid, and for bringing him before such justice or justices, or before any other of his Majesty's justices of the peace for such county, riding, division, city, liberty, or town corporate: and the justice or justices before whom such person shall be brought, is and are hereby authorised and required to commit (*e*) the person so charged as aforesaid (*f*) to the common gaol or house of correction of such county, riding, division, city, liberty, or town corporate, unless he shall give *security to indemnify* (*g*) such parish or place, or shall enter into a *recognizance* with sufficient surety (*h*), *upon condition to appear* at the next general quarter sessions, or general sessions of the peace, to be holden for such county, riding, division, city, liberty, or town corporate, and to abide and perform such order or orders as shall be made in pursuance of an act passed in the eighteenth year of the reign of her late Majesty Queen Elizabeth, concerning bastards, begotten and born out of lawful matrimony."

Charges person on oath with being the father.

He may be immediately apprehended,

and committed if he do not give security or enter into a recognizance to appear, &c.

Justices on prisoner's request may summon overseers, &c.

By Sect. 3 it is enacted, "that upon application (*i*) made by any person who shall be committed to any gaol or house of correction *by virtue of this act*, or by any person on his behalf, to any justice or justices residing in or near the limits where such parish or place shall lie, such justice or justices is and are hereby authorised and required to summon (*k*) the overseer or overseers of the poor of such parish, or one or more of the substantial householders of such extra-parochial place, to appear before him or them at a time and place to be mentioned in such summons, to show cause why such person should not be discharged; and if no order shall appear to have been made in pursuance of the said act of the eighteenth year of the reign of her late

And if no order made within six weeks after delivery, prisoner to be set at liberty.

(*a*) It extends to married women, see *post*, 354.

(*b*) The words in the above statute between brackets, "or shall declare herself to be with child, and that such child is likely to be born a bastard, and to be chargeable to any parish or extra-parochial place," &c. need not be attended to, for by stat. 49 Geo. III. c. 68, s. 6, so much of stat. 6 Geo. II. c. 31, "as authorises the justice or justices before whom the reputed father of a bastard child shall be brought, *in cases where the woman has not been delivered, to commit* such reputed father to the common gaol or house of correction, unless he shall give security to indemnify the parish or place, or shall enter into a recognizance with sufficient surety, upon condition to appear at the next general quarter sessions or general sessions of the peace," is repealed.

The s. 2 of this stat. of 6 Geo. II. is also virtually repealed, as that section applies only to cases of commitments, where the woman has *not* been delivered.

(*c*) See form, (No. 1), *post*.
(*d*) See form, (No. 2), *post*.
(*e*) See form, (No. 3), *post*.
(*f*) See form, (No. 3), *post*.
(*g*) See form, (No. 4), *post*.
(*h*) See form, (No. 5), *post*.
(*i*) See form, (No. 6), *post*.
(*k*) See form, (No. 7), *post*.

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Majesty Queen Elizabeth, within six weeks after such woman shall have been delivered (*a*), such justice or justices shall and may discharge (*b*) him from his imprisonment in such gaol or house of correction to which he shall have been committed."

Woman not to be examined relating to her pregnancy, till one month after her delivery.

Sect. 4. Provided, "that it shall not be lawful for any justice or justices of the peace to send for any woman whatsoever before she shall be delivered, and one month after, in order to her being examined concerning her pregnancy, or supposed pregnancy, or *to compel any woman before* (*c*) she shall be delivered, to answer to any questions relating to her pregnancy, any law, usage, or custom to the contrary notwithstanding."

Where woman *not delivered.*

Where Woman not delivered]—By stat. 49 Geo. III. c. 68, s. 2, it is enacted, "that if any single (*d*) woman shall declare herself to be *with child*, and that such child is likely *to be born* a bastard and to be chargeable to any parish, township, or extra-parochial place, and shall in an examination (*e*), to be taken in writing upon oath before any justice of the peace of any county, riding, division, city, liberty, or town corporate wherein such parish, township, or place shall lie, *charge* any person with having gotten her with child, it shall be lawful to and for such justice, upon application made to him by the overseer of the poor of such parish or township, or by any substantial householder of such extra-parochial place, to issue out his warrant (*f*) for the immediate apprehending of such person so charged as aforesaid, and for bringing him before such justice, or before any other justice of the peace of such county, riding, division, city, liberty, or town corporate: and the justice before whom such person shall be brought, having authority in this behalf, is hereby authorised and required to commit (*g*) the person so charged as aforesaid to the common gaol or house of correction of such county, riding, division, liberty, or town corporate, unless he shall give security (*h*) to indemnify such parish or place, or shall enter into a recognizance (*i*) with sufficient surety or sureties upon condition to appear at the next general quarter sessions or general sessions of the peace to be holden for such county, riding, division, city, liberty, or town corporate (*k*), to abide and perform such order or orders as shall then be made in pursuance of the said act of the eighteenth year of the reign of Queen Elizabeth, unless one such justice as aforesaid shall have certified in writing under his hand (*l*) to such general quarter sessions or general sessions of the peace, that it had been proved before him on oath (*m*) of one credible witness, that such single woman had not been then delivered or had been delivered within one month only previous to the day on which such general quarter sessions or general sessions of the peace shall be holden, *or* unless two justices of the peace of such county, riding, division, city, liberty, or town corporate, shall have certified in writing under their hands (*n*) to the next, or where such woman shall not have been delivered as aforesaid, then *to* the immediately subsequent general quarter sessions or general sessions of the peace, that an order of filiation had been already made on the person so charged, or that such order was not then requisite to be made, on account of the death of the child born a bastard, or for other like sufficient reason; in each of which cases *firstly* before mentioned, it shall be lawful for the justices assembled at such general quarter sessions or general sessions of the peace, to respite such recognizance to the then next general quarter sessions or general sessions of the peace to be holden for such county, riding,

Person charged on oath with having gotten any single woman with child, may be immediately apprehended, &c.

Certificate by one justice.

Of non-delivery, or of delivery within one month previous to sessions.

Certificate of two justices.

Of an order made, or that an order was not requisite. Expenses.

Respiting recognizance, &c.

(*a*) *Query*, whether this section be not in effect repealed by the 49 Geo. III. c. 68, s. 6, *ante*, 352, note (*b*).

(*b*) See form, (No. 8), *post*.

(*c*) See construction on this, 6 *B. & Cres.* 80; *post*, 354.

(*d*) Extends to married women, *post*, 354.

(*e*) See form, (No. 9), *post*.

(*f*) See form, (No. 10), *post*.

(*g*) See form, (No. 11,) *post*.

(*h*) See form, (No. 4), *post*.

(*i*) See form, (No. 12), *post*.

(*k*) The word "and" is in stat. 6 Geo. II. c. 31, s. 1, but is omitted in this statute.

(*l*) See form, (No. 13), *post*.

(*m*) See forms, (No. 14, 15), *post*.

(*n*) See form, (No. 16), *post*.

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division, city, or town corporate, without requiring the personal attendance of the putative father so bound, or of that of his surety or sureties, and in either of the said two *last*-mentioned cases it shall be lawful for the justices assembled as aforesaid wholly to discharge such recognizance."

The latter act provides for the expenses of securing the reputed father, see *post*, 361, 362.

Object and constructions of these acts. (*a*)

Object of and Construction upon these Statutes]—Before the 6 Geo. II. every magistrate, at his discretion, might bind to his good behaviour any person *charged* or *suspected* to have begotten a bastard, that he might be forthcoming when the child should be born, and the like might be done *after* the child's birth and before an order made under the 18 Eliz. c. 3. One object of the 6 Geo. II. therefore was to restrain justices from proceeding on the application of lewd women pretending to be with child, &c. till complaint by the parish officers, &c. *Per Foster*, J. *R.* v. *Fox*, 1 *Bott*, 472. The act, therefore, directs the order to be made by the overseers of the poor. *R.* v. *St. Mary, Nottingham*, 13 *East*, 57; 2 *Nolan, P. L.* 286; see *post*, 362, 363.

The second object of that statute was for more effectually indemnifying the parish from *expense*, and by giving it a more prompt remedy for securing the putative father, and better security for his future appearance to answer an order of filiation. 1 *Bott*, 472; 2 *Nolan*, 286, 7.

The object of the 49 Geo. III. c. 68, is in furtherance of the objects of the 6 Geo. II. c. 31.

Married women.

The acts extend to the bastards of married women. *R.* v. *Luff*, 8 *East*, 204.

Soldiers.

A soldier, though in actual service, is not protected by the Mutiny Act from the provisions of these acts. *R.* v. *Bowen*, 5 *T. R.* 156; *R.* v. *Archer*, 2 *T. R.* 156, *post*, 374.

Who to make charge.

The charge is to be made by the mother with the concurrence of the parish officers.

Guardians.

Where parishes are united under the 22 Geo. III. c. 83, the guardian thereby appointed is substituted in the overseer's place, and one who is *de facto* such, being so received and acknowledged by the parish, though not legally appointed, is competent to make the complaint. See *R.* v. *Martyr*, 13 *East*, 55.

In *Exp. Martin*, 6 *B. & C.* 80; 9 *D. & R.* 65, S. C.; it was made a question whether a clerk to the guardians of the poor was the proper person to make the complaint, and whether it ought not to be made by the guardians themselves; the point was not decided. At all events, a complaint by the latter would be the safer course.

To what justices.

The justices of the county or place within which the parish or place to which the child is likely to be chargeable is situated, are the justices to whom the complaint should be made. *R.* v. *St. Mary, Nottingham*, 13 *East*, 57.

Examination.

It has lately been decided, that under the 6 Geo. II. c. 31, *one* justice has no power to compel the woman to be examined, (that power being given to *two* justices under 18 Eliz. c. 3, *post*, 360, 362,) and although one justice may act if the woman *comes* before him and charges any person with being the father of the child, that is very different from *compelling* her to answer interrogatories and so to make such charge; and, therefore, where a single woman, having been delivered of a bastard child, was committed by one justice of the peace for refusing to answer inquiries as to who was the father of the child, it was held the commitment was bad. *Exp. Martin*, 6 *B. & Cres.* 80; 9 *D. & R.* 65; 4 *D. & R. Mag. Ca.* 191, S.C.; see *Billings* v. *Prinn*, 2 *W. Black.* 1017; *post*, 365.

It is said that no other person than the mother, such as a nurse, &c. is compellable to disclose the father's name, or to give security to the parish;

(*a*) See the valuable work of the late Mr. Nolan's on the Poor Laws, 4th edit. 286 to 290.

SECURING THE FATHER.

R. v. *Southby*, 1 *Bott.* 472; but it should seem they are compellable to give evidence before the justices on making the order of filiation.

Secreting the mother.

It seems questionable whether it is any offence to secrete the woman with her own consent, in order to prevent her giving evidence about the father. *R.* v. *Chandler*, 1 *Stra.* 612; 2 *Ld. Raym.* 1368. It is submitted that it is.

Escape.

A justice may bind those who procure the putative father or mother to run away, (so that an order cannot be made or performed to their good behaviour,) to be forthcoming at the next general gaol delivery or quarter sessions. *Dalt.* c. XI. *Bastardy.*

The sessions cannot fine a constable for suffering the putative father to escape. *R.* v. *Ridge*, 1 *Bott*, 507.

These proceedings before the magistrate are in general *exparte*.

Summons.

No summons is generally issued against the father, especially if it be apprehended he would abscond. It is as well, however, to issue one if such absconding be not apprehended. See 13 *East*, 31; 2 *Bing.* 63; *post*, Conviction, Vol. I. p. 368.

Warrant.

The justice should, after being satisfied, from the examination, of the party being the father, issue his warrant to apprehend him. Such warrant continues in force until it is fully executed and obeyed; before that is done, the party may be arrested under it at any time, however distant, during the magistrate's continuance in the commission; and where the reputed father had been taken under a warrant, and agreed to give a bond of indemnity with two sureties, but one of the sureties not executing the bond, he was taken a second time under the same warrant, it was held legal. *Dickson* v. *Brown*, *Peake's C. N. P.* 234; *Mayhew* v. *Parker*, 8 *T. R.* 110.

Proceedings at hearing.

The proceedings before the justice, when the father is brought before him, are pointed out by the statutes 6 Geo. II. and 49 Geo. III. *ante*, 352, 353. The justice is, by the terms of the act, *bound* to commit the father, unless he gives the security required by such statutes, except in the cases provided for by the 49 Geo. III. c. 68, s. 2, as to magistrates, &c. *ante*, 353.

(2.) Security to Indemnify the Parish.

Security to indemnify.

By the aforesaid statutes of 6 Geo. II. c. 31, and 49 Geo. III. c. 68, s. 2, the justice before whom the party shall be brought shall commit him, unless he shall give security to indemnify the parish, (see form, *post*, No. 4,) or enter into a recognizance to appear at the sessions, (see form, *post*, No. 12).

Overseers may sue on security to indemnify against bastards.

By stat. 54 Geo. III. c. 170, s. 8, it is enacted, "that all securities given or received, or hereafter to be given for indemnifying any district, parish, township, or hamlet, for the maintenance of any bastard child or children respectively, or any expenses in any way occasioned by such district, parish, township, or hamlet, by reason of the birth or support of any bastard child or children born within such district, parish, township, or hamlet, or chargeable thereto, shall be and the same are hereby declared to be vested in the overseers of the poor of such district, parish, township, or hamlet for the time being; and that it shall and may be lawful for the overseers of the poor of such district, parish, township, or hamlet, to sue for the same as and by their description of overseers of such district, parish, township, or hamlet; and such action so commenced by such overseers shall in no ways abate by reason of any change of overseers of such district, parish, township, or hamlet, pending the same, but shall be proceeded in by such overseers for the time being as if no such change had taken place, any law, usage, statute, or custom to the contrary in anywise notwithstanding."

Inhabitants to be competent witnesses for recovery of charges for maintenance of bastards.

And by the same statute, sect. 9, "no inhabitant or person rated, or liable to be rated to any rates or cesses of any district, parish, township, or hamlet, or wholly or in part maintained or supported thereby, or executing or holding any office thereof or therein, shall before any court or person or persons whatsoever be deemed and taken to be by reason thereof an incompetent witness for or against such district, parish, township, or hamlet, in any matter relating to such rates or cesses; or to the boundary between such district,

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parish, township, or hamlet, and any adjoining district, parish, township, or hamlet; or to any order of removal to or from such district, parish, township, or hamlet; or the settlement of any pauper in such district, parish, township, or hamlet; or touching any bastards chargeable or likely to become chargeable to such district, parish, township, or hamlet; or the recovery of any sum or sums for the charges or maintenance of such bastards; or the election or appointment of any officer or officers, or the allowance of the accounts of any officer or officers of any such district, parish, township, or hamlet, any law, usage, statute or custom to the contrary in anywise notwithstanding."

Nature and effect of the indemnity.

The taking of a bond seems not so convenient for the parish as an order made by the justices, because the suing upon a bond is both tedious and expensive, whereas the course of carrying an order into execution is very short and easy.

But then, on the other hand, a bond will bind a man's executors; but the order of justices being obligatory only upon the man himself, when he dies the order dieth with him.

The parish officers can only take security from the party to *indemnify the parish*: they cannot take a security for a sum of money in gross, payable at all events. Thus in *Cole and others* v. *Gower and another*, 6 *East*, 110, H. T. 45 Geo. III., Gower having been charged with being the father of a bastard child, gave the overseers three promissory notes, one for 6*l.* and the other two for 7*l.* each. The woman, after the notes were given, was delivered of a still-born child. An action having been brought on one of these notes, the defendant tendered 5*l.*, which was more than sufficient to defray the actual expenses (3*l.* 14*s.*) incurred by the parish, and pleaded the general issue as to the rest. On the trial a special case was reserved, and the question was, whether the defendants were liable beyond the 5*l.* which had been tendered. For the plaintiffs it was contended that the statutes did not prevent a contract of this sort. That a compromise of this nature was beneficial to both parties, to the father because he gets rid of a burthen to an indefinite amount, and to the parish because they secure, at all events, a certain fund for the maintenance of the child, which they might otherwise lose by the future inability or absconding of the father. On the other hand it was insisted that the contract was void, it being against the positive provisions of the legislature, and against public policy; that the object of the statute of Geo. II. was not the punishment of the father, but the indemnity of the parish: that the statute having directly authorised one kind of security, had virtually excluded all others; and that this was a species of wager upon the life of the child, giving an interest to the parish officers in its death. And of this opinion were the *whole court*, who thought that the plaintiffs were not entitled to recover beyond the sum paid into court, whether considering the contract as void on principles of public policy, or considering it with relation to the individuals with whom it was made, as a contract for gain or loss by persons clothed with a public trust upon the subject-matter of their trust, and giving them an interest in the mal-execution of it; that the law did not mean to make this a matter of speculation of loss or gain to the parish; that it had said that the security should be given to them in order to *indemnify* the parish, and having so said, it had excluded every other consideration.

A deposit of a sum of money with the parish officers by way of composition with the parish is illegal, and may be recovered back; such a deposit being inconsistent both with the spirit and letter of the laws relative to the maintenance of bastards, and giving the parish officers an interest in the death of the child. *Clark* v. *Johnson*, 3 *Bing.* 424; 11 *Moore*, 319, S. C.

And if the putative father of a bastard pay before its birth a fixed sum to the parish officers to discharge him of all future responsibility for the maintenance of the child after the birth and death of the child, he may recover back such part of the money as remains unexpended as had and received to his use. *Watkins* v. *Hewlett*, 1 *Brod. & B.* 1; 3 *Moore*, 211, S. C.

Where the father of a bastard child, upon whom an order of filiation had been made, paid several sums on that account to the parish, and during all that time for which he paid, the child was in the Foundling Hospital, and

the parish put to no expense; it was held he might recover it back. *Hodgson* v. *Williams*, 6 *Esp.* 29.

The parties receiving the money cannot discharge themselves by paying it over to their successors in office. *Townson* v. *Wilson*, 1 *Campb.* 396.

Nature of.

If a bond be given, it is generally entered into by the reputed father, and one or more sureties, with the existing churchwardens and overseers, in trust for the parish, conditioned to indemnify and save them harmless from all costs and charges whatsoever for or by reason of the birth, education or maintenance of the child, and all actions, suits, charges, troubles, and demands of and concerning the same. See form, (No. 4), *post.*

All the inhabitants of the parish are considered parties to it, and the overseers but mere trustees for them. *Per Lee*, C. J. *Newland* v. *Osman*, 1 *Bott*, 460.

The parish officers have a right to fix the amount of the security to be given. *Per Ld. Kenyon*, C. J. *Dickenson* v. *Brown*, *Peake's C. N. P.* 234.

A bond conditioned for payment to the overseers of a certain weekly sum so long as the bastard should continue chargeable, is valid. *Strangeways* v. *Robinson*, 4 *Taunt.* 498; *post*, 358.

Where the putative father of a bastard child gave a *voluntary* bond, and not under the compulsion of the 6 Geo. II. c. 31, to the parish officers, conditioned for the payment of a sum certain every three months until the child should be *deemed* capable of providing for herself, it was held that such bond was good, and the condition sufficiently certain. *Middleham* v. *Bellerby*, 1 *M. & S.* 310.

Forfeiture of bond.

So long as the parish remain not damnified there is no forfeiture of the bond.

The bond becomes forfeited as soon as the parish has been put to costs and charges for the child's support.

But if such charges and expenses were not incurred *necessarily* and in discharge of a legal obligation, the bond is not forfeited: and in a case where the defendant was apprehended under the 6 Geo. II., and gave a bond of indemnity to the parish against the expenses of a child likely to be born a bastard; the mother removed to the parish of S. and was delivered there, but returned to W., the place of her settlement, carrying her child with her, where she received 1*s.* 6*d.* weekly from the overseers of W. for the maintenance of herself and child; an action being brought by the overseers of W. against the father's surety to recover this money, the Court gave judgment for the defendant; *et per Lord Mansfield*, C. J. "The payment by the parish officers of W. was doubly *voluntary;* first, because there has been no order on them to pay, and secondly, because they were not liable to maintain the child, but the parish where it was born, and they should have applied to the officers of that parish." *Simson* v. *Johnson*, *Dougl.* 7.

See a case, *ante*, 356, where the child was kept at the Foundling Hospital at no expense to the parish.

If the father offer to take and maintain the child, and the parish choose to support it, they cannot proceed against him on the bond. *Newland* v. *Osman*, 1 *Bott*, 460.

Officers do not require an *order* of maintenance, to recover upon a bond given to indemnify a parish.

But in *Hays* v. *Bryant*, 1 *H. Black.* 253, in C. P., debt on a bond in the penalty of 50*l.* brought by the parish officers of Ridgwell in Essex, conditioned to indemnify the parish of Ridgwell against the charges of such bastard child or children as one Elizabeth Winch then went with, and should be delivered of. It was objected that the plaintiffs or parishioners were not obliged to maintain the children without a justice's order for that purpose: but Mr. J. *Wilson*, who tried the cause, over-ruled the objection, and a verdict was found for the plaintiffs. A rule having been granted to show cause why the verdict should not be set aside, and a nonsuit entered; the Court held clearly that an order of justices was not necessary to make the officers of the parish liable to do what they were otherwise under a legal obligation of doing,

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namely, to provide necessaries for the children, and therefore discharged the rule.

To debt on bond, conditioned for the payment of a weekly sum for maintenance of a bastard so long as it should be chargeable, it is no plea that after the child attained the age of seven years, the putative father offered thenceforth to keep and maintain the child, and requested the overseers to deliver it to him, without showing that the child was within the power and custody of the overseers. *Strangeways* v. *Robinson*, 4 *Taunt.* 498.

Bankruptcy, &c.

Where the obligor in a bastardy bond, after the bond had been forfeited, became bankrupt and obtained his certificate; the Court of King's Bench held, that the parish officers were not thereby precluded from recovering upon the bond further expenses incurred subsequently to the bankruptcy. *Overseers of St. Martin* v. *Warren*, 1 *B. & A.* 491; 2 *Stark. N. P.* 188, S. C.; but see now the 56th section of the 6 Geo. 4, c. 16.

The obligors, though discharged under the Insolvent Debtors' Act subsequently to a judgment on the bond, are liable for expenses incurred in respect of the bastard subsequently to their discharge. *Davies* v. *Arnott*, 3 *Bingh.* 154; 10 *Moore*, 539, S. C.

Action on security.

An action on a bond to indemnify a parish against the expenses of a bastard child, must be brought in the names of the overseers for the time being, and not of those to whom the bond was given. *Addey* v. *Woolley*, 3 *Moore*, 21; 8 *Taunt.* 691, S. C.

The action should be brought against all or each of the obligors.

The bond being only an *indemnity*, the obligors cannot be held to bail beyond the amount of the damages actually sustained by the parish. *Kirk* v. *Strickland*, *Dougl.* 449.

And no more than the amount of such damage can be recovered by a verdict in such action. *Id.*

No more than the whole penalty of the bond is recoverable, and the Court will stay the proceedings on payment of such penalty and costs. *Brangwin* v. *Perrot*, 2 *Black. Rep.* 1190. It was moved for leave to pay 40*l.* (being the whole penalty of a bond to indemnify a parish against a bastard child) into court with costs. It was objected that this was an action for a single breach of the bond on which the parish was entitled to recover; after which the penalty shall still remain in full force, to answer subsequent breaches, as they may arise, *in infinitum*. But this was not allowed by the Court; and Ld. C. J. *De Grey* said, "This is so plain a case that nothing that one can say can make it plainer. The bond ascertains the damage by consent of parties. If, therefore, the defendant pay the plaintiff the whole stated damages, what can he desire more?"

And in a similar case under the same circumstances, the court ordered satisfaction to be entered on the record. *Wilde* v. *Clarkson*, 6 *T. R.* 303.

So also in the case of *Shutt and another* v. *Proctor*, 2 *Marsh.* 226, a rule calling on the plaintiffs to show cause why the proceedings in an action on a bastardy bond should not be stayed, and the bond be delivered up and cancelled, on payment of 60*l.*, being the penalty of the bond and costs, was made absolute after cause shown. And *Gibbs*, C. J. there said, "I take the law to be clearly settled that it is unlawful to give, or to undertake to give, a sum out and out, (if I may be allowed to use so vulgar an expression) in order to indemnify a parish for the burthen which, more or less, will accrue from the birth of an illegitimate child; because it would create an interest in the death of the child. This, however, is not a contract to pay a gross sum at all events, but to pay a penalty, if the parish be not indemnified. The object of the contract is to indemnify the parish, and that object is secured by the penalty. The party who enters into it is interested not to pay the entire penalty, if the damages do not amount to it; but if he be conscious that they do, it then becomes his interest to pay the penalty, because otherwise he would only be incurring further costs. He must be the best judge of that; and if he think that he cannot resist the payment of

the full penalty, it is impossible to say that, on paying the whole of the demand which the parish have upon him, he is not entitled to be relieved from all further proceedings."

RECOGNIZANCE, &c.

(3.) Recognizance to appear where no Order made.

Recognizance before Order made]—By the 49 Geo. III. c. 68, s. 2, *ante*, 353, the justice or justices are authorised and required, where the mother has not been delivered, to commit the person charged with being the father, unless he shall give security to indemnify the parish, *or* shall enter into a *recognizance*, with sufficient surety, upon condition *to appear* at the next general or quarter sessions, or general sessions of the peace, to abide and perform such order or orders as shall then be made in pursuance of the 18 Eliz. c. 3, unless certain matters, set forth in the act, are certified to the sessions, when in some cases they are empowered to respite, and in others to discharge the recognizance, without requiring the attendance of the putative father or his sureties.

Recognizance before order made.

This act in effect supersedes the provision of the 6 Geo. II. c. 31, s. 1, as far as repects the recognizance therein mentioned.

A recognizance under the 49 Geo. III. may be taken before a single magistrate.

Under this act the reputed father must appear at the next general or quarter sessions, or general sessions of the peace, according to the condition of the recognizance, to perform the order. Where the sessions are continued by adjournment, he has, at least according to the practice of some sessions, until the last day to make his appearance.

Appearance under it.

If the order of filiation is made out of sessions, the terms of the recognizance do not extend to it. See 2 *Nol. P. L.* 325.

This act, as we have seen, *ante*, 353, enables the sessions to respite or discharge the recognizance, in certain events, without requiring the personal attendance of the father or his sureties, upon the production of a certificate in writing of one magistrate in some cases, and of two in others. But lest the party should appear in person at that sessions in pursuance of his recognizance, it is advisable for the parish officer to attend and apply for an order, or else to move to have the recognizance respited, upon proof of sufficient grounds for so doing, as was the practice before this statute passed. For if the words of the act are to be construed literally, the recognizance is satisfied by the reputed father's appearance to abide and perform the order to be there made; and therefore it may be discharged unless such an order is made, or it is respited on the application of the parish on whose behalf it was originally taken. See 2 *Nol. P. L.* 325, 6.

When the recognizance becomes forfeited by the non-appearance, it is entreated as a matter of course, without motion of counsel. *Post*, Recognizance, Vol. V.

As to the recognizance *after* the order of filiation is made, see *post*, 360.

(4.) Order of Filiation and Maintenance.

1*st. Order by Two Justices, or by the Sessions*, 359 to 365.
2*d. Form of the Order*, 365 to 370.
3*d. Appeal against the Order*, 370 to 372.
4*th. Removing it into King's Bench to quash it*, 372.
5*th. Mode of enforcing the Order*, 373 to 376.

1*st. Order by Two Justices, or by Sessions.*

If security hath not been given to indemnify the parish, the next thing in the course of proceeding is the order of filiation and maintenance.

ORDER OF MAINTENANCE.

Order by justices out of sessions.

By stat. 18 Eliz. c. 3, s. 2, power is given to two or more justices out of sessions to make order concerning the maintenance of bastards. The enactment is as follows: "Concerning bastards begotten and born out of lawful matrimony, (an offence against God's law and man's law,) the said bastards being now left to be kept at the charges of the parish where they be born,(*a*) to the great burthen of the same parish, and in defrauding of the relief of the impotent and aged true poor of the same parish, and to the evil example and encouragement of lewd life;" it is ordained and enacted, "that two justices of the peace, (whereof one to be of the *quorum* (*b*)), in or next unto the limits where the parish church is, within which parish such bastard shall be born, (upon examination of the cause and circumstance,) shall and may by their discretion take order,(*c*) as well for the punishment of the mother and reputed father of such bastard child, as also for the better relief of every such parish in part or in all; and shall and may likewise by like discretion take order for the keeping of every such bastard child, by charging such mother or reputed father with the payment of money weekly, or other sustentation for the relief of such child, in such wise as they shall think meet and convenient; and if after the same order by them subscribed under their hands, any of the said persons, *viz.* mother or reputed father, upon notice thereof, shall not for their part observe and perform the said order, that then every such party so making(*d*) default in not performing of the said order, to be committed to ward to the common gaol, there to remain without bail or mainprize, except he, she, or they shall put in sufficient surety to perform the said order, or else personally to appear at the next general sessions of the peace, to be holden in that county where such order shall be taken, and also to abide such order as the said justices of the peace, or the more part of them, then and there shall take in that behalf (if they then and there shall take any); and that if at the said sessions the said justices shall take no other order, then to abide and perform the order before made, as is abovesaid."

After order made and default.

Commitment excepting upon security given to perform it or abide the order made at the next sessions.

Order by the sessions.

By stat. 3 Car. I. c. 4, s. 15, the power thus given to magistrates was extended to justices in sessions; thus, "all justices of the peace within their several limits and precincts, and in their several sessions, may do and execute all things concerning that part of the said statute [*viz.* stat. 18 Eliz. c. 3,] that by justices of the peace in the several counties are by the said statute limited to be done."

Reputed father shall be chargeable with the expenses incident to the birth, of apprehending him, and of order of filiation.

The remedies pointed out by these statutes not being found effectual it was enacted by stat. 49 Geo. III. c. 68, s. 1, after reciting that "whereas the provisions of an act made in the eighteenth year of the reign of Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony, are found to be inadequate to the purposes of indemnifying parishes against the charges and expenses incurred by the apprehending and securing the reputed father, and also by the obtaining the order of filiation: and whereas it is expedient that such charges and expenses should be borne and discharged by the adjudged reputed father of such bastard child or children, at the discretion of the justices by whom such adjudication shall be made, either in the court of quarter sessions or otherwise, not exceeding the amount hereinafter mentioned;" "that every person who shall hereafter be adjudged to be the reputed father of any bastard child or children, shall be chargeable with and liable to the payment of all reasonable charges and expenses incident to the birth of such bastard child or children, and also to

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(*a*) *The said bastards being now left to be kept at the charges of the parish where they be born*]—For at that time they could have no other settlement. There were only two kinds of settlements then existing; the one was by birth, and the other where the person should have resided for the most part during the space of three years. So that till the child should be three years of age, it could possibly have no other settlement. And the place of birth continues to be the settlement of bastard children still, unless in some few excepted cases. *Vide* title Poor, Vol. IV.

(*b*) See *ante*, 208, note.

(*c*) See forms, (No. 18 and 20), *post*.

(*d*) See form, (No. 24), *post*.

ORDER OF MAINTENANCE.

49 Geo. 3, c. 68.

the payment of the reasonable costs of apprehending and securing such reputed father, and also to the payment of the costs of the order of filiation,(*a*) such costs of apprehending and securing the reputed father, and of the order of filiation, not to exceed the sum of ten pounds; and all such charges, expenses, and costs, shall be duly and respectively ascertained on oath before the justices of the peace or the court of quarter sessions making such order of filiation, which oath such justices or court are hereby respectively empowered to administer."

For the additional indemnity of the parish against the *incidental* as well as the *principal* expenses, as also for the liberty of the reputed father, in those cases where his appearance before the sessions is not necessary, this statute proceeds to afford a new and summary remedy for the performance of the order, when actually made, as follows: thus by sect. 3, after reciting that "whereas parishes are often put to great expense in enforcing the performance of orders of maintenance made on the filiation of bastard children;" it is enacted, "that if any reputed father or any mother of such bastard child or children on whom any order of filiation or maintenance of such child or children shall have been made by the court of quarter sessions, or which shall have been made by two justices of the peace, and confirmed by the court of quarter sessions, or against which no appeal shall have been made to the court of quarter sessions, shall neglect or refuse to pay any sum or sums of money which he or she shall have been ordered to pay towards the maintenance or other sustentation for the relief of any such bastard child or children by any such order, it shall be lawful for any justice of the peace of the county, riding, division, city, liberty, or town corporate in which such reputed father or such mother shall happen to be, and the said justice is hereby required upon complaint (*b*) made to him by any one of the overseers of the poor of any parish, township, or place, liable to the maintenance or support of such bastard child or children, or where such bastard child or children shall then be, and upon proof on oath of such order for the payment of such sum or sums of money, and of such sum or sums of money being unpaid, and of a demand of such payment having been made, and a refusal to pay the same, or that such reputed father or such mother hath left his or her usual place of abode, and hath avoided a demand thereof being made by such overseer, to issue his warrant (*c*) to apprehend such reputed father or such mother, and to bring him or her before such justice or any other justice of the peace of the same county, riding, division, city, liberty, or town corporate, to answer such complaint; and if such reputed father or such mother shall not pay such sum or sums of money as shall appear to the said justice before whom such reputed father or such mother shall be brought to be due and unpaid, or shall not show to such justice some reasonable and sufficient cause for not so doing, it shall be lawful for such justice, and the said justice is hereby required to commit (*d*) such reputed father or such mother to the public house of correction or common gaol of the said county, to be there kept to hard labour for the space of three months, unless such reputed father or such mother shall, before the expiration of the said three months, pay or cause to be paid to one of the overseers of the poor of the parish, township, or place on whose behalf such complaint as aforesaid was made, the said sum or sums of money so due and unpaid as aforesaid, and so from time to time and as often as such reputed father or such mother shall in manner aforesaid neglect or refuse to pay any other sum or sums of money that shall afterwards become due by virtue of and under such order after the expiration of or discharge from any such former imprisonment as aforesaid."

Arrest on neglect to obey order.

On complaint by overseer,

and certain proofs made.

On warrant issued.

Justice may commit him.

Sect. 4 provides and enacts, "that all such charges, expenses, and costs shall he wholly subject to the discretion of the justices or court of quarter sessions who shall make such order of filiation; and the justices or court of

Expenses and costs subject to the discretion and allowance of ma-

(*a*) See form, (No. 18), *post*.
(*b*) See forms, (No. 22, 25), *post*.
(*c*) See forms, (No. 23, 27), *post*.
(*d*) See forms, (No. 24, 28), *post*.

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gistrates or court of quarter sessions, as the case may be.

quarter sessions are hereby authorised, if they shall see fit, to allow and order payment of the whole or any part thereof: provided always, that the costs of apprehending and securing the reputed father, and of the order of filiation, shall not in any case exceed the sum of 10*l.*; and for securing the due payment of the same, after such allowance and order as aforesaid, all and every the powers, authorities, provisions, clauses, matters, and things contained in the said act passed in the eighteenth year of the reign of Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony, shall be respectively observed, used, and practised in the execution of this act, and shall be construed, deemed, and taken to apply as fully and effectually, to all intents and purposes, as if the said powers, authorities, provisions, clauses, matters, and things were specially recited and re-enacted in this act."

Jurisdiction of justices out of sessions.

Jurisdiction of Justices]—The 18 Eliz. c. 3, as we have seen *ante*, 360, empowers "two justices in or next unto the limits where the parish church is" to make the order. But the words "*in or next unto the limits*," are only directory, and an order of maintenance by two justices not "in or next unto the limits where the parish church is," is valid. If therefore "two justices cannot agree in the order, or shall make no order," it should seem that in the one case a justice not being "the next," may join with either of the other in making the order, and in the other case, recourse might be had to two other justices, being as near the limits as such could be procured. See *R.* v. *Shaw*, 1 *Bott*, 476.

If the child be born in an extra-parochial place, the two justices have no authority, it seems, to make an order of bastardy; *R.* v. *Baker*, 1 *Bott*, 476; unless it be an hamlet or township which maintains its own poor. *R.* v. *Mitford*, 1 *Bott*, 489.

The order may be made by two justices under the 18 Eliz. although the putative father has been bound over to appear at the quarter sessions under the 49 Geo. III. 2 *Nolan*, 291.

An order made by more than two justices is good. *Hatton's case*, 2 *Salk.* 477.

Until default made, the justices have no power to commit or to require sureties for the performance of the order, or for appearing at the sessions. *R.* v. *Chaffey*, 2 *Ld. Raym.* 858; 3 *Salk.* 66; 1 *Barn.* 261.

Under stat. 18 Eliz. the justices *out of sessions* have no authority to require a recognisance unless the party disobey the order of maintenance; and therefore where the sessions make an original order of filiation and maintenance, they cannot require a recognizance until such order is disobeyed, in which case the party may be taken up and committed, unless he give security for performance pursuant to stat. 18 Eliz. c. 3, s. 2, *ante*, 360.

Jurisdiction of sessions.

Jurisdiction of Sessions]—The Court of Quarter Sessions have now a power to make an original order of bastardy. *Slater's case*, *Cro. Car.* 471; 1 *Bott*, 498; *R.* v. *Greaves*, *Dougl.* 642.

The course of applying for original orders of bastardy at sessions is very unusual; the usual way is to make that court a court of appeal from an order of two justices. Although the sessions have an original power to make an order of bastardy, they cannot order the father to give security for the performance of that order, as appears by the case of *R.* v. *For*, 1 *Bott*, 477, and *R.* v. *Price*, 6 *T. R.* 147; 1 *Bott*, 510.

But if the sessions in such a case make an order of bastardy, *and also order the putative father to give security for the performance of that order*, the Court of K. B. will quash the latter part, and confirm the former part of the order. *R.* v. *Price*, 6 *T. R.* 147, and *R.* v. *For*, there cited. See *post*, 373.

Who to apply for order.

Who to apply for Order]—It is not essential where an order is applied for under the 18 Eliz., that the parish officers should be the applicants; any person may apply. *R.* v. *Bucknall*, 1 *Barn.* 261; *R.* v. *For*, 6 *T. R.* 148; *sed vide R.* v. *Nottingham*, 2 *Bott*, 478. It is most usual for the parish officers to make the application. See *ante*, 354.

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With respect to the proceedings under stat. 6 Geo. II. c. 31, one of the purposes, it seems, for which the statute was made, was to restrain the justices from proceeding on the application of every lewd woman pretending to be with child, &c. till complaint by the *churchwardens*, &c. *R.* v. *Fox*, 1 *Bott*, 473, cited by Lord *Kenyon* from his own MS. 6 *T. R.* 148, 151; *ante*, 354.

Time of making order.

Time of making Order]—There is no *time* limited for the justices proceeding in this matter; so that the order may be made at any time after the birth of the child.

And in the case of *R.* v. *Miles*, 1 *Sess. Cas.* 77, 1 *Bott*, 473, on motion to quash an order of bastardy, it was resolved that if the father run away and return, though fourteen years after, yet an order to fix the child on him is good; for there is no statute of limitation in these cases. And see *R.* v. *Nottingham*, 13 *East*, 57.

By stat. 6 Geo. II. c. 31, s. 3, (*ante*, 352,) if the reputed father be in prison, and no order be made in six weeks after the birth of the child, he may in such case be discharged from his imprisonment; but the order nevertheless made upon him afterwards will be good.

And if the mother die or be married before her delivery, or prove not to be with child, the alleged father, if in prison, may be released from custody by an order of a single justice; or if he has given sureties, his recognizances will be discharged as of course at the ensuing session. 6 Geo. II. c. 31, s. 2, *ante*, 353.

Where an order has been made and the time for appeal is past, it cannot be enforced under the 18 Eliz. c. 3, but the magistrate must proceed under the 49 Geo. III. c. 68, s. 3, by commitment for three months. *Esp. Addis*, 1 *B. & Cres.* 87; 2 *D. & R.* 167; 2 *D. & R. Mag. Ca.* 196, S. C.; *post*, 375, 369.

Child must be alive.

Child alive]—No order can be made unless the child be born alive; and where an order of bastardy stated, that "E. A., single woman, on the 13th of September, 1810, was delivered of a *dead born* male bastard child," Lord *Ellenborough*, C. J. said, "all the provisions in the several statutes assume the birth of a child, which must of course be born alive." *Grose*, J. "No dead substance is the object of legislative provision in any of the acts." Order quashed. *R.* v. *De Brouquens*, 14 *East*, 277. See *post*, 369.

Mother marrying.

Mother marrying]—The mother marrying before the order is made may be committed for disobeying it. *R.* v. *Ellen Taylor*, late *Bent*, 3 *Burr.* 1681; 1 *Bott*, 479. She was delivered of a bastard child in the parish of Clifton: after which, and before any order made, she married one Abraham Taylor, of the parish of Middleton. The overseers of Clifton applied to the justices, who made an order of filiation, charging her with 8*d.* a week towards the relief of the parish. She pleaded her utter inability, and refused to pay; upon which the justices committed her to the house of correction. She was brought up by *habeas corpus*, and her counsel moved for her discharge, insisting upon the illegality of her commitment; for that, being a married woman, she was not an object of the justices' jurisdiction, and the husband was not summoned. But by the court, "A feme covert is liable to be prosecuted for crimes committed by her. This woman has disobeyed the order of the justices, and the statute prescribes the punishment here inflicted upon her. There is no need to summon the husband in a criminal prosecution against the wife."

Mother dying.

Mother dying]—The order may be made notwithstanding the mother be dead. *R.* v. *Ravenstone*, 5 *T. R.* 373; 1 *Bott*, 483; *R.* v. *Clayton*, 3 *East*, 58; 1 *Bott*, 484. The examination of a pregnant woman taken by a justice, under the stat. 6 Geo. II. c. 31, is evidence sufficient to authorise the sessions to make an order of filiation on the putative father, though the woman be dead. By the court, "The examination having been taken before a magistrate in the course of a judicial proceeding, under stat. 6 Geo. II. c. 31, is certainly admissible evidence, like the depositions taken under stat. 1 and 2 P. & M. c. 13; and being admissible, and not contradicted by any other evidence, it seems to be conclusive. We cannot indeed compel the justices at

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the sessions to decide on the weight of evidence; but when we determine that this evidence is admissible in point of law, and that the justices may make the order applied for, though the woman be dead, we have no doubt but that they will also be of opinion that this evidence is conclusive against the party against whom the application has been made." This was a case stated by the sessions who had rejected this evidence, and discharged the defendant from his recognizance.

Summons to appear.

Summons to Appear]—In making the order the justices must proceed as in all other like cases, by giving the party accused an opportunity of being heard in his defence, and a summons should therefore be previously served on him. In the case of *R.* v. *Cotton*, 1 *Sess. Cas.* 179; 1 *Bott*, 486; an information was moved for against the defendant, who with another justice made an order of bastardy upon one Fitzgerald, without summoning him to appear before them to make his defence. Upon appeal to the sessions he was acquitted, and put to great expenses; which it was insisted was contrary to natural justice. By Mr. J. *Page*—"No man in an office can be supposed to be so ignorant, as not to know it is against natural justice to convict a man without a summons; the examination ought to be so made that the truth may appear; and this must be by examining both sides, otherwise it is partial. Here was no taking by warrant, and therefore an action of false imprisonment would not lie; and this is the only method that can be used to punish the justice." Mr. J. *Probyn*—"The principal objection about a summons is right in law and in reason; possibly an action on the case might be framed; there may possibly have been only an error in judgment, and it is hard to grant an information." Mr. J. *Lee*—"If this were strictly a conviction against which no appeal lies, an information ought to be granted; but the matter is not so very strong in the case of orders." And the rule was discharged. See *R.* v. *Clegg*, 1 *Stra.* 475; *R.* v. *Clayton*, 3 *East*, 58; *post*, 368.

That a summons by a *third justice* is sufficient is decided in the case of *R.* v. *Taylor and Neale*, 2 *Sess. Cas.* 192; *Cas. temp. Hardw.* 112.

Rescue of father.

And although it is indispensable that the putative father should be summoned to appear, previously to an order being made upon him, his presence during the mother's examination before the justices out of sessions, is not necessary to the validity of such order. *R.* v. *Upton Gray*, *Cald.* 308; 1 *Bott*, 482.

If a person charged with a bastard child is under any incapacity of attending by illness or otherwise, the justices may and ought to receive evidence on his behalf, but not otherwise. It is the practice in K. B. not to hear exceptions to an order of bastardy in the absence of the person charged, except under such circumstances as above mentioned. *R.* v. *Taylor and Neale*, *supra*, *et Serjeant Hill's MSS.*

Evidence and examination.

Evidence and Examination]—In general the order must be made upon the *vivâ voce* examination of witnesses, and cannot be founded upon affidavit without such evidence. *R.* v. *Colbert*, *Comb.* 103.

The mother's testimony, if living, is nearly always resorted to, when the order is upon the father; but though it should nearly always be taken, it is not essential to the order, for it may be made on the evidence of others. *R.* v. *St. Mary, Nottingham*, 13 *East*, 57.

If the mother be dead, her examination, taken under the 6 Geo. II. c. 31, *ante*, 352, 353, will be sufficient. *R.* v. *Ravenstone*, 5 *T. R.* 373, *ante*, 363; and see *R.* v. *Clayton*, 3 *East*, 58.

We have already seen how far the testimony of the parents is admissible to prove the bastardy, *ante*, 349, and what is sufficient to prove that fact, *ante*, 347 to 349.

The bastard himself, if competent in other respects, may be examined on oath to prove circumstantial facts, as that his father when accused of it had acknowledged the witness was his child, or that the witness was constantly reputed to be such, or the like. *R.* v. *St. Mary, Nottingham*, 13 *East*, 57.

The father's confession of his being the father will suffice to found the order on him. See *id.*

The mother may be committed if she refuse to answer the questions legally put to her; *Billings* v. *Prinn*, 2 *Bla. Rep.* 1017; *R.* v. *Beard*, 2 *Salk.* 278; but to justify such commitment the justices must not only be together at the examination, but also when they make and sign the commitment. *Id.* But the latter point seems questionable. *Vide post*, **Commitment**, Vol. I.; **Warrant**, Vol. V.

Commitment for non-answering.

In *Billings* v. *Prinn* and *Delabere*, Esqs., 2 *Bla. Rep.* 1017; 1 *Bott*, 482, an action of trespass and false imprisonment was brought by the plaintiff, for committing her to prison for refusing to filiate a bastard child. She was examined severally, at separate times (but in the same day) and in separate places by the two justices the defendants, and they separately signed the warrant of commitment. On trial at the assizes, a verdict was given for the plaintiff, with 5*l.* damages. It was now moved for a new trial. By the court—"There is no use in appointing two or more persons to exercise judicial powers, unless they are to act together. Separate examinations by different magistrates may produce different facts. On which then is the adjudication to proceed? It is exceedingly clear, that in case of an action thus brought to try the validity of the commitment, it cannot be supported by law. And see *Exparte Martin*, 6 *B. & Cres.* 80; *ante*, 354.

Order may be on both parents;

The order may be made upon both or either of the parents. *R.* v. *Taylor*, 3 *Burr.* 1679; *R.* v. *Whitley*, 1 *Bott*, 490.

including several children.

And may include more than one bastard child, if begotten by the same father upon the same mother. *R.* v. *Skinn*, 1 *Bott*, 470.

Adjudication and sum to be paid.

As to the nature and form of the adjudication and sum to be paid, see *post*, 368.

Order how far conclusive.

The order of filiation made by justices out of sessions is conclusive when unappealed from, and cannot be impeached any where. *Webb* v. *Cooke*, *Cro. Jac.* 535, 626; *Thornton* v. *Pickering*, 283; 3 *Keb.* 200.

But *Holt*, C. J. has said, that if a person be committed as the father of a bastard child, and the child is no bastard, an action will lie. *Dr. Greenwell's case*, *Comb.* 482. See further, *post*, **Order**, Vol. III.

2nd. *Form of the Order.*

Form of an order of filiation by two justices.

The following is the usual form of an order of filiation and maintenance by two justices, pursuant to stats. 18 Eliz. c. 3, and 49 Geo. III, c. 68.

County of } *THE order of J. P. and K. P. Esquires, two of his Majesty's justices of the peace in and for the said county, one whereof is of the quorum, and both residing* [*in* or] *next unto the limits where the parish church is situate, of the parish of in the said county, made the day of one thousand eight hundred and concerning a (fe) male bastard child lately born in the said parish, of the body of A. M.* [*single*] *woman.*

Whereas it hath been duly made to appear unto us the said justices, as well upon the complaint of the churchwardens and overseers of the poor of the parish of in the said county, as upon the oath of A. M. single woman, that she the said A. M. on or about the day of now last past, was delivered of a (fe) male bastard child in the said parish, which was born alive and is still living, and that the said bastard child is now chargeable to the said parish, and likely so to continue; and further, that A. F. of in the county of did beget the said bastard child on the body of her the said A. M.: And whereas the said A. F. hath appeared before us, in pursuance of our summons for that purpose, but hath not shown any sufficient cause why he the said A. F. shall not be adjudged to be the reputed father of the said bastard child [or, *And whereas it hath been duly proved to us upon oath, that the said A. F. hath been duly summoned to appear before us the said justices, to the end that we might examine into the cause and circumstances of the premises: but he the said A. F. hath neglected to appear before us, according to such summons:*] *We therefore, upon examination of the cause and circumstances of the premises, as well upon the oath of the said A. M. as otherwise,*

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do hereby adjudge him the said A. F. to be the reputed father of the said bastard child.

And thereupon we do order, as well for the better relief of the said parish, as for the sustentation and relief of the said bastard child, that the said A. F. shall and do forthwith, upon notice of this our order, pay or cause to be paid to the said churchwardens and overseers of the poor, or to some or one of them, the sum of as and for the reasonable charges and expenses incident to the birth of the said bastard child, and also the sum of as and for the reasonable costs of apprehending and securing the said A. F. and of this our order of filiation; and the further sum of for the maintenance of the said bastard child to the time of making this our order; all which said charges, expenses, costs, and maintenance have been duly and respectively ascertained, as well on the oath of one of the said overseers of the poor, as otherwise before us the said justices, and are hereby by us allowed. And we do also hereby further order that the said A. F. shall likewise pay or cause to be paid to the churchwardens and overseers of the said parish, for the time being, or to some or one of them, the sum of weekly and every week from this present time, for and towards the keeping, sustentation, and maintenance of the said bastard child, for and during so long time as the said bastard child shall be chargeable to the said parish. And we do further order, that the said A. M. shall also pay or cause to be paid to the churchwardens and overseers of the poor of the said parish for the time being, or to some or one of them, the sum of weekly and every week, so long as the said bastard child shall be chargeable to the said parish, in case she shall not nurse and take care of the said child herself. Given under our hands and seals the day and year first above written.

Jurisdiction of justices.

One whereof is of the quorum]—The jurisdiction of the justices must be stated. Many orders formerly were quashed for want of setting forth that one of the justices was of the *quorum*, but now by stat. 26 Geo. II. c. 27, no order shall be quashed for that defect only.

By a bill now before parliament, it is proposed that all justices named or to be named in any commission, shall have equal authority, and shall enjoy all powers which are given to justices of the *quorum*.

The county should be set forth, to show that the fact arose where they had jurisdiction, but if it appear in the margin, that will be sufficient. *R.* v. *Messenger*, 1 *Bott*, 491.

As to where the justices have jurisdiction, see *ante*, 362.

Statement of examination.

Whereas it hath been duly made to appear unto us.]—*R.* v. *Beard*, 2 *Salk.* 478; 1 *Bott*, 481. The examination of the woman must be by two justices, as well as the ordering part; for the examination is a judicial act, and ought to be by both; and it is not enough that one should examine, and make report to the other; but if they be both present, and one only examine, it is well enough, for it is in fact the examination of both. *Ante*, 365.

As to the mode of examination and what evidence sufficient, *ante*, 364, 347 to 351.

Statement of party making complaint.

As well upon the Complaint of the Churchwardens and Overseers of the Poor of the said Parish, &c.]—An order stated to be made upon the application and complaint of the overseers of the poor of the township of H. U. Q. in the parish of H. is sufficient without stating that it is a township maintaining its own poor. *R.* v. *Hartington-Upper-Quarter*, 4 *M. & S.* 559.

As to who may make the complaint, *ante*, 362, 354.

On oath.

As upon the Oath of the said A. M.]—As to who may be examined, see *ante*, 364, 365, 349.

Sex or name to be set forth.

Was delivered of a (Fe) male Bastard Child]—*R.* v. *England*, 1 *Stra.* 503; 1 *Bott*, 497. An order was quashed, because neither the *sex* of the bastard, nor the *name* of it was mentioned; only, a certain bastard child born of the body of such a woman.

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At in the said Parish of]—*Q.* v. *Cash, Sett. & Rem.* 59. The order did not set forth that the child was born in the parish; and by the statute the justices cannot make an order to compel a man to contribute towards the maintenance of a bastard child, but in case of that parish where the child was born; and it was quashed for this reason.

And the parish where born.

R. v. *Butcher*, 1 *Str.* 437; 1 *Bott*, 499. Exception was taken to an order of bastardy, that it did not appear that the child was born in the parish to which the relief is ordered; for it was, *We, two justices of the borough of Lyme Regis, residing within the limits where the parish church is, within which parish the child was born*—which is only an averment that the justices resided in that parish where the child was born, but that might not be the same parish ordered to be relieved. And for this fault the order was quashed.

R. v. *Childers*, 1 *Barnard.* 326. On a rule to show cause why an order of two justices for relief of a bastard child, and an order of sessions confirming the same, should not be quashed, it was objected, that it was not directly adjudged that the child was born in the parish of Staplehurst, and yet the order requires the defendant to pay the sum of 45*s.* to the churchwardens of that parish to reimburse them. It was answered that it doth sufficiently appear in the order that the child was born there; for it adjudges that the defendant should pay this sum for the charges the parish of Staplehurst were at, upon account of the woman's lying-in there. But the court said, that they do not allow of inferences to give the justices jurisdiction; and accordingly quashed both the orders.

R. v. *Greaves, Nels. Bast.* The parish where the child is born is only to be indemnified; and if the bastard has acquired a settlement elsewhere, the father is then discharged.

And in *R.* v. *Stanley, Cald.* 172; 1 *Bott*, 504. It appearing that there was no adjudication, that the child was *born* in the parish charged with its maintenance, nothing more being stated than that it was *chargeable to the parish, and likely so to continue*. By the Court—Order quashed.

But a formal statement that the child was born in the parish is not absolutely requisite. It is sufficient if it appear anywhere upon the order in the words of the justices. *Per Denison, J. R.* v. *Fox*, 6 *T. R.* 150.

Therefore an order in the following form—"The order of us, L. and D. two justices, &c. residing near the parish of H., concerning a bastard child of E. G. born in the said parish of H."—and adjudging J. T. "to be the father of the *said* child," was held good. *R.* v. *Fox*, 1 *Bott*, 492; 2 *Nol.* 300, 1.

And an order, which recited that the child was *baptized* in the parish, and did not adjudge that it was born there, was confirmed in *R.* v. *Moravia*, 1 *Bott*, 492; and see *R.* v. *Gravesend*, 1 *Bott*, 491.

Chargeable.

Chargeable to the said Parish]—Order to provide for a bastard child: exception was taken, that the order doth not set forth that he is chargeable to the parish, or likely to be so. And quashed by the court. *Comb.* 30; and see *Exparte Martin*, 6 *B. & Cres.* 33; 9 *D. & R.* 65, S. C.

But in *R.* v. *Matthews*, 2 *Salk.* 475; 1 *Bott*, 496; exception was taken that the order doth not set forth that the child is likely to become chargeable. But this exception was overruled; for that it is self-evident that every bastard child is likely to become chargeable.

So also in *R.* v. *Hartington-Upper-Quarter*, 4 *M. & S.* 559, an order of filiation upon the putative father of a bastard child, stating that the child "*is likely* to become chargeable," was held sufficient, without showing that it was *actually chargeable*.

Begetting the child.

And further, that A. F. of in the said county, Yeoman, did beget the said Bastard Child]—*R.* v. *Browne*, 2 *Stra.* 811. Upon an order of bastardy it was stated, that the husband had been absent six years, and that during his absence the defendant *had carnal knowledge* of the wife, and therefore they adjudge him to be the putative father. But by the court—This order must be quashed; for his lying with her is not a sufficient reason to infer him the father of this child; and though the justices need not show the

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grounds upon which they go, yet if they do, and they be not sufficient, their order will be bad. See further, *ante*, 347, 348.

Presence of father.

And whereas the said A. F. hath appeared before us]—In the case of *R.* v. *Upton Gray, Cald.* 308; 1 *Bott*, 482; it was determined, that it is not necessary to the validity of an order of filiation that the putative father should be present at the examination of the woman before the two justices. See *ante*, 355.

Summons.

In pursuance of our Summons]—It is usual and proper to state that the father was summoned, and that he either appeared in consequence thereof, or neglected to do so. But it is not in strictness necessary that this should be averred on the face of the proceeding, as the court will intend that he was, unless the contrary appear. *R.* v. *Clegg*, 1 *Stra.* 475; *R.* v. *Clayton*, 3 *East*, 58; 2 *Nolan*, 299; see *ante*, 364.

Adjudication.

Adjudication]—The adjudication must appear to be made by both justices. Two justices made an order, and when it came to the adjudication, it was, "We the said justices *doth* adjudge," instead of do adjudge, and the order was quashed. *R.* v. *Weston*, 2 *Ld. Raym.* 1198.

And afterwards, the same justices made another order with the very same fault in it, viz. *doth* adjudge; and upon a *certiorari* that was quashed. 2 *Ld. Raym.* 1198.

Adjudge the said A. F. to be the reputed Father]—*R.* v. *Perkasse*, 2 *Sid.* 363. An order was quashed, because there was no adjudication that the person against whom the complaint was made was the reputed father.

So in *R.* v. *Pitts*, *Dougl.* 661, the court of K. B. quashed an order of bastardy which only stated "Whereas it hath appeared to us," &c. without an *express adjudication* that the person charged was the putative father.

R. v. *Jenkins*, 2 *Sess. C.* 161; 2 *Str.* 1050; 1 *Bott*, 474. Motion to quash an order of two justices, whereby they adjudge that such a person is *not* the putative father of a bastard child, and therefore they discharge him; and the rather, because in such a case the parish cannot appeal, because an appeal is only when the party refuses to give security to come to sessions. And by the whole court, the two justices have no such authority; for their whole power depends on the statute of 18 Eliz., and that is only to take order for punishment of the parties, and for relief of the parish, and this order is for neither the one nor the other.

Sum ordered to be paid.

The sum of for and towards the reasonable Charges and Expenses incident to the Birth of the said Bastard Child]—The stat. 49 Geo. III. c. 68, expressly enacts, sect. 1, that the reputed father shall be liable to these charges, *ante*, 360, 361.

And also the sum of as and for the reasonable Costs of Apprehending, &c.]—The above statute also enacts that the reputed father shall be liable to those costs, not exceeding 10*l.* which limitation of the amount seems to make it necessary that they should form a distinct item in the order.

The 1st and 4th sects. of stat. 49 Geo. III. c. 68, apply to the aforesaid charges, expenses, and costs; and for securing the due payment thereof, sect. 4 enacts that the powers of stat. 18 Eliz. shall be used, which authorise a commitment until securities are put in to perform the order, or to appear at the sessions, &c.

And the further sum of for the Maintenance of the said Bastard Child to the Time of making this our Order]—*Q.* v. *Odam*, 1 *Salk.* 124; 1 *Bott*, 497. Order for maintenance of a bastard child was excepted to, because the defendant is upon sight of the order to pay 9*l.* in gross; and after that so much weekly. And it was held good; for by the statute the justices are to

take order for relief of the parish, and keeping of the child, by payment of money weekly, or other sustentation: and this may be only indemnifying the parish for money laid out before the reputed father was found. ORDER OF MAINTENANCE, FORM OF.

In *Exp. Addis*, 1 *B. & Cres.* 87; 2 *D. & R.* 167, S. C.; an objection to a commitment for disobeying an order of filiation, that the order being for by-gone maintenance was bad, was given up on citing *Q.* v. *Odam*, and *Q.* v. *Smith*, 1 *Bott*, pl. 67; *R.* v. *Moravia*, *id.* pl. 680; *R.* v. *Fox*, *id.* pl. 682; *R.* v. *Hill*, 1 *Sid.* 326; *R.* v. *Hartington*, 4 *M. & S.* 559; *ante*, 363; *post*, 375.

If an order directs a sum to be paid towards the lying-in and maintenance, it seems to be enough, without stating that the sum was expended by the overseers. *R.* v. *Hartington-Upper-Quarter*, 4 *M. & S.* 559.

See further, *ante*, 356, as to the nature of the indemnity to be taken by the parish.

During so long Time as the said Bastard Child shall be Chargeable]—The justices have power to order the parent to pay so far as is necessary to indemnify the parish for the expense of maintaining the infant, but no further. The payment therefore should be limited in the order to such time as the child shall be a burthen in the parish. How long such payments shall be ordered to continue.

An order to pay so much per week indefinitely is bad. *R.* v. *Matthews*, 2 *Salk.* 475.

R. v. *Barebaker*, 1 *Salk.* 121; 2 *Salk.* 478; 1 *Bott*, 495. An order to pay so much money by the week till the child shall be fourteen years of age, was adjudged to be bad; for the justices have no power but to indemnify the parish; and that is only to oblige him (the father) to maintain the child as long as it is or may be chargeable.

An order that the putative father should pay so much a week, until the child should be able to get its living by working, was quashed; it should have been for so long time as the child was chargeable to the parish. 1 *Vent.* 210.

But in *R.* v. *Street*, 2 *Str.* 788; 1 *Bott*, 498, an order of bastardy was made to pay so much weekly till the child was nine years old, if it should so long live. And by the court—It is a good order, for we cannot intend it able to provide for itself sooner.

So in *R.* v. *Buckhall*, 1 *Barnard.* 261, exception was taken that the order appointed the sum of 2*s.* to be paid weekly till the child should come to the age of twelve years, without saying, if the child shall be so long chargeable to the parish. It was answered, that indeed the old authorities lay it down in general that orders of bastardy, as well as other orders relating to the poor, must be under the limitation mentioned; but the latter authorities have been, that orders of bastardy need not: and this, it was said, is founded upon good reason; for there cannot be any reasonable intendment that bastards, who have no kindred, will have provision from any body till such an age as is mentioned in the order. And of that opinion was the court, and confirmed the order as to that point.

But it is best in this and all such like cases to hold to the statute; and the statute here only gives power to the justices *to take order for the relief of the parish where the child shall be born.*

An order of payment "till the child shall be no longer chargeable" is good. *R.* v. *Johnson*, *Comb.* 69.

The order may be for the payment of the money to the overseers. *R.* v. *Weston*, *Salk.* 122.

The order must be for maintenance only. In *Brown's case*, *Comb.* 448, it was said, the justices cannot order a sum for putting out the child an apprentice. Order must be for maintenance and expenses only.

But in the aforesaid case of *R.* v. *Buckall*, 1 *Barnard.* 261, where it was objected that the order was for the reputed father to pay 4*l.* to the overseers for binding the child out apprentice when it should come to the age of twelve years, and did not say, if the child shall want it; so that though the child should be provided for in any other way, the sum must be still paid to the overseers, the objection was overruled by the court, and the order as to that held good.

ORDER OF MAINTENANCE, FORM OF.

But it seemeth not necessary to encumber the order therewith; for it may be the same thing if the parish bind him out, and pay the money; for until such sum shall be run off by the weekly payments, so long the child continues chargeable.

By the 49 Geo. III. c. 68, s. 1, we have seen, *ante*, 360, 361, the order may be for the charges and expenses incidental to the birth, &c.

Order may be on both parents.

The order may be made on the mother. *R.* v. *Taylor*, 3 *Burr.* 1679; *R.* v. *Willey*, 1 *Bott*, 490.

It may be a joint order upon the mother and reputed father, requiring each of them to pay a certain proportion of the child's maintenance. *Comb.* 232.

And include more than one child.

The order may include more than one bastard child, if begotten by the same father upon the same mother. *R.* v. *Skinn*, 1 *Bott*, 470.

3d. *Appeal against Order.* (*a*)

Appeal by party accused.

By the aforesaid stat. 18 Eliz. c. 3, the mother or reputed father refusing to perform the order of the two justices shall be committed, unless they shall put in sufficient surety to perform the said order, "or else personally to appear at the next *general sessions* of the peace, to be holden in that county where such order shall be taken; and also to abide such order as the said justices of the peace, or the more part of them, then and there shall take in that behalf (if they then and there shall take any): and that if, at the said sessions, the said justices shall take no other order, then to abide and perform the order before made, as is above said."

It will be observed that this statute in terms gives the party *accused* a right of appeal, and not the parish. See *Burrell's case*, 1 *Mod.* 20.

Appeal by either party to the quarter sessions allowed on giving notice and entering into recognizance.

By stat. 49 Geo. III. c. 68, s. 5, it is enacted, "that *any person* or persons who shall think himself, herself, or themselves *aggrieved* by any order made by such justices as aforesaid under the provisions of this act, and not originating in the quarter sessions, (*b*) may appeal to the *next general quarter sessions* of the peace to be holden for the county where such order shall be made, on giving notice to such justices, or to one of them, and also to the churchwardens and overseers of the poor of the parish on whose behalf such order shall have been made, or to one of them, ten clear days before such general quarter sessions of the peace at which such appeal shall be made, of his, her, or their intention of bringing such appeal, and of the cause and matter thereof, and entering into a recognizance (*c*) within three days after such notice before some justice of the peace for such county, with sufficient surety conditioned to try such appeal, and abide the judgment and order of, and pay such costs as shall be awarded by the justices at such quarter sessions, which said justices at their said sessions, upon proof of such notice being given, and of entering into such recognizance as aforesaid, shall and they are hereby required to proceed in, hear, and determine the causes and matters of all such appeals, and shall give such relief and costs to the parties appealing or appealed against, as they in their discretion shall judge proper; and such judgments and orders therein made shall be final, binding, and conclusive to all parties concerned, and to all intents and purposes whatsoever."

No appeal without notice and entering into recognizance shall be heard.

And by s. 7, it is enacted, "that no appeal in any case relating to bastardy shall be brought, received, or heard at the said quarter sessions, unless such notice shall have been given, and such recognizance shall have been entered into in manner aforesaid, according to the provisions of this act."

The provision of the 49 Geo. III. in effect supersedes that of the 18 Eliz. c. 3, and the right of appeal therefore may be said to rest on the former.

Notice of appeal.

Notice of Appeal]—This statute of 49 Geo. III., it will be observed, renders a notice of appeal necessary.

(*a*) As to appeals in general, see *ante*, Appeal, p. 135 to 152.

(*b*) Although there be no appeal against an order of bastardy made at the sessions, yet it may be removed into the Court of King's Bench by writ of *certiorari*. 2 *Nol. P. L.* 282, 3d edit.

(*c*) See form, (No. 21), *post*.

ORDER OF MAINTENANCE, APPEAL AGAINST.

It is requisite that the causes and matters of the appeal should be set forth in the notice, the object of the legislature being, that the respondents should know precisely what objections they have to meet. Upon this ground the sessions were held to have acted rightly in refusing to hear an appeal against an order upon the following notice: "This is to give you notice, that I H. N. of L. do intend at the next general quarter sessions, &c. to commence and prosecute an appeal against an order of filiation made by you, &c. whereby I was adjudged," &c. For it does not contain any information of the cause and matter of appeal; it is merely a description of the order and not of the objections which the party charged intended to make against it. *R.* v. *Oxfordshire*, 1 *B. & Cres.* 279; 2 *D. & R.* 426; 1 *D. & R. M. C.* 281, S. C.; *ante*, 144.

Verbal notice of appeal will suffice, provided such notice be in other respects sufficient. *R.* v. *Salop*, 4 *B. & A.* 626, *ante*, 142.

There must be ten clear intervening days of notice, exclusive both of that of serving the notice and the day of holding the sessions. *R.* v. *Herefordshire*, 3 *B. & A.* 581.

It seems that the entering into the recognizance required by the 49 Geo. III. before the justices who make an order of bastardy, does not dispense with the necessity of giving such justices notice of appeal against the order, the statute requiring the party to give notice of such appeal, and of the "cause and matter thereof." *R.* v. *Salop*, 4 *B. & A.* 626; see 5 *B. & A.* 539; *ante*, 142.

The notice must be given and the recognizance entered into before the next ensuing sessions, and it will not suffice to enter the appeal at the next sessions, respite it for want of notice, and give the notice ten days before the ensuing sessions as in cases of appeals against rates and orders of removal, for the 7th sect. of the 49 Geo. III. expressly enacts, that no appeal in any case relating to bastardy shall be *brought*, *received*, or *heard*, unless the notice and recognizance be first given, and no practice of sessions, however uniform, can controul them. *R.* v. *Lincolnshire*, 3 *B. & Cres.* 548; 5 *D. & R.* 347, S. C.

Neither can such appeal be received, though after notice and recognizance, at an adjourned sessions for another division of the county. *Id.*

See further as to notices and recognizances on appeals, *ante*, Appeal, p. 141 to 145.

Time for appealing past.

Where an order of filiation has been made, and the time for appealing against it is passed, it cannot be enforced under the 18 Eliz. c. 3, but the justice must proceed under the 49 Geo. III. c. 68, s. 3, *ante*, 361, by commitment for three months. *Exp. Addis*, 1 *B. & Cres.* 87; 2 *D. & R.* 167, S. C.

Appeal to what sessions.

To what Sessions]—By the 18 Eliz. c. 3, the appeal should be to the next general sessions after the party has notice of the order and *made default* in not performing it. *Dalt.* 45.

If such order was made by two justices during sessions time, the appeal ought not to be to such sessions, but to that next ensuing. *Burrell's case*, 1 *Mod.* 20.

For the County where such Order shall be made]—*R.* v. *Coyston*, 1 *Sid.* 149; 1 *Bott*, 504. Resolved, that this shall be intended of the next sessions of that part of the county where it was made, and not at the next sessions in any county at large; for that would be mischievous in many counties, where there are several sessions in distinct parts of the county.

An appeal to the next general quarter sessions is sufficient. See *R.* v. *Chichester*, 3 *T. R.* 496, overruling *R.* v. *Shaw*, 2 *Salk.* 482.

As to what sessions an appeal in general should be made, see further, *ante*, 137 to 141.

Respondents begin on appeal.

Who to begin] Upon appeal against an order of bastardy, it is incumbent upon the respondents to begin to support the order, whatever may be the practice of the court in that respect. *R.* v. *Knill*, 12 *East*, 50. And see further, *ante*, p. 146, 147.

ORDER OF MAINTENANCE, APPEAL AGAINST.

Hearing of Appeal]—The sessions must hear all the circumstances of the appeal. The parish officers if the respondents must, unless the appellant waives it by the tenor of his notice or otherwise, be prepared and able to sustain the order by sufficient evidence.

Hearing of appeal.

The defendant must appear in court where the order is quashed. *R.* v. *Gibson*, 1 *W. Bla.* 198.

As to the evidence and witnesses, see *ante*, p. 146, 147, 347 to 351.

Quashing or confirming order.

Where an order is substantially good but directs something additional, which is illegal, the sessions may quash such defective part and affirm the remainder. 2 *Nolan*, 312; *ante*, 362.

The order of two justices being quashed upon the merits by the sessions on appeal, the defendant is thereby legally acquitted, and cannot be drawn in question again for the same fact. *R.* v. *Tenant*, 2 *Ld. Raym.* 1423, 4; 2 *Stra.* 716; 1 *Bott*, 511.

If the two next justices make an order, and the party appeal to the next sessions, and they alter or discharge (upon the merits), or confirm that order, no other sessions can order any thing contrary thereto, for the order upon the appeal is final. *Pridgeon's case*, *Cro. Car.* 350; *Bulst.* 255; 1 *Bott*, 506.

For a second sessions cannot vacate an order made by two justices and confirmed by a former sessions. *R.* v. *Arundel*, 1 *Sess. Ca.* 234; 1 *Bott*, 509.

But if the order be quashed for want of form, it is as no order at all; and therefore the justices may proceed *de novo*. Or the sessions may, under the statute 5 Geo. II. c. 19, amend the order in point of form, and then proceed on the merits.

The justices may at the same sessions quash, upon appeal, on order of bastardy made by two justices, and also make an original order upon another person for the same child. *Burrell's case*, 1 *Mod.* 20; *ante*, 362. See further in general, *ante*, 147 to 150.

Costs.

Costs]—Where an order of sessions awarded costs to be paid by the defendant, to be taxed by the clerk of the peace, the court confirmed the order except as to costs, and quashed so much of it. *R.* v. *Skinn*, 1 *Bott*, 470; 9 *East*, 25. See further as to costs, *ante*, 151, 152.

4th. Removing Order into Court of King's Bench to quash it.

Removal of order into King's Bench to quash it.

The order may be removed by the defendant into the Court of King's Bench by writ of *certiorari* for the purpose of quashing it.

If the party be in custody for non-performance of the order when made at sessions, it seems that the proper mode is for him to obtain a *habeas corpus*, on a return to which the causes of commitment would be specified, and upon which the court would be enabled to form an opinion whether or not those causes were sufficient to justify his detention. *R.* v. *Bowen*, 5 *T. R.* 156.

If he be not in custody for such non-performance he may remove it by *certiorari*, although there has been no appeal to the sessions. *R.* v. *Stanley*, *Cald.* 172.

As to the method of removing orders by *certiorari*, see *post*, Certiorari, Vol. I.

A rule for a *certiorari* to remove an order of bastardy was discharged because not applied for in six months. *R.* v. *Howlett*, 1 *Wils.* 35.

When the case comes on to be heard the defendant must be present in court in order that he may, if the order be quashed, enter into a recognizance to abide such order as the sessions may subsequently make. *R.* v. *Gibson*, 1 *Bla. Rep.* 198; *sed vide*, 2 *Salk.* 475; 6 *T. R.* 147.

The Court of King's Bench in giving their decision look to the matters as they appear on the face of the proceedings.

They will quash the order if it appear that the persons making it had not sufficient jurisdiction so to do; (*R.* v. *Tenant*, 2 *Stra.* 716;) or if it appear that the reasons for the adjudication are not sufficient; (*R.* v. *Browne*, 2 *Stra.* 811;) or if the order be in other respects substantially defective. *R.* v. *Pitts*, *Dougl.* 662, *ante*, 366 to 370.

If the order be defective only in one point, they may quash it as to that and confirm as to the rest. *Comb.* 264; 1 *Bott*, 468; *R.* v. *Skinn*, 1 *Bott*, 470; *ante*, 362, 372.

If the order be confirmed, the court will not take security of the party for the performance, but will grant an attachment for non-performance. See *R.* v. *Chaffey*, 2 *Ld. Raym.* 858.

The court will, when it quashes the order as bad, bind the defendant to appear at the next sessions, and abide their order. *R.* v. *Gibson*, *Bla. Rep.* 198.

If a recognizance has been taken in the court below, although the court of K. B. does not take security for the performance of the order confirmed there, it seems to continue in force so as to entitle the parish to their remedy thereupon for any subsequent disobedience of the order. 2 *Roll.* 327.

5th. Mode of enforcing the Order.

Enforcing of order.

There are usually five modes of enforcing the order of affiliation;—1st, by Proceedings on the Recognizance;—2dly, by Commitment;—3dly, by Sale of the Parents' Property;—4thly, by the Court of King's Bench; and 5thly, by Indictment.

(1st.) On recognizance.

(1st). *On the Recognizance*]—By the 18 Eliz. c. 3, s. 2, "if after the same order by them (the justices) subscribed under their hands, any of the said persons, (viz. mother or reputed father,) upon notice thereof, shall not for their part observe and perform the said order, that then every such party so making default in not performing of the said order to be committed to ward in the common gaol, there to remain without bail or mainprize, *except* he, she, or they shall put in *sufficient surety* to perform the said order, *or* else personally to appear at the next general sessions of the peace to be holden in that county where such order shall be taken, and *also to abide such order* as the said justices of the peace, or the most part of them, then and there shall take in that behalf, (if they then and there shall take any,) and that if at the said sessions the said justices shall take no other order, then to abide and perform the order before made as is aforesaid." See the remaining part of this section, *ante*, 360.

It does not seem that the 49 Geo. 3, c. 68, has made any alteration as to this provision of the 18 Eliz. as to the recognizance, but merely appropriates a different punishment in the event of a neglect or refusal to perform that part of the order which provides for the child's maintenance. See *post*, 374, 375.

Under the 18 Eliz. no recognizance or security can be required of the parent until he disobeys the order of maintenance made on him. See *R.* v. *Smith*, 2 *Bulst.* 343; *R.* v. *Fox*, 1 *Bott*, 472.

In order to compel the security to be given, explicit notice must be given to the party of the order, by serving him with a copy thereof or otherwise. It would be as well to request him to perform the same, if such request can be made. See 1 *T. R.* 316.

The recognizance is entered into before two magistrates. If the party will not enter into a recognizance when properly required, he may be committed to the common gaol in pursuance of the act. See *post*, 374.

Forfeiture of recognizance.

The recognizance will be forfeited by non-appearance or not performing the order. As to the forfeiture for non-appearance, see *ante*, 359.

Whatever amounts to a breach of the condition of the bond to indemnify is likewise a non-performance of the order of filiation, so that the same facts which give the parish a remedy upon the bond, entitle it to proceed for a forfeiture of the recognizance where the default arises from a neglect to provide for the child. And as to what is such forfeiture, see *ante*, 357.

It seems questionable whether, if the father offer to maintain the child, and the parish continue to support it, he is liable on his recognizance. See *R.* v. *Smith*, *Cas. Sett.* 64; *R.* v. *Arundell*, *Sess. Ca.* 204; he is not liable in such case on the bond, *ante*, 357, 358.

ORDER OF MAINTENANCE, ENFORCING OF.

If the father be entitled and offer to take and support the child, he cannot be considered as forfeiting his bond or not performing an order of maintenance by a subsequent refusal to contribute to maintain it while in the mother's custody, any more than if it remained with the parish officers. But if the mother be so entitled, it seems he must contribute to support it so long as the law permits it to remain with her for nourishment and protection. *Holland* v. *Malkin*, 2 *Wils.* 126; and see *post*, 377, as to the parents' rights to the custody of their children.

Enforcing recognizance.

The proceedings on the recognizance is by moving the court of quarter sessions where it is filed of record to escheat it into the Court of Exchequer.

If the motion be granted, the recognizance is returned as of course, by the clerk of the peace, into that court, to be recovered there for the crown's benefit.

If the defendant does not *appear* at the sessions conformable to the condition, the recognizance is escheated as a matter of course, without motion of counsel. See 2 *Nol.* 328; *post*, Recognizance, Vol. V.

(2dly.) By commitment.

(2dly.) *By Commitment*]—The 18 Eliz. c. 3, s. 2, as we have seen, *ante*, 360, provides, that if the reputed parent, on notice, does not perform the order, the justices may commit him to gaol, there to remain without bail, *except* he put in surety to perform the order or else to appear at the next general sessions, and also to abide the order to be made at such sessions, or if none made, then to abide by and perform the original order.

The 49 Geo. III. c. 68, s. 3, as we have already seen, p. 361, without giving the party the benefit of the exception in the 18 Eliz. c. 3, as to entering into the recognizance, enacts, that if the parent on whom an order has been made by the quarter sessions, *or* by two justices, and confirmed by the quarter sessions, or against which no appeal has been made to the quarter sessions, shall neglect or refuse to pay the money, &c. according to the order, any justice in the county, &c. where the parent is, may, on complaint made by the overseers, &c. of the parish liable to support the child, or where such child is, and upon proof on oath of the order and demand of payment, and a refusal to pay, or of the parent having left his place of abode and having avoided a demand of payment, issue his warrant to apprehend him; and if the parent will not pay the money, the justice before whom he is brought, upon his not assigning sufficient cause for not making such payment, may commit him to prison and to hard labour for three months, unless he shall before the expiration of that time pay or cause to be paid the money due; and so the justice may act, as often as the parent neglects or refuses to pay any other sum that becomes due under the order *after* the expiration of or discharge from such imprisonment. See the section in full, *ante*, 361.

Summons.

In proceeding under either of these statutes, it is generally safest and best to issue a summons (*a*) before a warrant, and at all events it is so where the parent is not expected to abscond. See *R.* v. *Martyr*, 13 *East*, 55; 2 *Bing.* 63; *ante*, 355, and *post*, Warrant, Vol. V.

The commitment is for a crime.

The commitment for disobeying the order of bastardy, is a commitment for a crime. Therefore a soldier in actual pay may be committed for disobeying the order, for he is not protected by the clause in the Mutiny Act, exempting him from arrest, where his original debt is under 20*l.*, inasmuch as it excepts criminal matters. *R.* v. *Archer*, 2 *T. R.* 270; 5 *T. R.* 156.

So a woman a *feme sole* when her bastard is born, may have an order made on her notwithstanding a subsequent marriage, and her husband need not be summoned to show cause against the order; but if she disobey it, she may be sent to prison; *R.* v. *Taylor*, 3 *Burr.* 1679; 1 *Bott*, 473; *et per Curiam*, a *feme covert* is liable to be prosecuted for crimes committed by her. This woman has disobeyed the order of the justices, and the statute prescribes the punishment here inflicted upon her. There is no need to summon the husband in a criminal prosecution against the wife.

Evidence.

The magistrate should also have strict proof, when the commitment is made

(*a*) See form, (No. 25), *post*.

ORDER OF MAINTENANCE, ENFORCING OF.

under the 49 Geo. III., of the order for payment, of the non-payment, of a demand or refusal to pay, or that the parent has left his usual place of abode and avoided a demand.

Time of commitment.

Where an order of filiation is made, and the time for appeal is past, it cannot be enforced by commitment under stat. 18 Eliz. c. 3, but the magistrate, in case of the party's refusal to comply with it, should proceed under stat. 49 Geo. III. c. 68, s. 3, by commitment for three months; this being the third case mentioned in stat. 49 Geo. III. c. 68, s. 3, *viz.* "an order against which no appeal has been made." *Exparte Addis*, 1 *B. & Cres.* 87; 2 *D. & R.* 167, S. C.

Form of.

A commitment under the 18 Eliz. must be in the disjunctive, that is, except he shall put in sufficient surety to perform the said order, *or* to appear, &c. *Smith's case*, 2 *Bulst.* 312; 1 *Bott*, 465. (*a*)

A warrant for the commitment of the putative father of a bastard child, until he should pay a sum due for the maintenance of the child and legal accustomed fees, or *until he should be otherwise delivered by due course of law*, is bad, the magistrate not being authorised under 49 Geo. III. c. 68, s. 3, to make such a warrant; *Robson* v. *Spearman and another*, 3 *B. & A.* 493. The declaration stated that defendants made an assault upon the plaintiff, and seized, &c. and imprisoned him without reasonable cause, in a certain gaol, &c. for six days, and until he paid a large sum of money. Plea, not guilty. At the trial, *cor. Bayley*, J., it appeared that the plaintiff, against whom a regular order of filiation had been previously made, had been committed by the warrant of the defendant *Spearman*, who was a magistrate, for not having paid the arrears due under that order. The warrant being produced, appeared to be for the commitment of the plaintiff to the gaol of Morpeth, *until he should pay the sum due, and legal accustomed fees, or until he should be otherwise delivered by due course of law.* The plaintiff, having been imprisoned six days, paid the money, and was discharged. The learned judge being of opinion that the warrant was illegal, inasmuch as by the 49 Geo. III. c. 68, s. 3, the magistrate was empowered only to commit for three months, unless the money be sooner paid, (whereas here the commitment was general, being until he should pay the money,) directed the jury to find a verdict for the plaintiff against *Spearman*. The other defendant, who was the constable who executed the warrant, had a verdict. *Cross*, Serjt. moved to enter a nonsuit. Here the defendant was discharged, in point of fact, within the three months, for which, by 49 Geo. III. c. 68, s. 3, he might have been committed. If he had been detained beyond that period under the warrant, he might have had some ground for the action. *Abbott*, C. J.—I am of opinion that the warrant in this case was illegal, not being such as the justice had authority to make. It was his duty to have pursued the words of the stat. 49 Geo. III. c. 68. If he had so done, it would have given the party committed the option either of paying the money, or of staying three months in prison, and being thereby altogether discharged from the payment. This warrant is for his imprisonment till he shall pay the money, and deprives the party of that advantage. The difference is a most material one, and it gives the party committed a right of action aginst the magistrate.

The act seems to have exempted the parent from payment of any sum becoming due during the period of his imprisonment, as it only provides for his subsequent commitment from time to time, when he neglects to pay sums becoming due under the order, after the expiration or discharge from his former imprisonment. 2 *Nolan*, 324.

As to commitment in general, see *post*, **Commitment in Execution**, Vol. I.

(3dly.) By sale of parents' property. Parents running away, their property may be seized and sold.

(3dly.) *By Sale of Parents' Property*]—By stat. 13 & 14 Car. II. c. 12, s. 19, "whereas the putative fathers and lewd mothers of bastard children run away out of the parish, and sometimes out of the county, and leave the said bastard children upon the charge of the parish where they are born, although such putative father and mother have estates sufficient to discharge

(*a*) See form, (No. 24,) *post*.

ORDER OF MAINTENANCE, ENFORCING OF.

such parish; it shall and may be lawful for the churchwardens and overseers of the poor of such parish where any bastard child shall be born, to take and seize so much of the goods and chattels, and to receive so much of the annual rents or profits of the lands of such putative father or lewd mother, as shall be ordered (*a*) by any two justices of peace as aforesaid for or towards the discharge of the parish, to be *confirmed* at the sessions, for the bringing up and providing for such bastard child; and *thereupon* it shall be lawful for the sessions to make an order for the churchwardens or overseers of the poor of such parish, to dispose of the goods by sale or otherwise, or so much of them for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the sessions as aforesaid, of his or her lands."

13 & 14 Car. 2, c. 12.

This provision corresponds with the 5 Geo. I. c. 8, which is copied from it, and they should be construed alike. See title Poor, Vol. IV.

Q. v. *Chaffey*, 2 *Ld. Raym.* 858; 3 *Salk.* 66; 1 *Bott*, 472. Order to the churchwardens and overseers to seize of the putative father's goods what *they should judge proper* for securing of the parish quashed; for that it should be what the *justices think proper*, and not what the churchwardens and overseers think proper.

(4thly.) By Court of King's Bench.

(4thly.) *By the Court of King's Bench*]—When an order is *confirmed* by this court, on a removal of it there for the purpose of quashing it, an attachment lies for non-performance. See *Tidd's Practice*, 9th ed. *Index*, tit. *Attachment*.

As to this court's making the party give security for performance of the order, see *ante*, 373.

(5thly.) By indictment.

(5thly.) *By Indictment*] — If the parent disobey the order, he may be indicted for it, like for the disobedience of any other justice's legal order; see 2 *Burr.* 799; 1 *Bott*, 381. Having taken a recognizance is no bar to the indictment, and both might be proceeded on. 2 *Nolan*, 338.

See further, *post*, Order, Vol. III. p. 953. See form of indictment, *post*, (No. 32.)

III. Punishment of the Parents.

It is no offence at common law to get a bastard child.

18 Eliz. c. 3. Punishment of parents.

But by stat. 18 Eliz. c. 3, s. 2, "concerning bastards begotten and born out of lawful matrimony, (an offence against God's law and man's law,) the said bastards being now left to be kept at the charges of the parish where they be born, to the great burden of the same parish, and in defrauding of the relief of the impotent and aged true poor of the same parish, and to the evil example and encouragement of lewd life: it is ordained and enacted by the authority aforesaid, that two justices of the peace (whereof one to be of the *quorum*, or next unto the limits where the parish church is, within which parish such bastard shall be born, upon examination of the cause and circumstances) shall and may by their discretion take order, as well for the punishment of the mother and reputed father of such bastard child, as also for the better relief of every such parish in part or in all."

50 G. 3, c. 51.

By the stat. 50 Geo. III. c. 51, s. 1, the stat. 7 Jac. c. 4, s. 7, (for punishing lewd women who have bastards) is repealed, and by sect. 2 it is enacted, "that from and after the passing of this act, in cases when a woman shall have a bastard child which may be chargeable to the parish, it shall be lawful for any two justices of the peace before whom such woman shall be brought, and they shall or may, at their discretion, commit (*b*) such woman to the house of correction for the district or place, and there to be set on work for any time not exceeding twelve calendar months nor less than six weeks."

Commitment.

Not exceeding twelve calendar months nor less than six weeks.

And by sect. 3, "it shall be lawful for any two justices of the peace, at

(*a*) See form, (No. 31,) *post*. (*b*) See form, (No. 30,) *post*.

any petty session for the division wherein the parish to which such bastard child may be chargeable is situate, upon their own knowledge, or a certificate duly authenticated from the keeper of such house of correction in which such woman shall have been confined for any space not less than six weeks, of the good behaviour of such woman during such her confinement, and of the reasonable expectation of her reformation, by warrant under their hands and seals, to order such woman to be immediately (or at the time to be appointed in such warrant) discharged and released from further confinement."

Justices may mitigate confinement and discharge.

Sect. 4 provides, "that nothing in this act contained shall extend, or be construed to extend to authorise any justices of the peace to commit any such woman to the house of correction, until she shall have been delivered for the space of one calendar month."

No woman to be committed till she has been delivered one month.

Bastard Child which may be chargeable]—It is questionable whether the mother can be legally committed, either under stat. 18 Eliz. or stat. 50 Geo. III. c. 51, if she will discharge the parish of keeping the bastard. See 4 *Bla. Com.* 65; and *R.* v. *Tibbenham*, and *R.* v. *Alveley*, tit. Poor, Vol. IV.

Child must be chargeable.

Lawful for any Two Justices]—The apparent restriction of 18 Eliz. to the *two next* justices is removed.

Commitment by any two justices.

To commit such Woman]—It seemeth neither reasonable nor legal *to commit the child* with the mother. It ought to be left to her own option, particularly if the child suckleth, which is most frequently the case, to take it with her, or leave it. If left it must be supported by the parish in which it is legally settled, which is ordinarily that from which the mother is committed. *Dalt*, c. 11.

Whether the child may be committed with the mother.

IV. Right of the Father or Mother to the Custody of the Child.

Custody of.

In the case of *Richards and Samon* v. *Hodges*, this point came in question, but the matter went off on an error in the proceedings; and the point was not spoken to by the court. 2 *Saund.* 83; 1 *Bott*, 464.

Q. v. *Smith*, *Sett. Cases*, 64; 1 *Bott*, 497. Order to pay 1*s.* a week till the child is eight years old. It was objected that it should be so long as the child is chargeable; possibly he may gain a settlement; or a person may give him an estate; or the father may take him. By the court—this is only a remote possibility. As to the father's taking him, he ought to have done it at first; and by suffering the order to be made, it shall be deemed a refusal in law; besides, he shall not then be suffered; he may sell him, or make away with him, as too often happens.

In the following case, however, the question came particularly under the consideration of the court:—it was there held, that the putative father may take his bastard child from the *parish*, and maintain him himself. *Newland* v. *Osman*, T. 27 Geo. II. MSS. (B); 1 *Bott*, 466, S. C. Debt upon bond conditioned to indemnify and save harmless the parish of Eling from a bastard child. *Plea*, that the defendant had maintained, supported, and nourished the said child to a certain day, that is to say, to the 27th of October last, and that then he offered to take the said child to maintain, which they refused, and that if the churchwardens or any of them have been damnified, it is of their own wrong. *Replication*, that for three weeks from and after the said 27th day of October, the defendant did not provide nourishment for the child, but failed, and by reason thereof the plaintiffs, after the three weeks, expended 3*s.* for the maintenance of the child, and so were damnified. Demurrer, and joinder in demurrer. The question of law is, whether a putative father may take a bastard child into his

CUSTODY OF.

own custody to maintain it, or whether the parish shall have the care of it. And the case in 2 *Saund.* 83, was mentioned, wherein the court held this to be a good plea. 1 *Vent.* 48. That the father may maintain the child himself. I *Vent.* 210. That the justices can only make an order to maintain, so long as the child shall be chargeable. It was considered by the court, that the putative father might take his child and maintain it himself, and that this was the reason always given why orders for the maintenance of such children must not be limited to any certain time. (*Foster*, J., Dub.)

And in the case of *Hulland* v. *Malkin and Bristow*, 2 *Wils.* 126; 1 *Bott*, 488, (which was on an action on a bond for indemnifying the plaintiff from the charges of a bastard child, but it went off upon an error in the pleadings,) the court said, we need not in this case say, whether the father or the mother hath a right to have the child while under seven years of age. And by the Lord C. J. *Wilmot*, I give no opinion, whether the father has any power over the child, who is *nullius filius*. *Grotius* says, truly the mother is the only certain parent. And an order of justices to remove the mother always removes the child.

But in the case of *R.* v. *Soper*, 5 *T. R.* 278, a child of three years of age being brought up at the instance of its mother, on an *habeas corpus*, by the putative father, on whom an order of filiation had been made, and who had obtained the possession of the child by fraud, Lord *Kenyon*, C. J. said, that the putative father had no right to the custody of the child; and it was accordingly restored to the mother.

Upon a motion on behalf of the mother of a bastard for a *habeas corpus* to the defendants, to bring it before the court, in order that her bastard child, which the defendants had taken from her by force, might be restored to her, it was said by Lord *Ellenborough*, C. J., that as the mother had had the child in her quiet possession under her own care and protection during the period of nurture, and had been first divested of her possession by stratagem, and afterwards by force, in such a case every thing was to be presumed in her favour. And he said that, without touching the question of guardianship, it was a proper occasion, by means of this writ, to restore the child to the same quiet custody in which it was before the transactions happened which were the subject of complaint. *R.* v. *Hopkins and Wife*, 7 *East*, 579; 3 *Smith*, 577, S. C.

In *Exparte Ann Knee*, 1 *N. R.* 148, it was held, that the mother of an infant illegitimate child is entitled to the custody of the child in preference to the father, though from his circumstances he may be better able to educate it. This was an application for an *habeas corpus* to bring up the body of an infant illegitimate child in order to restore it to the mother. It appeared by the affidavits, that the child had been placed by consent of the father and mother under the care of a nurse; that it was afterwards removed by the father to another woman; that the father then went abroad, having entrusted Mr. *Brandon*, a friend, with the superintendence of the child; that Mr. *Brandon* (to whom the writ was prayed to be directed) wished to have the child placed with some person where the mother could have access to the child, and under those circumstances was willing to pay for its maintenance, but the mother insisted upon having it delivered up to her. The child being brought up, and the mother being present, *Shepherd*, Serj. showed cause, and urged that it would be for the benefit of the child that it should be placed with some person whom the father might approve of, as the father, from his situation of life, was better able to maintain the child than the mother. *Best*, Serj. *contrà*, insisted upon the right of the mother to the custody of her own child, and referred to *R.* v. *De Manneville*, 5 *East*, 221, and *R.* v. *Moseley*, 5 *East*, 224, (notis,) and *R.* v. *Soper*, 5 *T. R.* 278. Sir *James Mansfield*, C. J. "There is no affidavit before the court to show any ground of apprehension that the child would incur any danger from being left with the mother. It is not unlikely indeed that by granting this application we may be doing a great prejudice to the child, but still the mother is entitled to the child if she insists upon it. The

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PUNISHMENT OF PARENTS.

Justices may mitigate confinement and discharge.

No woman to be committed till she has been delivered one month.

Child must be chargeable.

Commitment by any two justices.

Whether the child may be committed with the mother.

tody of.

CAPACITY OF BASTARD TO INHERIT.

though there is natural affection between them, yet the raising the use is a constitution of the law, and therefore the issue will never arise. *Jenk.* 47; *Dyer*, 374.

If the issue of a man who is a bastard purchase land, and die without issue, though the land cannot descend to any heir on the part of the father, yet to the heir on the part of the mother (being no bastard) it may; so if the bastard were attaint; for the heirs of the mother make not any conveyance by the bastard. *Noy*, 159.

If a bastard die intestate, without wife or issue, the King is entitled to the *personalty;* and the ordinary of course grants administration to the patentee or grantee of the crown. 3 *P. Wms.* 33; 2 *Black. Com.* 505.

It is usual, however, for the crown to grant administration of it to some relation of the bastard's father or mother, reserving one-tenth or other small proportion of it. 1 *Wood*, 308.

But the rule, that a bastard is *nullius filius*, applies only to the case of *inheritance;* it was so considered by Lord *Coke*. See *Ld. Raym.* 68; *Comb.* 356.

As to the marriage of bastards, see *R.* v. *Hodnett*, 1 *T. R.* 96, *post*, Marriage, Vol. III.

VII. Forms, *Index to.*

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FORMS.

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ORDER to seize the Goods, &c. of a Father or Mother of a Bastard, who run away and leave him upon Charge of Parish, on 13 & 14 Car. II. c. 12, (No. 31.)
INDICTMENT for disobeying an Order of Maintenance, (No. 32.)

(No. 1.)

Examination of a woman delivered of a bastard; under 6 Geo. 2, c. 31. (*a*)

County of } *THE voluntary examination of A. M. of the parish of in the* } *said county, [single] woman, taken upon oath before me one of his Majesty's justices of the peace in and for the said county, this day of* 18 .

Who saith, that on or about the day of now last past, she, the said A. M. was delivered of a male [or *female*] *bastard child in the said parish, and that the said bastard child is* [or *is likely to*] *become chargeable to the said parish, and that A. F. of in the said county,* [*farmer,*] *did get her with child of the said bastard child. Taken and signed the day and year first above written, at before me, J. P.*

The mark of
+ *A. M.*

(No. 2.)

Warrant to apprehend reputed father, after the birth, on 6 Geo. 2, c. 31, s. 1. (*b*)

County of } *To A. C. the Constable of in the said County, and to all other* } *Peace Officers in the said County.*

WHEREAS A. M. of the parish of in the said county, [single] woman, hath, in her voluntary examination taken in writing, upon oath, before me, J. P. Esquire, one of his Majesty's justices of the peace of the said county, this day deposed that on or about the day of now last past, she the said A. M. was delivered of a male [or *female*] *bastard child in the said parish, and that the said bastard child is* [or *is likely to*] *become chargeable to the said parish, and hath in her same examination charged A. F. of in the said county of* [*farmer,*] *with having gotten her with child of the said bastard child; and whereas P. P. one of the overseers of the poor of the said parish, in order to indemnify the said parish in the premises, hath applied to me to issue my warrant for the apprehending of the said A. F., according to the statute in that case made and provided: These are therefore to command you in his Majesty's name immediately to apprehend the said A. F. and to bring him before me, or any other of his Majesty's justices of the peace for the said county, in order that he may be committed to the common gaol or house of correction of the same county, unless he shall give security to indemnify the said parish, or shall enter into a recognizance with sufficient surety, upon condition to appear at the next general quarter sessions or next general sessions of the peace to be holden for the said county, and to abide and perform such order or orders as shall be made, in pursuance of an act passed in the eighteenth year of the reign of her late Majesty Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony. Given under my hand and seal at the day of* 18 .

J. P.

(No. 3.)

Commitment thereon for not giving security or entering into a recognisance.

County of } *To C. C. the Constable of in the said County, and to the Keeper of* } *the House of Correction,* [or *Common Gaol,*] *at in the said County.*

WHEREAS A. M. of the parish of in the said county, [single] woman, hath, in her voluntary examination taken in writing, upon oath, before [*me,*] *J. P. Esquire, one of his Majesty's justices of the peace of the said county, on the day of deposed that on or about the day of now last past, she the said A. M. was delivered of a male* [or *female*] *bastard child, in the said parish, and that the said bastard child is* [or *is likely to*] *become chargeable to the said parish, and hath in her same examination charged A. F. of* [*farmer,*] *with having gotten her with child of the said bastard child. And whereas the said A. F. being now personally present before me,* [or *us, K. P. and L. M. Esquires, two, &c.*] *being brought pursuant to the warrant of* [*me*] *the said J. P., for that purpose granted upon the application of P. P.*

(*a*) *Ante*, 352. This form is the one given in prior editions of this work and usually adopted, but it should seem best that the form should give the *very words* used by the mother in the *material* part of her examination. See *post*, Vol. II. p. 98, 104.

(*b*) 6 Geo. II. c. 31, *ante*, 352.

FORMS.

one of the overseers of the poor of the said parish, doth refuse to give security to indemnify the said parish, and doth also refuse to and will not enter into a recognizance with sufficient surety, upon condition to appear at the next general quarter sessions or next general sessions of the peace to be holden for the said county of and to abide and perform such order or orders as shall be made in pursuance of an act passed in the eighteenth year of the reign of her late Majesty Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony; pursuant to the statute in such case made and provided: These are therefore to command you the said constable to take and convey the said A. F. to the house of correction [or common gaol] at in the said county of and to deliver him to the keeper thereof, together with this warrant; and I do hereby command you the said keeper of the said house of correction [or the said common gaol] to receive the said A. F. into your custody in the said house of correction [or the said common gaol] and him there safely to keep until he shall give such security, or enter into such recognizance as aforesaid, or be otherwise lawfully delivered from thence. Given under my hand and seal, at the day of , 18 .

(No. 4.)

Bond to indemnify the parish. (a)

KNOW all men by these presents, that we A. F. of in the county of [farmer,] and G. G. of [yeoman,] are held and firmly bound unto churchwardens, and overseers of the poor of the parish of in the said county (in trust for the parishioners of the said parish,) in pounds of good and lawful money of Great Britain, to be paid to the said or their certain attorney, their executors, administrators, or assigns. To which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our, and each and every of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the day of in the year of the reign of our sovereign Lord William the Fourth, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and in the year of our Lord .

The condition of this obligation is such, that whereas A. M. of [single] woman, hath in and by her voluntary examination, taken in writing upon oath before J. P. Esquire, one of his Majesty's justices of the peace in and for the said county of declared that she is with child, and that the said child is likely to be born a bastard, and to be chargeable to the said parish of and that the above-bounden A. F. hath gotten her with and is the father of the said child; [if it is after the birth, then say, that whereas A. M. of [single] woman, in her examination taken in writing upon oath, before one of his Majesty's justices of the peace in and for the said county, hath declared, that on the day of now last past, at in the parish of in the county aforesaid, she the said A. M. was delivered of a male [or female] bastard child, and that the said bastard child is likely to become chargeable to the said parish of and hath charged the above-bound A. F. with having gotten her with child of the said bastard child]; if therefore the said A. F. and G. G. or either of them, their or either of their heirs, executors, or administrators, do and shall from time to time, and at all times hereafter, fully and clearly indemnify and save harmless, as well the above-named churchwardens and overseers of the poor of the said parish of , and their successors for the time being, as also all and singular the other parishioners and inhabitants of the said parish of which now are or hereafter shall be for the time being, and from all manner of costs, taxes, rates, assessments, and charges whatsoever, for or by reason of the birth, education, and maintenance of the said child, and of and from all actions, suits, troubles, and other charges and demands whatsoever, touching or concerning the same, then this present obligation to be void, otherwise of force.

Signed, sealed, and delivered (having been first duly stamped) in the presence of W. W. C. W. A. F. (L. S.) G. G. (L. S.)

(No. 5.)

Recognizance of reputed father after birth to appear at sessions, and to abide their order, on 6 Geo. 2, c. 31. (a)

County of } BE it remembered, that on the day of in the year of the } reign of our sovereign Lord William the Fourth, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, A. F. of in the county aforesaid [farmer,] and G. G. of in the county aforesaid, [yeoman,] personally came before me J. P. Esquire, one of the justices of our said Lord the King assigned to keep the peace in and for the said county, and acknowledged themselves to owe to our said Lord the King, that is to say, the said A. F. the sum of and the said G. G. the sum of of good and lawful money of Great Britain, to be made and levied of their goods and chattels, lands and tenements respectively to the use of our

(a) See *ante*, 352, 355.

FORMS.

said Lord the King, his heirs and successors, if the said A. F. shall make default in the condition under written.

Whereas A. M. of the parish of in the said county, [single] woman, in her examination taken in writing upon oath before [me] J. P. one of his Majesty's justices of the peace in and for the said county, on the day of hath deposed that on or about the day of now last past, she the said A. M. was delivered of a male [or female] bastard child in the said parish, and that the said bastard child is [or is likely to become] chargeable to the said parish; and in the same examination hath charged the above-bounden A. F. with having gotten her with child of the said bastard child. The condition of this recognizance is such, that if the above-bounden A. F. do and shall appear at the next general quarter sessions [or the next general sessions] of the peace to be holden for the said county, and shall abide and perform such order or orders as shall be made in pursuance of an act passed in the eighteenth year of the reign of her late Majesty Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony, then this recognizance to be void, otherwise to be of force.

Acknowledged before me, J. P.

(No. 6.)

Application of reputed father for a liberate, under 6 Geo. 2, c. 31, s. 3 (*a*).

County of } WHEREAS on the day of in the year of our Lord one thousand eight hundred and A. F. [or G. G. for and on the behalf of A. F.] a prisoner in the house of correction [or common gaol] at in the said county of committed thereto by virtue of the statutes in that case made and provided, made application to me J. P. Esquire, one of his Majesty's justices of the peace in and for the said county, and residing in [or near] the limits where the parish of in the said county lies, stating that A. M. of the parish of in the said county [single] woman, in and by her voluntary examination in writing, taken upon oath before [me] J. P. Esquire [or if any other justice, name him accordingly] the day of now last past, deposed, that on or about the day of she the said A. M. was delivered of a male [or female] bastard child, in the said parish, and that the said bastard child was [or was likely to become] chargeable to the said parish, and that the said A. M. did, in her examination, charge that the said A. F. did get her with child of the said bastard child: Whereupon he the said A. F. having been brought before me, [or if before any other justice name him accordingly], by virtue of [my] warrant for that purpose granted, and having refused to give security to indemnify the said parish, or to enter into a recognizance with sufficient surety, with a condition thereunto annexed in pursuance of the statutes (b) in that case made and provided, was by me, [or if before any other justice name him accordingly] on the day of now last past committed to the said house of correction, [or common gaol,] in pursuance of the said statutes.(c) And whereas the said A. F. [or the said G. G. for and on the behalf of the said A. F.] doth allege that he the said A. F. hath indemnified [or that he hath given security to indemnify,] the said parish against all costs and charges incident to the birth and maintenance of the said bastard child, [or that it is more than six weeks since the said A. M. was delivered of the said bastard child, and that no order hath been made in pursuance of the act of the eighteenth year of her late Majesty Queen Elizabeth concerning bastards begotten and born out of lawful matrimony.] And thereupon the said A. F. [or G. G. for and on the behalf of the said A. F.] prayeth that he may be forthwith liberated and discharged from and out of his imprisonment in the said house of correction [or common gaol,] according to the statute in such case made and provided. A. F. [or G. G.]

Made before me the day and year first above named, J. P.

(No. 7.)

Summons of overseers to show why reputed father should not be discharged out of prison, where no order made within six weeks after birth of child, according to 6 Geo. 2, c. 31, s. 3 (*d*).

County of } To C. C. the Constable of in the said County, and to all other peace officers of the said County.

WHEREAS application hath been made unto me, J. P. Esquire, one of his Majesty's justices of the peace in and for the said county, and residing in [or near unto] the limits where the parish of in the said county lies, by A. F. [or G. G. for and on the behalf of A. F.] now a prisoner in the house of correction [or common gaol] at in the said county, committed thereto by virtue of the statute in that case made and provided, stating that A. M. of the parish of in the said county, single woman, in and by her voluntary examination in writing taken upon oath before

(*a*) *Ante*, 353.
(*b*) 6 Geo. II. c. 31, s. 1, *ante*, 352; 49 Geo. III. c. 68, s. 2, *ante*, 353.
(*c*) 49 Geo. III. c. 68, s. 2, *ante*, 353.
(*d*) *Ante*, 353.

FORMS.

me, [or if any other justice state the fact] *the day of now last past, deposed, that on or about the day of she the said A. M. was delivered of a male* [or *female*] *bastard child in the said parish, and that the said bastard child was* [or *was likely to become*] *chargeable to the said parish; and that the said A. F. did get her with child of the said bastard child: Whereupon he, the said A. F. having, &c.* [proceed as in the form *supra,* (No. 6), reciting it to the end]: *These are therefore to require and command you the said constable to summon the overseers of the poor of the said parish of to appear before me or such other of his Majesty's justices of the peace of the said county as shall be then present, at in the said county, on the day of next, at the hour of in the noon of the same day, to show cause why the said A. F. should not be discharged from his imprisonment in the said house of correction* [or *common gaol*] *according to the statute in that case made and provided. And be you then there to certify what you shall have done in the execution hereof. Herein fail you not. Given under my hand and seal the day of .* J. P. (L. S.)

(No. 8.)

Liberate thereupon.

County of } *J. P. Esquire, one of the justices of our Lord the King assigned to keep the peace in and for the said county. To the keeper of the house of correction* [or *common gaol*] *at in the said county.*

WHEREAS A. M. of in the said county, [*single*] *woman, in and by her voluntary examination taken in writing upon oath the day of now last past, before me the justice aforesaid* [or if before any other justice state the fact accordingly] *deposed, that on or about the day of she the said A. M. was delivered of a* [*male*] *bastard child, &c.* [state the filiation in the past tense, as in the form *supra,* No. 6.]: *And whereas the said A. F. having refused before me* [or if before any other justice state the fact accordingly] *to give security to indemnify the said parish or to enter into a recognizance with sufficient surety, with a condition thereunto annexed, in pursuance of the statutes in that case made and provided, was by me* [or if before any other justice state the fact accordingly] *on the day of last committed to the said house of correction* [or *common gaol*] *in pursuance of the said statutes: And whereas the said A. F.* [or *G. G. for and on the behalf of the said A. F.*] *hath applied to me to be discharged from his imprisonment: And whereas P. P. one of the overseers of the poor of the said parish, having been duly summoned for that purpose, hath this day appeared before me, but hath not shown any cause why the said A. F. should not be discharged according to the form of the statute in that case made and provided:* [If no overseer appear, then say, *And whereas it hath been duly proved to me, upon the oath of C. C. constable of that the overseers of the poor of the said parish of were duly summoned to show cause why the said A. F. should not be discharged from his said imprisonment according to the statute in that case made and provided, but that all the said overseers have neglected to appear before me at the time and place appointed by my summons:*] *And it appearing unto me on the oath of W. W. of that the said A. F. hath indemnified* [or *that he hath given security to indemnify*] *the said parish against all costs and charges incident to the birth and maintenance of the said bastard child:* [or *that it is now more than six weeks since the said A. M. was delivered of the said bastard child, and also that no order hath been made in pursuance of the act of the eighteenth year of her late Majesty Queen Elizabeth concerning bastards begotten and born out of lawful matrimony;*] [or as the case is, see the form *ante,* (No. 6)]. *These are therefore in his said Majesty's name to authorise and require you the said keeper of the said house of correction* [or *common gaol*] *to forbear to detain the said A. F. any longer in your custody, and to release him from thence, and to suffer him to go at large, provided he be not detained in your custody for any other cause. Given under my hand and seal at the day of A. D. . J. P.* (L.S.)

(No. 9.)

Voluntary examination of woman with child of a bastard, not delivered. In pursuance of 49 Geo. 3, c. 68, s. 2. (a).

County of } *THE voluntary examination of A. M. of the parish of in the said county,* [*single*] *woman, taken upon oath before me one of his Majesty's justices of the peace in and for the said county, this day of* 18 .

Who saith that she is now with child, and that such child is likely to be born a bastard, and to be chargeable to the said parish, and that A. F. of in the county of [*farmer,*] *hath gotten her with child of the said child.*

Taken and signed the day and year above written, before me, J. P.

The mark of + *A. M.*

(a) *Ante,* 353. See the note (a) *ante,* 381, as to stating the very words used by the mother in her examination.

(No. 10.)

County of } *To the constable of* .

Warrant to apprehend reputed father before the birth, by 40 Geo. 3, c. 68, s. 2. (a)

*WHEREAS A. M. of the parish of in the said county, [single] woman, hath in her voluntary examination taken in writing upon oath before me, one of his Majesty's justices of the peace of the said county, this day declared herself to be with child, and that such child is likely to be born a bastard, and to be chargeable to the said parish; and hath in the same examination charged A. F. of in the county of with having gotten her with child of the said child: And whereas O. P. one of the overseers of the poor of the said parish, in order to indemnify the said parish in the premises, hath applied to me to issue my warrant for the apprehending of the said A. F.; I do therefore hereby command you immediately to apprehend the said A. F. and to bring him before me or any other of his Majesty's justices of the peace for the said county of to the intent that he may be committed to the common gaol or house of correction of the same county, unless he shall give security to indemnify the said parish, or shall enter into a recognizance with sufficient surety or sureties upon condition to appear at the next general quarter sessions [or next general sessions] of the peace to be holden for the said county of to abide and perform such order or orders as shall then be made, in pursuance of an act passed in the eighteenth year of the reign of her late Majesty Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony, unless one such justice * as aforesaid shall have certified in writing, under his hand, to such general quarter sessions [or general sessions] of the peace, that it hath been proved before him, upon the oath of one credible witness, that the said A. M. had not been then delivered; [or that the said A. M. had been delivered within one month only previous to the day on which such general quarter sessions [or general sessions] of the peace shall be holden; or unless two justices of the peace of the said county of shall have certified in writing under their hands to the next, or in case the said A. M. shall not have been delivered as aforesaid, then to the immediately subsequent general quarter sessions [or general sessions] of the peace, that an order of filiation had been already made on the said A. F., or that such order was not then requisite to be made on account of the death of the said bastard child, or for other like sufficient reason (b), pursuant to the statute (c) in such case made and provided. Given under my hand and seal the day of &c.*

(No. 11.)

County of } *To the constable of in the said county, and to the keeper of the house of correction [or common gaol] at in the said county.*

Commitment thereon.

WHEREAS A. M. of the parish of in the said county, [single] woman, hath in her voluntary examination taken in writing upon oath before me , one of his Majesty's justices of the peace of the said county, on the day of declared herself to be with child, and that such child is likely to be born a bastard, and to be chargeable to the said parish, and hath in the same examination charged A. F. of in the county of with having gotten her with child of the said child. And whereas the said A. F. being now personally present before me, being brought pursuant to my warrant for that purpose granted upon the application of O. P., one of the overseers of the poor of the said parish, doth refuse to give security to indemnify the said parish, and doth also refuse to enter into a recognisance with sufficient surety or sureties, upon condition to appear at the next general quarter sessions [or next general sessions] of the peace to be holden for the said county, to abide and perform such order or orders as shall then be made in pursuance of an act passed in the eighteenth year of the reign of her late Majesty Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony, unless one justice, &c. [and so on from the * in the form, No. 10.]

These are, therefore, to command you the said constable to take and convey the said A. F. to the house of correction [or *common gaol*] *at in the said county of and to deliver him to the kerper thereof, together with this warrant: and I do hereby command you the said keeper of the said house of correction* [or *the said common gaol*] *to receive the said A. F. into your custody in the said house of correction* [or *the said com-*

(a) *Ante*, 353.

(b) See stat. 49 Geo. III. c. 68, s. 2, *ante*, 353.

(c) Viz. 6 Geo. II. c. 31, s. 3; 49 Geo. III. c. 68, s. 2; *ante*, 352, 353.

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mon gaol,] and him there safely to keep until he shall give such security, or enter into such recognizance as aforesaid, or be otherwise lawfully delivered from thence. Given under my hand and seal the day of , &c.

(No. 12.)

Recognizance of reputed father before birth, conditioned to appear at sessions to abide their order, &c. on 49 Geo. 3, c. 68, s. 2. (a)

[See the form of Recognizance, *ante*, 382. The condition will be as follows.]

WHEREAS A. M. of the parish of in the said county, [single] woman, hath, in her voluntary examination, taken in writing upon oath before me one of his Majesty's justices of the peace of the said county, on the day of declared herself to be with child, and that such child is likely to be born a bastard, and to be chargeable to the said parish, and hath in the same examination charged the above bounden A. F. with having gotten her with child of the said child. The condition of this recognizance is such, that if the above-bounden A. F. do and shall appear at the next general quarter sessions [or the next general sessions] of the peace to be holden for the said county of to abide and perform such order or orders as shall be then made in pursuance of an act passed in the eighteenth year of the reign of her late Majesty Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony, unless one justice of the peace for the said county of shall have certified in writing under his hand to such general quarter sessions [or general sessions] of the peace that it has been proved before him, on the oath of one credible witness, that the said A. M. had not been then delivered, [or that the said A. M. has been delivered within one month only,] previously to the day on which such general quarter sessions [or general sessions] of the peace shall be holden, [or unless two justices of the peace for the said county of shall have certified in writing under their hands to the next, [or in case the said A. M. shall not have been delivered, then to the immediately subsequent general quarter sessions [or general sessions] of the peace,] that an order of filiation has already been made, or that such order was not then requisite to be made, on account of the death of the said bastard child, or for other like sufficient reason, then this recognizance to be void, otherwise of force.

Acknowledged before me, J. P.

(No. 13.)

Certificate of justice that the woman hath not been delivered, or hath been delivered in one month only before sessions, under 49 Geo. 3, c. 68, s. 2. (a)

To His Majesty's justices of the peace, for the county of assembled at the general quarter sessions of the peace, holden at in and for the said county, on the day of 18 .

County of } WHEREAS A. M. of the parish of in the said county, [single] wo-
to wit. } man, did by her voluntary examination, taken in writing upon oath before J. P., one of his Majesty's justices of the peace for the said county, on the day of last past, declare herself to be then with child; and that the said child was likely to be born a bastard, and to be chargeable to the said parish of and the said A. M. did in the same examination charge A. F. of with having gotten her with child of the said child: and whereas afterwards, to wit, on the day of the said A. F. was brought before the said J. P. [or before one of his Majesty's justices of the peace for the said county of] pursuant to a warrant for that purpose duly granted, and thereupon entered into a recognizance before him the said in the sum of with two sureties, to wit, of and of in the sum of each, upon condition to appear at the then next general quarter session of the peace to be holden for the said county, to abide and perform such order or orders as should then be made in pursuance of an act passed in the eighteenth year of her late Majesty Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony, unless one such justice as aforesaid should have certified in writing under his hand to such general quarter sessions of the peace that it had been proved before him on oath of one credible witness, that such [single] woman had not been then delivered, or had been delivered within one month only previous to the day on which such general quarter sessions or general sessions of the peace shall be holden.

Now I one of his Majesty's justices of the peace, acting in and for the said county of , do hereby certify that it hath been this day proved before me, upon the oath of (b) (being a credible witness) that she the said A. M. hath not yet been delivered of the said bastard child, [or that she the said A. M. hath been delivered of a bastard child, within one month only previous to the day on which the said

(a) *Ante*, 353. (b) See next form, (No. 14).

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general quarter sessions of the peace will be holden, to wit, on the day of last or instant,] to the end that the recognizance entered into as aforesaid may be respited to the next general quarter sessions, pursuant to the statute in that case made and provided.

Given under my hand the day of in the year of our Lord .

(No. 14.)

Affidavit to get recognizance respited, under 49 Geo. 3, c. 68, s. 2. (a)

County of } A. B. of in the county of maketh oath that } he [or she] is acquainted with A. M. of the parish of , in the said county, [single] woman, who, as this deponent is given to understand, hath lately sworn before one of his Majesty's justices of the peace for the said county, that she the said A. M. is with child, that the said child is likely to be born a bastard, and to be chargeable to the said parish of and that E. F. of in the county of hath gotten her with child; and this deponent further maketh oath that the aforesaid A. M. (as this deponent verily believes) hath not yet been delivered of the said child, [or hath been delivered of the said child within one month previous to the day on which the next general quarter sessions of the peace will be holden for the said county of to wit, on the day of last [or instant.]

Sworn before me, one of his Majesty's justices of the peace for the said county of this day of .

(No. 15.)

Justice's certificate thereon.

To his Majesty's justices of the peace for the county of assembled at the general quarter sessions [or general sessions] of the peace to be holden in and for the said county, on the day of , 18 .

PURSUANT to the statute in that case made and provided, and in consequence of the above information this day made on oath before me, J. P., Esquire, one of his Majesty's justices of the peace in and for the said county, I do hereby certify the same unto you, to the end that the recognizance entered into with sureties by the abovementioned putative father may be respited to the next quarter sessions [or general sessions] to be holden for the said county. Given under my hand at in the said county of this day of A. D. 18 .

J. P.

(No. 16.)

Certificate of justices that an order of filiation has been made, or that such order is not requisite; on 49 Geo. 3, c. 68, s. 2. (a)

To his Majesty's justices of the peace for the county of in quarter sessions assembled, on the day of .

WHEREAS A. M. of in the said county of [single] woman, did lately make oath before one of his Majesty's justices of the peace for the county aforesaid, that she was with child, and that the said child was likely to be born a bastard, and to be chargeable to the parish of in the said county, and that A. F. of in the county of [yeoman,] did get her with child of the said child: and whereas the said A. F. was afterwards bound in a recognisance with sureties before one of his Majesty's justices of the peace for the said county of to appear at the next general quarter sessions for the said county of to abide and perform such order or orders as should then be made in pursuance of an act passed in the eighteenth year of the reign of Queen Elizabeth; And whereas we, J. P. and K. P. Esquires, two of his Majesty's justices of the peace for the said county of have this day made an order of affiliation on the aforesaid A. F. for the maintenance of the said child since born a bastard of the body of the said A. M. in the said parish of [or and whereas it has this day been made appear to us J. P. and K. P. Esquires, two of his Majesties justices of the peace for the said county of that no order of filiation is now requisite to be made on account of the death of the said child since born a bastard of the body of the said A. M. in the said parish of [or state any other good reason for not making the order, see ante, 353.] We do therefore, pursuant to the statute in that case made and provided, hereby certify the same unto you, in order that the said recognizance may be wholly discharged. Given under our hands this day of in the year of our Lord 18 .

J. P.
K. P.

(a) *Ante*, 353.

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(No. 17.)

Warrant of justices for mother, with a summons for reputed father, to make the order of filiation and maintenance, &c., on 18 Eliz. c. 3. (a)

County of } *To the constable of in the said county.*

WHEREAS information hath been made unto us two of his Majesty's justices of the peace in and for the said county, one whereof is of the quorum, and both of us residing in [or *next unto*] *the limits where the parish church is situate, of the parish of in the said county, as well upon the complaint of the churchwardens and overseers of the poor of the said parish, as on the oath of A. M. of* [*single*] *woman, that on the day of last past, she the said A. M. was delivered of a* [*male*] *bastard child in the said parish, and that A. F. of in the said county, did get her with child of the said bastard child, and that the said bastard child is now living and chargeable* [or *likely to become chargeable*] *to the said parish: these are therefore to command you to bring the said A. M. before us, at the house of in in the said county, on the day of at the hour of in the noon of the same day, to be by us further examined touching the premises; and also to give notice thereof unto the said A. F. that he may likewise attend at the time and place aforesaid, to make his lawful defence: to the end that, upon examination of the case and circumstances, we may take such order therein as to right doth appertain. And what you shall do in the execution hereof, you are to make known unto us at the time and place last aforesaid. Given under our hands and seals the day of, &c.*

(No. 18.)

Order of filiation and maintenance pursuant to 18 Eliz. c. 3; on 49 Geo. 3, c. 68.

This form is given *ante*, 365.

(No. 19.)

Overseer's affidavit of expenses. (b)

County of } *ACCOUNT of the charges and expenses incident to the birth of A. M.'s male bastard child, lately born in the parish of in the county of together with the costs of apprehending and securing the reputed father, the making of the order of filiation for indemnifying the said parish, and such other expenditure of the overseers of the poor of the parish aforesaid, as has been by them incurred regarding the same, in pursuance of the statutes respecting bastards, and ascertained upon the oath of the undersigned overseer of the poor of the said parish, before us, whose names are hereunto set, being two of his Majesty's justices of the peace in and for the said county, this day of in the year of our Lord one thousand eight hundred and .*

	£	s.	d.
Charges and expenses incident to the birth			
Costs of apprehending and securing the reputed father, and of the order of filiation			
Examination, on oath, of the mother			
Warrant thereon to apprehend the putative father			
Expenses of the overseer in conveying the mother to the magistrate, and attending on him accordingly			
Constable's expenses on apprehending the putative father ..			
Commitment of the putative father for want of sureties ..			
Expenses of conveying the putative father to the house of correction			
Summons of the putative father to show cause why an order of filiation should not be made on him			
Information and warrant thereon after the birth of the child, to bring the mother for examination before two justices ..			
Expenses of the overseer in attending the magistrates to obtain the warrant for the mother, and summons for the putative father to show cause why an order of filiation and maintenance should not be made on him			

(a) *Ante*, 360.

(b) From Y. C. P. 69, *et seq.*, on stat. 49 Geo. III. c. 68, s. 1, see *ante*, 360. The affidavit should be conformable to the order, *ante*, 365.

	£	s.	d.
Summons for the mother after the birth of the child, to be examined before two justices, (no warrant to bring her having issued)			
Examination on oath of the mother, after the birth of the child, before two magistrates			
Constable's expenses in serving and returning the summons or warrant, &c. to the two justices			
Affidavit taken in writing of these particulars, directed by stat. 49 Geo. III. c. 68, s. 1, to be duly ascertained upon oath, before the justices of the peace making the said order of filiation			
Maintenance of the child from the time of its birth to the present day, viz. weeks, at per week			
Total			

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Sworn before us, the day and year abovementioned,
J. P.
K. P.

O. P. { Overseer of the Poor.

(No. 20.)

Original order of bastardy made by the quarter sessions pursuant to 3 Car. 1, c. 4, s. 15. (a)

County of } *AT* &c. [The caption of the sessions.]

UPON application and complaint to this court by the churchwardens and overseers of the poor of the parish of , in this county, concerning a [female] bastard child begotten on the body of E. W., [single] woman, and born in and chargeable to the said parish of and upon examination of the cause and circumstances of the premises, as well upon the oath of the said E. W. as otherwise; it is adjudged by the court that I. H. of , in the said county, [yeoman,] is the reputed father of a [female] bastard child born in and chargeable to the said parish of on the body of the said E. W.: Therefore it is ordered by the court that the said I. H. do forthwith pay unto the said churchwardens and overseers of the poor of the said parish of the sum of as and for the charges and expenses incident to the birth of the said bastard child, and the sum of as and for the costs of apprehending and securing the said I. H. and of the order of filiation; and also the sum of for the maintenance of the said bastard child to the time of making this order, all which said charges, expenses, costs, and maintenance, have been duly and respectively ascertained, as well on the oath of H. O., one of the said overseers of the poor as otherwise, before the said court, and are by the said court allowed; and it is further ordered by the said court, that I. H. shall pay or cause to be paid to the churchwardens and overseers of the poor of the said parish for the time being, or to some or one of them, the sum of weekly and every week from the making of this order for and towards the keeping, sustentation and maintenance of the said bastard child for and during so long time as the said bastard child shall be chargeable to the said parish of . And that the said E. W. shall likewise pay unto the churchwardens and overseers of the poor of the said parish of for the time being, the sum of weekly and every week from the making of this order, for and towards the keeping, sustentation, and maintenance of the said bastard child, so long as the said bastard child shall continue chargeable to the said parish of , in case she the said E. W. shall not herself nurse and take care of the said child.

By the Court.

W. K.

(No. 21.)

Recognizance on appeal against order of bastardy. (b)

County of } *BE it remembered, that on the day of in the year of the reign of our sovereign lord William the Fourth, of the United Kingdom of Great Britain and Ireland King, defender of the faith, A. F. of in the said*

(a) *Ante*, 360. (b) 49 Geo. III. c. 68, s. 5, *ante*, 370.

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county, [yeoman,] and B. F., of in the county aforesaid, personally came before me J. P., Esquire, one of his Majesty's justices of the peace in and for the said county, and acknowledged themselves to owe to our said lord the King, the sum of pounds each, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said lord the King, his heirs and successors, if the default shall be made in the condition following:

Whereas by an order under the hands and seals of J. P. and K. P. Esquires, two of his Majesty's justices of the peace for the said county of , one whereof is of the quorum, and both of them residing in [or, next unto] the limits where the parish church is situate, of the parish of in the said county of , A. F., of in the said county, [yeoman,] is adjudged to be the reputed father of a male [or female] bastard child lately born of the body of A. M., of aforesaid, [single] woman, in the parish of, &c. [Here state the order verbatim.] And whereas the said A. F. hath within three days preceding the date of this recognizance, and ten days before the next general quarter sessions of the peace to be holden for the said county, given notice to the said two justices, or to one of them, and also to the churchwardens and overseers of the poor of the said parish of or to one of them, of his intention of appealing against the said order, and of the cause and matter thereof: The condition of this recognizance is such, that if the above bound A. F. shall personally appear at the next general quarter sessions of the peace to be holden at the in and for the said county, and shall then and there try such appeal, and abide the judgment and order of the justices at the quarter sessions assembled, and shall pay such costs as shall be by them awarded, then this recognizance to be void.

Taken and acknowledged before me, J. P.

(No. 22.)

Information for enforcing payment of expenses incident to birth and securing the reputed father, and of order of filiation.(a)

County of } THE information and complaint of A. O. one of the overseers of the poor } of the parish of W. in the said county, taken before me J. P. one of his Majesty's justices of the peace for the said county, the day of in the year of our Lord 183 .

Who on his oath saith that by an order made the day of A. D. 18 under the hands and seals of A. P. and K. P. Esquires, two of his Majesty's justices of the peace in and for the said county, one whereof is of the quorum and both residing in [or, next unto] the limits where the parish church is situate, of the parish of in the said county, A. F. of in the county of was adjudged to be the reputed father of a male [or, female] bastard child then lately born in the said parish, of the body of A. M. [single] woman, and that in and by the said order, it was (amongst other things) ordered, [here set forth the order in the past tense, which may be thus] *that the said A. F. should forthwith upon notice thereof pay or cause to be paid to the churchwardens and overseers of the poor of the said parish for the present year* [or, *the year last past*, or as the case may be,] *or to some or one of them the sum of as and for the reasonable charges and expenses incident to the birth of the said bastard child, and also the sum of as and for the reasonable costs of apprehending and securing the said A. F. and of the order of filiation; and also the further sum of for the maintenance of the said bastard child to the time of making the said order; all which said charges, expenses, costs, and maintenance had been duly and respectively ascertained on oath before the said justices, and were by the same justices allowed: And this informant further saith that he the said A. F. hath had due notice of the said order, a true copy thereof having been personally delivered to him the said A. F. on the day of by the said and that the said A. F. hath made default in not performing the said order, against which no appeal hath been made, and that the sum of is now due and owing under and by virtue of the said order from him the said A. F. to the churchwardens and overseers of the poor of the said parish on the account aforesaid. And that payment of the said sum of hath been demanded of him the said A. F., but that he the said A. F. hath neglected and refused to pay the same. And this informant prayeth justice in the premises.*

Sworn before } A. O.
}

(No. 23.)

Warrant to apprehend reputed father for disobeying order of filiation, by non-pay-

County of } To the constable of and all others his Majesty's officers of the peace } for the said county.

WHEREAS information and complaint upon oath have been this day made before

(a) Stat. 49 Geo. III. c. 68, s. 3, *ante*, 361, and 18 Eliz. c. 3, *ante*, 360.

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me (a) J. P. Esquire, one of his Majesty's justices of the peace for the said county by A. O. one of the overseers of the poor of the parish of in the said county, that by an order, &c. [here recite the information, *ante*, (No. 22)]. *These are therefore to command and require you forthwith to apprehend and bring the said A. F. before any two or more of his Majesty's justices of the peace for the said county of to the intent that he may be committed to ward to the common gaol of the same county, there to remain without bail or mainprize except he shall put in sufficient surety to perform the said order or else personally to appear at the next general sessions of the peace to be holden in and for the said county of and also to abide such order as the justices of the peace, or the more part of them then and there shall take in that behalf (if they then and there shall take any), and if at the said sessions the said justices shall take no other order, then to abide and perform the order already made as aforesaid.*

Given under my hand and seal the day of one thousand eight hundred and .

J. P. (L. S.)

Payment of expenses incident to the birth and costs, on 49 Geo. 3, c. 68, s. 1, 4, and 18 Eliz. c. 3. (*b*)

(No. 24.)

County of } *To the constable of in the said county, and to the keeper of the common gaol at in the said county.*

Commitment thereon by two justices.

WHEREAS by an order, &c. [Here recite the order as in information *ante*, (No. 22)]. *And whereas it appears unto us J. P. and T. P. Esquires, two of his Majesty's justices of the peace for the said county of on the oath of A. O. one of the overseers of the poor of the said parish, that the said A. F. hath had due notice of the said order, a true copy thereof having been personally delivered to him the said A. F. on the day of by the said and that the said A. F. hath made default in not performing the said order against which no appeal hath been made; and that the sum of is now due and owing under and by virtue of the said order from the said A. F. to the churchwardens and overseers of the poor of the said parish, on the account aforesaid, and that payment of the said sum of hath been duly demanded of him the said A. F. but that he the said A. F. hath neglected and refused to pay the same. And whereas the said A. F. being now present before us, the said last named justices, to answer unto the complaint of the said A. O. touching such neglect and refusal, and to be further dealt with according to law, hath been required by us to put in sufficient surety to perform the said order or else personally to appear at the next general sessions of the peace to be holden in and for the said county, and also to abide such order as the justices of the peace, or the more part of them, then and there shall take in that behalf, (if they then and there shall take any,) and if at the said sessions the said justices shall take no other order, then to abide and perform the order already made as aforesaid, but he the said A. F. hath refused to put in such surety. These are therefore to charge and command you the said constable forthwith to take and convey the said A. F. to the common gaol at in the said county of and there to deliver him to the keeper thereof, together with this warrant. And we do hereby also command you the said keeper to receive the said A. F. into your custody in the said common gaol, and him there safely to keep, without bail or mainprize, except he shall put in such surety as aforesaid. Given under our hands and seals the day of one thousand eight hundred and*

J. P. (L. S.)

(No. 25.)

County of } *THE information and complaint of A. O. one of the overseers of the poor of the parish of W. in the said county, taken before me J. P. one of his Majesty's justices of the peace for the said county, the day of in the year of our Lord one thousand eight hundred and*

Information for obtaining payment of the weekly sum ordered for maintenance, on 49 Geo. 3, c. 68, s. 3. (*b*)

Who on his oath saith, that by an order made the day of A. D. 18 under the hands and seals of A. P. and K. P. Esquires, two of his Majesty's justices of the peace in and for the said county, (one whereof is of the quorum,) and both

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(*a*) The complaint may now be made before *one* justice, and a warrant issued by him to bring the party before *two or more* justices, &c. 3 Geo. IV. c. 23. See *post*, tit. **Conviction**, Vol. I.

(*b*) *Ante*, 360, 361.

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residing in [or, *next unto*] *the limits where the parish church is situate, of the parish of in the said county,* [or, *or by an order made by the court of quarter sessions, held in and for the said county, on the day of .*] *A. F. of in the county of was adjudged to be the reputed father of a male* [or, *female*] *bastard child then lately born in the said parish of the body of A. M.* [*single*] *woman* [or as the case may be,] *and that in and by the said order it was amongst other things ordered, that he the said A. F. should pay or cause to be paid to the churchwardens and overseers of the poor of the said parish for the time being, or to some or one of them, the sum of weekly and every week from the date of such order, for and towards the keeping, sustenance, and maintenance of such bastard child for and during so long a time as the said bastard child should be chargeable to the said parish: and this informant further saith, that he the said A. F. hath had due notice of the said order, against which no appeal hath been made,* [or, *and that the said order was upon appeal confirmed by the court of quarter sessions, holden in and for the said county of on the day of last,*] *and that the said bastard child is now living, and the said parish is liable to the maintenance of the said bastard child, and that default hath been made in the payment of the said weekly sum of money mentioned in the said order, whereby there is now due and owing from him the said A. F. to the churchwardens and overseers of the poor of the said parish under and by virtue of the said order on the account aforesaid, the sum of and that he the said A. F. hath neglected to pay the same, and this informant prayeth justice in the premises.*

Sworn before me, J. P. } *A. O.*

(No. 26.)

Summons thereon.

County of } *To the constable of in the said county, and to all other his Majesty's officers of the peace for the same county.*

WHEREAS information and complaint upon oath have this day been made before me J. P. Esquire, one of his Majesty's justices of the peace for the said county, by A. O. one of the overseers of the poor of the parish of in the said county, that by an order made the day of one thousand eight hundred and under the hands and seals of A. P. and K. P. Esquires, two of his Majesty's justices of the peace in and for the said county, one whereof is of the quorum, and both residing in [or, *next unto*] *the limits where the parish church is situate, of the said parish of A. F. of in the county of was adjudged to be the reputed father of a male* [or, *female*] *bastard child then lately born in the said parish, of the body of A. S.* [*single*] *woman,* [or as the case may be,] *and that in and by the said order it was amongst other things ordered, that the said A. T. should pay or cause to be paid to the churchwardens and overseers of the poor of the said parish for the time being, or to some or one of them, the sum of weekly and every week, from the date of such order, for and towards the keeping, sustenance, and maintenance of such bastard child, for and during so long time as the said bastard child should be chargeable to the said parish. And further, that the said A. T. hath had due notice of the said order, against which no appeal hath been made,* [or, *and that the said order was upon appeal confirmed by the court of quarter sessions holden in and for the said county of on the day of last;*] *and that the said bastard child is now living, and the said parish is liable to the maintenance of the said bastard child: and that default hath been made in the payment of the said weekly sum of money mentioned in the said order, whereby there is now due and owing from him the said A. T. to the churchwardens and overseers of the poor of the said parish, under and by virtue of the said order, on account aforesaid, the sum of and that he the said A. T. hath neglected to pay the same. These are therefore to command you forthwith, upon sight hereof, to summon the said A. T. to appear before me, or such other or others of his Majesty's justices of the peace in and for the said county of as shall be at in the same county, on the day of at the hour of in the forenoon of the same day, to answer to the said complaint, and to be further dealt with according to law; and be you then and there present to show what you shall have done in the execution hereof. Given under my hand and seal the day of one thousand eight hundred and*

J. P. (L. S.)

(No. 27.)

Warrant to apprehend reputed father for disobeying order of filiation, by non-payment of maintenance money, on 49 Geo. 3, c. 68, s. 3.(a)

County of } *To the constable of and all others his Majesty's officers of the* } *peace for the said county of .*

WHEREAS information and complaint upon oath have been made before me J. P. Esquire, one of his Majesty's justices of the peace for the said county, by A. O. one of the overseers of the poor of the parish of in the said county, that by an order made the day of under the hands and seals of J. K. and K. P. Esquires, two of his Majesty's justices of the peace in and for the said county, (one whereof is of the quorum,) and both residing in [or *next unto*] *the limits where the parish church is situate, of the said parish of A. F. of in the county of* [*labourer,*] *was adjudged to be the reputed father of a male* [or *female*] *bastard child then lately born in the said parish, of the body of A. M.* [*single*] *woman, and that in and by the said order it was amongst other things ordered that he the said A. F. should pay or cause to be paid to the churchwardens and overseers of the poor of the said parish for the time being, or to some or one of them, the sum of weekly and every week, from the date of the said order, for and towards the keeping, sustentation, and maintenance of the said bastard child, for and during so long a time as the said bastard child should be chargeable to the said parish; and further that he the said A. F. hath had due notice of the said order, against which no appeal hath been made,* [or, *and that the said order was upon appeal confirmed by the court of quarter sessions holden in and for the said county of on the day of*] *and that the said bastard child is now living, and the said parish is liable to the maintenance of the said bastard child, and that default hath been made in the payment of the said weekly sum of money mentioned in the said order, whereby there is now due and owing from him the said A. F. to the churchwardens and overseers of the poor of the said parish under and by virtue of the said order on the account aforesaid, the sum of and that payment of the said sum of hath been demanded of him the said A. F. but that he the said A. F. hath neglected and refused to pay the same. And whereas the said A. F. hath been duly summoned to answer to the said information and complaint but hath not appeared in pursuance of such summons. These are therefore to command and require you forthwith to apprehend and bring the said A. F. before me or some other of his Majesty's justices of the peace for the said county, to answer to the said information and complaint and to be further dealt with according to law. Given under my hand and seal the day of one thousand eight hundred and .*

(L. S.)

(No. 28.)

Commitment thereon.

County of } *To the constable of in the said county, and to the keeper of the* } *house of correction* [or *common gaol*] *at in the said county.*

WHEREAS by an order made the day of under the hands and seals of J. K. and K. P. Esquires, two of his Majesty's justices of the peace for the said county, (one whereof is of the quorum,) and both residing in [or *next unto*] *the limits where the parish church is situate, of the said parish of in the said county, A. F. of in the county of* [*labourer,*] *was adjudged to be the reputed father of a male* [or *female*] *bastard child then lately born in the said parish, of the body of A. M.* [*single*] *woman: and it was in and by such order (amongst other things) ordered that he the said A. F. should, upon due notice thereof, pay or cause to be paid to the churchwardens and overseers of the poor of the said parish of for the time being, or to some or one of them, the sum of weekly and every week, from the date of such order, for and towards the keeping, sustentation, and maintenance of the said bastard child, for and during so long a time as the said bastard child should be chargeable to the said parish. And whereas it appears unto me J. P. Esquire, one of his Majesty's justices of the peace for the said county, on the oath of A. O. one of the overseers of the poor of the said parish of that the said A. F. hath had due notice of the said order, a true copy thereof having been personally delivered to him the said A. F. on the day of by the said against which no appeal hath been made,* [or, *and that the said order was upon appeal confirmed by the court of quarter sessions, holden in and for the said county of on the day of*] *and that the said bastard*

(a) See *ante*, 361.

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child is now living, and the said parish is liable to the maintenance of the said bastard child, and that default hath been made in the payment of the said weekly sum of money mentioned in the said order, whereby there is now due and owing from him the said A. F. to the churchwardens and overseers of the poor of the said parish under and by virtue of the said order on the account aforesaid the sum of and that payment of the said sum of hath been demanded of him the said A. F. but that he the said A. F. hath neglected and refused to pay the same. And whereas the said A. F. being now present before me the said last named justice to answer unto the complaint of the said A. O. for such neglect and refusal, and to be further dealt with according to law; and it appearing unto me the said justice, as well on the oath of the said A. O. as otherwise, that the said sum of is now due and owing from the said A. F. to the churchwardens and overseers of the poor of the said parish of under and by virtue of the said order, on the account aforesaid, and the said A. F. being called upon by me the said justice to pay the same, doth now refuse to pay the said sum, and hath not shewn to me any sufficient cause why the same should not be paid. These are therefore to charge and command you the said constable forthwith to take and convey the said A. F. to the house of correction [or common gaol] at in the county of aforesaid, and there deliver him to the keeper thereof, together with this warrant. And I do hereby also command you the said keeper to receive the said A. F. into your custody in the said house of correction [or common gaol] and him there safely to keep to hard labour for the space of three months, unless he the said A. F. shall, before the expiration of the said three months, pay or cause to be paid to one of the overseers of the poor of the said parish of on whose behalf the aforesaid complaint has been made, the said sum of so due and unpaid as aforesaid. Given under my hand and seal the day of one thousand eight hundred and .

(L. S.)

(No. 29.)

Warrant to apprehend mother of a bastard, in order to her being sent to house of correction, on 50 Geo. 3, c. 51.(a)

County of } To the constable of in the said county.

FORASMUCH as A. J. of in the said county, [yeoman,] hath this day made oath before us J. P. and K. P. Esquires, two of his Majesty's justices of the peace in and for the said county, that A. M. late of in the said county, [single] woman, on the day of last past, was delivered of a bastard child at in the parish of in the said county, and that the said bastard child is now living and chargeable to the said parish of These are therefore to command you in his Majesty's name to apprehend and bring before us the said A. M. to answer the premises, and to be further dealt with according to law. Herein fail you not. Given under our hands and seals the day of .

(No. 30.)

Commitment thereon.(a)

County of } J. P. and K. P., Esquires, two of the justices of our Lord the King, assigned to keep the peace within the said county, to the constable of in the said county, and to the keeper of the house of correction at in the said county.

These are to command you the said constable, in his said Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said house of correction the body of A. M. late of in the said county, [single] woman, convicted before us upon the oath of A. W. of in the said county, [yeoman,] with having been delivered of a [fe] male bastard child on the day of now last past, at in the parish of in the said county, which said bastard child is now living and chargeable to the parish of : and you the said keeper are hereby required to receive the said A. M. into your custody in the said house of correction, and her there to set on work during the term of [a space of time not exceeding twelve calendar months nor less than six weeks] according to the form of the statute in that case made and provided. Herein fail you not. Given under our hands and seals the day of in the year of our Lord one thousand eight hundred and .

Note.—This commitment must not be issued till the woman shall have been delivered for a calendar month.

(a) See *ante*, 376.

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(No. 31.)

Order to seize the goods, &c. of father or mother of a bastard who run away and leave him upon charge of parish, on 13 and 14 Car. 2, c. 12. (*a*)

County of } *To the churchwardens and overseers of the poor of the parish of in* } *the said county.*

WHEREAS A. C. and B. C. churchwardens, and A. O. and B. O. overseers of the poor of the parish of in the said county, have made complaint unto us J. P. and K. P. Esquires, two of his Majesty's justices of the peace in and for the said county, (one whereof is of the quorum,) that A. F. late of the said parish of hath run away out of the said parish, and that the place of his abode is not known; and that the said A. F. hath left his [fe] male bastard child, aged years, and born within the said parish of upon the charge of the said parish, although the said A. F. hath an estate sufficient to discharge such parish from the charge thereof: and whereas we the said justices, having duly examined into the cause and circumstance of the said complaint, as well upon oath as otherwise, it doth appear unto us, and we do adjudge that the said complaint is true; and we do also adjudge him the said A. F. to be the reputed father of the said bastard child. These are therefore in his Majesty's name to authorise you the said churchwardens and overseers of the poor of the said parish to take and seize so much of the goods and chattels, and to receive so much of the annual rents and profits of the lands of the said A. F. as shall amount to the sum of , which we do hereby appoint and order you to receive towards the discharge of the said parish, and for the bringing up and providing for the said bastard child; and you are hereby required to attend at the next general quarter sessions of the peace to be holden in and for the said county, in order that this present order may be then and there confirmed, according to the form of the statute in that case made and provided. Given under our hands and seals the day of in the year of our Lord one thousand eight hundred and .

(No. 32.)

Indictment for disobeying an order of maintenance, in not paying the monies ordered to be paid. (*b*)

—— *THE jurors for our Lord the King, upon their oath present, that E. F. of the [township of in the] parish of in the county of [single] woman, before the making of the order of justices hereafter mentioned, to wit, on, &c. at the said, &c. was delivered of a living [fe] male bastard child. And the jurors aforesaid on their oath aforesaid do further present, that the said E. F. having been so delivered of such bastard child within the [township] aforesaid, afterwards, to wit, on, &c. at the [township] aforesaid, complaint thereof, and that the said child was then christened by the name of and was then chargeable to the said [township] and likely so to continue, was, by the overseers of the poor of the said [township] of made to C. D., Esquire, and L. M., Esquire, two of his Majesty's justices of the peace and quorum, in and for the said county of and residing next unto the limits of the parish church of in the said parish of in the said county, and that the said E. F. was by them, the said overseers of the poor, then and there brought and personally appeared before the said justices, so residing, to be and was thereupon then and there examined, upon oath, by and before the said justices, of and concerning the cause and circumstance of the begetting and birth of such bastard child. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said E. F., upon her said examination upon oath, then and there taken in writing, by and before the said justices, deposed and declared that she was delivered of such bastard child as aforesaid, and that A. T. of, &c. was the true and only father of the said bastard child. And the jurors, &c. do further present, that the said C. D. Esquire, and L. M. Esquire, so being such justices residing as aforesaid, did thereupon afterwards, to wit, on the day and year last aforesaid, at the [township] of aforesaid, duly summon the said A. T. to be and appear before them, the said justices, to make his defence of and concerning the premises, and to show cause why an order of maintenance should not be made upon him for the cause aforesaid; to which said summons he the said A. T. then and there, before the making of any order in that behalf, personally appeared before the said justices, but did not make any sufficient defence or show any cause why an order should not be made upon him; whereupon the said justices, upon hearing the said complaint, upon oath, afterwards, to wit, on, &c. last aforesaid, at the [township] aforesaid, did by their discretion take order of and concerning the premises, and by their said order in writing under their hands and seals, bearing date, &c. reciting to the effect hereinbefore mentioned, adjudge the same to be true, and thereby, as well upon examination of the cause and circumstances of the premises upon the oath of the said E. F. as otherwise, did declare and adjudge the said A. T.* [set forth the order

(*a*) See *ante*, 375, 376. (*b*) See forms, 2 Chit. C. L.

FORMS.

in the past tense.] *And the jurors aforesaid, on their oath aforesaid, do further present, that after the making of the said order, to wit, on the day and year last aforesaid, at, &c.* [venue] *aforesaid, notice of the aforesaid order was duly given to the said A. T., and he the said A. T. was then and there duly made acquainted with the contents thereof. And the jurors aforesaid, on their oath aforesaid, do further present, that the said bastard child is yet living, and hath always, from the time of making the said order until the day of taking this inquisition, been and continued and now is chargeable to the said* [township] *of , to wit, at, &c.* [venue] *aforesaid, and that before and at the time of making of the said order, and from thence continually till the taking of the inquisition, one G. H. and one J. J. were and still are overseers of the poor of the said* [township] *of , duly constituted, of which he the said A. T. afterwards, to wit, on, &c. had due notice, to wit, at the, &c. aforesaid. And the jurors aforesaid, on their oath aforesaid, do further present, that the said A. T. not regarding the said order, nor the laws and statutes in such case made and provided, did not, upon notice of the said order, forthwith pay or cause to be paid, &c.* [negativing the performance of the duty in the words of the order] *although so to do he the said A. T. afterwards, to wit, on, &c. and often, both before and afterwards, to wit, at, &c.* [venue] *aforesaid, was duly requested by the said G. H. and J. J., so being such overseers as aforesaid; but on the contrary thereof, he, the said A. T., on and from the said, &c. until the taking of this inquisition, unlawfully, wilfully, obstinately, and contemptuously, hath neglected and refused to pay, or cause to be paid, the said sum of* [twenty shillings] *so by him to be paid as aforesaid, as also the said sum of* [one shilling] *weekly and every week, from the time of making the said order hitherto, contrary to the direction of the said order and in manifest breach and contempt of the same, to the great damage of the inhabitants of the said* [township] *of , to the evil example of all others, and against the peace of our Lord the King his crown and dignity.*

Bathing.

When an offence.

IT is an established principle, that whatever openly outrages decency, and is injurious to public morals, is a misdemeanor at common law. 4 *Bla. Com.* 65; 1 *Hawk.* c. 5, s. 4; 1 *East's P. C.* c. 1, s. 1.

It is therefore indictable for a person to bathe in an indecent manner near a highway, or in any part of a public river.

In *R.* v. *Crunden*, 2 *Campb.* 89, it was held an indictable offence for a man to undress himself on the beach, and to bathe in the sea near inhabited houses, from which he may be distinctly seen, although these houses may have been recently erected, and till then it may have been usual for men to bathe in great numbers at the place in question. See form of indictment, 2 *Chit. C. L.* 41.

By the Vagrant Act, a person may be treated as a rogue and vagabond who shall wilfully, openly, lewdly, and obscenely expose his person in any street, road, or public highway, or in the view thereof, or in any place of public resort, with intent to insult any female. See *post*, Vagrant, Vol. V.

It is singular this offence is not more frequently punished.

Public no right to bathe in the sea.

In *Blundell* v. *Catterall*, 5 *B. & Ald.* 268, it was held that the public at large have no common law right to bathe in the sea, and, as incident thereto, of crossing the shore on foot or with bathing-machines for that purpose.

Battel, *Appeal of.* *See ante*, Appeal, p. 135.

Battery. *See ante*, Assault, p. 267.

Bawdy-houses. *See* **Disorderly Houses**, Vol. I.; **Gaming**, Vol. II; *and* **Lewdness**, Vol. III.

Beacon. *See* **Ships**, Vol. V.

Beadle. *See* **Church**, **Constable**, Vol. I.

Beasts. *See* **Cattle**, Vol. I.; **Larceny**, Vol. III.

Bedford Level.

[Stat. 4 Geo. IV. c. 46.]

Destroying banks, &c. in.

BY stat. 4 Geo. IV. c. 46, s. 1, so much of stat. 27 Geo. II. c. 19, s. 49, (*a*) as excludes the benefit of clergy from persons convicted of the felony thereby created is repealed; and from the passing of this act (viz. 4th July, 1823,) any person convicted of the said felony shall be liable, at discretion of the court, to be transported beyond the seas for life, or for any time not less than seven years, or to be imprisoned only, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any time not exceeding seven years.

Beer. *See ante*, **Alehouse**, p. 56; **Excise**, Vol. II.

Behaviour. *See* **Surety**, Vol. V.

Benefit of Clergy. *See* **Clergy**, Vol. I.

Benefit Society. *See* **Friendly Societies**, Vol. II.

Bent.

[15 Geo. II. c. 33.]

15 Geo. 2, c. 33.

BY stat. 15 Geo. II. c. 33, s. 6, whereas on the north-west coasts of England, and especially in the county of Lancaster, the sea is bounded, and the

(*a*) That act enacts, that if any person or persons shall maliciously cut, break down, burn, demolish, or destroy any bank, mill, engine, flood-gate, or sluice, making or erecting, or made or erected, supported or maintained, for answering the purposes specified in the said act, every person or persons so offending, being thereof convicted, shall be guilty of felony, and shall suffer death as felons without benefit of clergy.

BENT.

15 Geo. 3, c. 33.

lands are prevented from being overflowed by large hills, the sand of which is so loose that in dry weather it is thrown by the winds on the adjacent lands, to the damage thereof and the danger of the inhabitants, who are exposed thereby to the inundation of the sea; to prevent which the landowners are at great charges annually to plant and maintain a sort of rush or shrub, called starr or bent, but many disorderly persons pluck up and carry away the same to make mats and brushes; therefore, if any person without consent of the owner shall cut, pull up, or carry away any starr or bent planted or set on the said hills on the north-west coasts of England, on complaint thereof on oath to one justice, the offender shall be summoned; and on default of appearing, the justice shall issue his warrant to apprehend and bring him before him; and being convicted on oath of one witness or confession, he shall forfeit 20*s.*, half to the informer and half to the owner of the bent, by distress; and for want of sufficient distress, be sent to the house of correction for three months, to be kept to hard labour; and for a second offence, he shall be committed to the house of correction for one year, to be whipped and kept to hard labour.

Sect. 7. And if any starr or bent shall be found within five miles of the said sand hills, the persons convicted of having the same in custody shall forfeit 20*s.* in like manner, and for want of sufficient distress shall be committed to the house of correction, there to be kept to hard labour for three months.

Sect. 8. But this shall not restrain any person from the exercise of any ancient prescriptive right to cut starr or bent on the sea coasts in the county of Cumberland.

Bestiality. *See* **Buggery**, Vol. I.

Bigamy. *See* **Polygamy**, Vol. V. p. 140.

Bill in Chancery, &c. *Proof of.* *See* **Evidence**, Vol. II. p. 45. **Forgery**, Vol. II.

Bill of Exceptions. *See post*, **Evidence**, Vol. II. p. 92.

Bills of Exchange. *See* **Promissory Notes**, Vol. V. *and stat. 2 Geo. II. c. 25, s. 3, and* **Larceny**, Vol. III.

Birth, *Proof of.* *See post*, **Evidence**, Vol. II. p. 30.

Black Act.

Repeal of Black Act.

THIS act, viz. the 9 Geo. I. c. 22, (which was called the Black Act, and passed on the occasion of some devastations being committed near Waltham, in Hampshire, by persons in disguise or with their faces *blacked*,) is now totally repealed by 7 & 8 Geo. IV. c. 27. But its provisions are consolidated and amended by the 7 & 8 Geo. IV. c. 30, being the act consolidating and amending the laws in general relative to malicious injuries to property.

The 43 Geo. III. c. 58, commonly called Lord Ellenborough's Act, is now partially repealed by the 7 & 8 Geo. IV. c. 27, and what is not repealed by that act is so by the 9 Geo. IV. c. 31, consolidating and amending the laws in general relative to injuries to the *person*.

Repeal of Lord Ellenborough's Act.

The Black Act and Lord Ellenborough's Act, therefore, being no longer in existence, it is thought best to treat of the offences formerly provided for by them under other titles, viz. **Malicious Injuries to Property**, and **Malicious Injuries to Persons**, *post*, Vol. III.

Under those titles will be found the statutory provisions *in general* relating to injuries to property and injuries to the person.

Black Lead. *Stealing of.* 7 & 8 *Geo. IV, c.* 29, *s.* 37, *post*, **Mines**, Vol. III. **Malicious Injuries to Property**, Vol. III.

Blasphemy and Profaneness.

[3 Jac. c. 21; 1 Will. III. sess. 1, c. 18; 9 & 10 Will. III. c. 32; 22 Geo. II. c. 33; 53 Geo. III. c. 160; 60 Geo. III. c. 8, s. 4; 1 Will. IV. c. 73.]

Blasphemy.

ALL blasphemies against God, as denying his being or providence; and all contumelious reproaches of Jesus Christ; all profane scoffing at the Holy Scriptures, or exposing any part of them to contempt or ridicule; imposters in religion, as falsely pretending to extraordinary commissions from God, and terrifying or abusing the people with false denunciations of judgments; and all open lewdness grossly scandalous—are punishable by fine and imprisonment, and also such corporal punishment, as to the court shall seem meet, according to the heinousness of the crime. 1 *Hawk.* c. 5. s. 6; 1 *East's P. C.* 3.

Depraving the established religion.

Also seditious words, in derogation of the established religion, are indictable, as tending to a breach of the peace. 1 *Hawk.* c. 5, s. 6.

Representing the Deity in stage plays.

By stat. 3 Jac. I. c. 21, if any person shall, in any stage play, interlude, show, may-game, or pageant, jestingly or profanely speak or use the holy name of God, or of Christ Jesus, or of the Holy Ghost, or of the Trinity, he shall forfeit 10*l.*; half to the King and half to him that shall sue.

Denying the Trinity.

By stat. 1 Will. & M. c. 18, no person shall have any benefit of the toleration act, who shall deny in his preaching or writing the doctrine of the blessed Trinity, as it is set forth in the thirty-nine articles.

Christians depraving the Christian religion.

And by stat. 9 & 10 Will. III. c. 32, if any person having been educated in, or at any time having made profession of the Christian religion in this realm, shall by writing, printing, teaching, or advised speaking, deny any one of the persons in the Holy Trinity to be God; or shall assert or maintain there are more Gods than one; or shall deny the Christian religion to be true, or the Holy Scriptures to be of divine authority; and shall be convicted thereof, in any of the courts at Westminster, or at the assizes, on the oaths of two witnesses, he shall, for the first offence, be incapable to have any office, ecclesiastical, civil, or military (unless he shall renounce such opinion in the court where he was convicted within four months after such conviction); and for the second offence he shall be disabled to be plaintiff, guardian, executor, or administrator, to take any gift or legacy, or to bear any office, and shall be imprisoned for three years.

But no person shall be prosecuted for any words spoken unless the information be given to a justice of the peace within four days after the words

BLASPHEMY AND PROFANENESS.

spoken, and the prosecution of such offence be within three months after such information.

1 Will. & M. c. 18, respecting the denial of the Trinity, repealed.

By stat. 53 Geo. III. c. 160, intituled, "An Act to relieve persons who impugn the doctrine of the Holy Trinity from certain penalties," reciting, that whereas in the nineteenth year of his present Majesty an act was passed, intituled "An Act for the further relief of Protestant dissenting ministers and schoolmasters," and it is expedient to enact as hereinafter provided, it is enacted, "that so much of an act passed in the first year of the reign of King William and Queen Mary, intituled, 'An Act for exempting his Majesty's Protestant subjects dissenting from the Church of England from the penalties of certain laws,' as provides that that act or any thing therein contained should not extend or be construed to extend to give any ease, benefit, or advantage to persons denying the Trinity as therein mentioned, be and the same is hereby repealed."

Provisions of 9 & 10 Will. 3, in part repealed.

By sect. 2 it is enacted, "that the provisions of another act passed in the ninth and tenth years of the reign of King William, intituled, 'An Act for the more effectual suppressing blasphemy and profaneness,' so far as the same relate to persons denying as therein mentioned respecting the Holy Trinity, be repealed."

Acts passed in Scotland against blasphemy repealed.

And two acts passed in the parliament of Scotland, the first in 1 Car. II. and the other in 1 Will. III. intituled, "Acts against the crime of blasphemy," which acts respectively ordain the punishment of death, are hereby repealed.

Sect. 4. This is a public act.

Repeal of part of 60 Geo. 3, c. 8, as to punishment for seditious or blasphemous libels.

By the 1 Will. IV. c. 73, so much of the 60 Geo. III. c. 8, for the more effectual prevention and punishment of blasphemous and seditious libels, as relates to the sentence of banishment for the second offence, is repealed. See further, *post*, **Libel**, Vol. III.

An offence at common law.

The statute, 9 & 10 Will. III. c. 32, has not altered the common law as to the offence of blasphemy, but only given a cumulative punishment. It is, therefore, still an offence at the common law to publish a blasphemous libel. *R.* v. *Richard Carlile*, 3 *B. & A.* 161.

It seems that the stat. 53 Geo. III. c. 160, does not alter the common law, but only removes the penalties imposed by 9 & 10 Will. III. c. 32, on persons denying the Trinity, and extends to them the benefits conferred on all other Protestant dissenters by stat. 1 Will. & M. c. 18, s. 1. *R.* v. *Waddington*, 1 *B. & Cres.* 26.

Account of proceedings in a court.

It is not lawful to publish even a correct account of the proceedings in a court of justice, if such an account contain matter of a scandalous, blasphemous, or indecent nature. *R.* v. *Mary Carlile*, 3 *B. & A.* 167.

An obscene book is punishable as a libel.

An information was exhibited by the attorney-general against Edmund Curl, for printing and publishing two obscene books, the one styled "The Nun in her Smock;" the other, "The Art of Flogging;" setting out the several lewd passages, and concluding against the peace. And of this the defendant was found guilty. It was moved in arrest of judgment, that however the defendant may be punishable for this in the spiritual court, as an offence against good manners; yet it cannot be a libel, for which he is punishable in the temporal courts. But after long debate and consideration, the court at last gave it as their unanimous opinion, that this was an offence properly within their jurisdiction; they said, that religion is a part of the common law, and therefore whatever is an offence against that, is evidently an offence against the common law. And the defendant was set in the pillory. 2 *Stra.* 788; 1 *Barn.* 29.

To write against Christianity in general is punishable at common law.

In *R.* v. *Woolston*, 2 *Stra.* 834, *Fitzgib.* 64, the defendant was convicted on four informations, for his blasphemous discourses on the miracles of our Saviour. And attempting to move in arrest of judgment, the court declared they would not suffer it to be debated, whether to write against Christianity *in general* was not an offence punishable in the temporal courts at common law: they desired it might be taken notice of, that they laid their stress upon the word *general*, and did not intend to include disputes between learned

men upon particular controverted points. The next term he was brought up and fined 25*l.* for each of his four discourses, to suffer a year's imprisonment, and to enter into a recognizance for his good behaviour during his life, himself in 3000*l.* and 2000*l.* by others.

In the case of *R.* v. *Waddington*, 1 *B.* & *C.* 26, a publication stating Jesus Christ to be an impostor, and a murderer in principle, and a fanatic, is a libel at common law, Christianity being a part of the law of the land.

In the year 1656, James Naylor for personating our Saviour, and suffering his followers to worship him, and pay him divine honours, was sentenced to be set in the pillory, and to have his tongue bored through with a red hot iron, and to be whipped, and stigmatized in the forehead with the letter B.

In *R.* v. *Annet*, 1 *Bla. R.* 395, the defendant was convicted on an information, for writing a most blasphemous libel in weekly papers, called the Free Inquirer; to which he pleaded guilty. In consideration of which, and of his poverty, of his having confessed his errors in an affidavit, and of his being seventy years of age, and some symptoms of wildness that appeared on his inspection in court, the court declared they had mitigated their intended sentence to the following, viz. to be imprisoned in Newgate for a month; to stand twice in the pillory with a paper on his forehead, inscribed blasphemy; to be sent to the house of correction, to hard labour, for a year; to pay a fine of 6*s.* 8*d.*, and to find security, himself in 100*l.* and two sureties in 50*l.* each, for his good behaviour during life.

What discussions allowable.

Contumely and contempt are what no establishment can tolerate; but, on the other hand, it would not be proper to lay any restraint upon rational and dispassionate discussions of the rectitude and propriety of the established mode of worship; 4 *Bla. Com.* 51; 1 *Russ.* 219; and Mr. Starkie, upon the subject, says, "that it may not be going too far from the principles and decisions that no author or preacher, who fairly and conscientiously promulgates the opinions, with whose truth he is impressed, for the benefit of others, is for so doing amenable as a criminal, that a malicious and mischievous intention is in such case the broad boundary between right and wrong; and that if it can be collected from the offensive levity with which so serious a subject is treated, or from other circumstances, that the act of the party was malicious, then, since the law has no means of distinguishing between different degrees of evil tendency, if the matter published contain any such tendency, the publisher becomes amenable to justice."—*Starkie on Libel*, 496, 497.

Navy.

By stat. 22 Geo. II. c. 33, art. 2, all persons in or belonging to H. M.'s ships or vessels of war, being guilty of profane oaths, cursings, execrations, drunkenness, uncleanness, or other scandalous actions, in derogation of God's honour, and corruption of good manners, shall incur such punishment as a court-martial shall think fit to impose.

Punishment at common law.

The punishment for blasphemy and profaneness is, by the common law, fine and imprisonment, and also infamous corporal punishment, in the discretion of the court. 1 *Hawk.* c. 5.

As to the extent of this offence and the nature and certainty of the words, it appears to be immaterial whether the publication be oral or written, though the committing mischievous matter to print or writing, and thereby affording it a wider circulation, would undoubtedly be considered as an aggravation and affect the measure of punishment.—*Starkie on Libel*, 493.

As to profane cursing and swearing, see **Swearing**, Vol. V.

Forms.

(No. 1.)

Commitment for blasphemous libel.

[Commencement as usual, as *ante*, p. 8]: *on, &c. at, &c. unlawfully and wickedly did compose, print, and publish a certain scandalous, impious, blasphemous, and profane libel, of and concerning the Holy Scriptures and the Christian religion. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

FORMS.

(No. 2.)

Indictment for blasphemous libel.

—— *THE jurors for our Lord the King upon their oath present that C. D., late of, &c. being a wicked and evil disposed person, and disregarding the laws and religion of the realm, and wickedly and profanely devising and intending to bring the Holy Scriptures and the Christian religion into disbelief and contempt among the people of this kingdom, with force and arms, at, &c. aforesaid, unlawfully and wickedly did compose, print, and publish, and cause and procure to be composed, printed, and published, a certain scandalous, impious, blasphemous, and profane libel, of and concerning the Holy Scriptures and the Christian religion, in one part of which said libel there were and are contained, amongst other things, certain scandalous, impious, blasphemous, and profane matters and things, of and concerning the Holy Scriptures and the Christian religion, according to the tenor and effect following; that is to say:* [set out the libellous passage verbatim; and if there be another such passage in another part of the libel, state it thus: *and in another part thereof, there were and are contained, amongst other things, certain other scandalous, impious, blasphemous, and profane matters and things, of and concerning the said Holy Scriptures and the Christian religion, according to the tenor and effect following; that is to say:* and setting it forth conclude thus]: *To the high displeasure of Almighty God, to the great scandal and reproach of the Christian religion, to the evil example of all others, and against the peace of our Lord the King his crown and dignity.*

See forms of indictments for libel and observations as to, *post*, **Libel**, Vol. III.

Bodies (Dead,) Stealing of, &c.

No action lies for stealing a body. Nor is it felony.

IT is clear no action lies for violating or disturbing the remains of the dead; nor is the stealing a corpse felony: a corpse being *nullius in bonis*. 3 *Inst.* 203.

But it is a misdemeanor to steal a dead body.

But in *R.* v. *Lynn*, 2 *T. R.* 733; 2 *Leach, Cr. C.* 497, S. C., it was determined that stealing dead bodies, though for the improvement of the science of anatomy, is an indictable offence as a misdemeanor, it being a practice contrary to common decency, and shocking to the general sentiments and feelings of mankind.

Stealing shroud, &c.

If the shroud, coffin, &c. be stolen, an indictment for the felony is sustainable, and the property should be laid in the representatives. 2 *East's P. C.* 652; 1 *Hale*, 515.

It is questionable if the apprehension of a person in the act of stealing a dead body from a churchyard is a lawful apprehension so as to subject such person to an indictment for cutting, &c. a sexton, in order to obstruct such apprehension. *R.* v. *Duffin*, *R. & R. C. C.* 365.

Selling bodies.

The taking away a dead body to dispose of it for gain and profit is an indictable offence. *R.* v. *Gilles*, *Russ. & Ry. C. C. R.* 366, n.

To sell a dead body of a capital convict for dissection, where dissection is no part of the sentence, is a misdemeanor indictable at common law. *R.* v. *Cundick*, *D. & R. N. P. C.* 13; *R. & R. C. C.* 366, n. S. C.

An indictment charging that one E. L. was executed, and that the defendant was retained and employed by the gaoler for certain reward to bury the body, and that in pursuance of such retainer it became his duty to bury the body, but that he did not, nor would bury the body, but on the contrary thereof, for the sake of lucre and gain, sold it for the purpose of being dissected, is good: and to support such an indictment it is not necessary to give *direct* evidence that the defendant sold the body for the purpose of being dissected. *Id.*

Preventing a burial.

A conspiracy to prevent a burial is indictable as a misdemeanor. *Young's case*, 2 *T. R.* 734. See *post*, **Conspiracy**, Vol. I.

An indictment for wilfully obstructing W. C. clerk, in reading the service of the burial of the dead, in the parish church of A. and by threats and me-

naces hindering the burial, must state, that W. C. was a clerk in holy orders, or that he had a right to bury the corpse, and must also set out the threats and menaces. *R.* v. *Cheere*, 7 *D.* & *R.* 461. STEALING, &c. DEAD BODIES.

In the case of *Quick* v. *Copleton*, 1 *Levinz*. 161; 1 *Sid.* 242; 1 *Keb.* 866, a case was quoted where a woman who feared the dead body of her son would be arrested for debt, was holden liable on a promise to pay in consideration of forbearance, though she was neither executrix nor administratrix, but Lord *Ellenborough*, C. J., in *Jones* v. *Ashburnham*, 4 *East*, 460, denied the correctness of such a decision, and said, "It is impossible to contend that this last forbearance could be a good consideration for an *assumpsit*: for to seize a dead body upon any such pretence would be *contra bonos mores*, and an extortion on the relatives. It is contrary to every principle of law and moral feeling. Such an act is revolting to humanity, and illegal; and therefore any promise extorted by the fear of it could never be valid in law. It might as well be said, that a promise in consideration that one would withdraw a pistol from another's breast could be enforced against the party acting under such unlawful terror." Arresting a dead body.

By stat. 25 Geo. II. c. 37, s. 2, the body of a murderer (where the conviction and execution is in Middlesex or London) shall be conveyed by the sheriff to the hall of the surgeons' company, and dissected by such surgeons or their appointee: and when such execution happens in any other county or place in Great Britain, the body shall be delivered by the sheriff to such surgeon as the judge directs. Body of murderer.

Sect. 10. Rescuing the body from the sheriff during conveyance to the surgeon, or from the house of the surgeon, is felony, punishable by seven years' transportation. See *post*, Homicide, Vol. III. p. 257.

By stat. 32 Hen. VIII. c. 4. s. 2, the masters or governors of the commonalty of surgeons of London may yearly, at their pleasure, take four persons, put to death for felonies, and make dissection thereof for advancing the science of surgery. Bodies of four felons in London.

As to the burial of bodies cast on shore, see *post*, Burial. As to the burial of a *felo de se*, see *post*, Felo de se, Vol. II. Burial of bodies.

Form.

—— *THE jurors of our Lord the King upon their oath present, that C. D. late of, &c., on, &c., with force and arms, &c., at, &c., aforesaid, the churchyard of and belonging to the parish church of the same parish there situate, unlawfully, voluntarily, and wilfully, did break and enter and the grave there in which one A. B. deceased, had lately before then been interred and then was, with force and arms unlawfully, voluntarily, wilfully and indecently did dig open, and afterwards, to wit, on the same day and year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, the body of the said A. B. out of the grave aforesaid, unlawfully, voluntarily, wilfully, and indecently did take and carry away, to the great indecency of christian burial, to the evil example of all others, and against the peace of our sovereign Lord the King his crown and dignity.* [Add other counts according to the difficulties that may present themselves in evidence.] Indictment for digging up and carrying away a dead body out of a churchyard.

Bonds. *See* Larceny, Vol. III; Forgery, Vol. II.

Books.

[7 Ann. c. 14.]

7 Ann. c. 14.

By stat. 7 Ann. c. 14, s. 10, if any book shall be taken or otherwise lost out of any parochial library, any justice may grant his warrant to search for it; and if it shall be found, it shall by order of such justice be restored to the library.

As to the evidence by books. See Evidence, Vol. II. p. 56 to 62.

Borders between England and Scotland. *See* Northern Borders, Vol. III.

Brandy. *See* Excise, *(Spirits,)* Vol. II.

Brass. *See* Pewter, Vol. V.; Larceny, Vol. III.

Brawling in Churchyards. *See* Church, Vol. II.

Bread.

I. *Baking Bread in London, or within Ten Miles of the Royal Exchange*, 404 to 416.
[3 Geo. IV. c. cvi.]

II. *Baking Bread where an Assize is set*, 416 to 461.
[31 Geo. II. c. 29; 13 Geo. III. c. 62; 36 Geo. III. c. 22; 38 Geo. III. c. 62; 39 & 40 Geo. III. c. 74; 41 Geo. III. (U. K.) c. 12; 50 Geo. III. c. 73; 53 Geo. III. c. 116; 3 Geo. IV. c. cvi.; 5 Geo. IV. c. 50.]

III. *Baking Bread where no Assize is set*, 461 to 474.
[59 Geo. III. c. 36; 1 & 2 Geo. IV. c. 50.]

IV. *Standard Wheaten Bread*, 474.
[13 Geo. III. c. 62.]

I. Baking Bread in London, or within Ten Miles of the Royal Exchange. (a)

3 Geo. 4, c. cvi.

The stat. 3 Geo. IV. c. cvi, after reciting stat. 55 Geo. III. c. 99; 59 Geo. III. c. 127; 60 Geo. III. c. 1, and 1 Geo. IV. c. 4, (b) and that it is expedient that the said recited acts of the 59 & 60 Geo. III., and of 1 Geo.

(a) This is a local act, but one which concerns so great a portion of the magistracy, that it is thought advisable to insert it.

(b) All these acts are local.

IV., should be continued until 29th Sept. 1822; and that after the said 29th Sept. the said recited act of the 55 Geo. III., and the several provisions therein contained, (except so much thereof as repeals any former act or acts,) should be altogether repealed; and that in lieu of the several provisions and penalties contained in that act, and in the said recited act of 59 Geo. III., the regulations, provisions, and penalties hereinafter contained shall be substituted: enacts, "That the said recited acts of the fifty-ninth and sixtieth years of the reign of his said late Majesty, and of the first year of the reign of his present Majesty, and the several clauses and provisions therein contained, shall be and the same are hereby continued, and shall remain and continue in force until the said 29th day of September next; and that from and after the said 29th day of September, the said recited act of the fifty-fifth year of the reign of his said late Majesty, and all and every the provisions therein contained, (except so much thereof as repeals any former act or acts,) shall be and the same are hereby repealed."

3 Geo. 4, c. cvi.

Acts of 59 Geo. 3, 60 Geo. 3, and 1 Geo. 4, continued to 29th Sept. 1822; and after that day, 55 Geo. 3 repealed.

Sect. 2 enacts, "that it shall and may be lawful for the several bakers or sellers of bread within the city of London and the liberties thereof, within the weekly bills of mortality, and within ten miles of the Royal Exchange, to make and sell, or offer for sale, in his, her, or their shop, or to deliver to his, her, or their customer or customers, bread made of flour, or meal of wheat, barley, rye, oats, buck wheat, Indian corn, peas, beans, rice, or potatoes, or any of them, and with any common salt, pure water, eggs, milk, barm, leaven, potato, or other yeast, and mixed in such proportions as they shall think fit, and with no other ingredient or matter whatsoever, subject to the regulations hereinafter contained."

Bread made of the articles herein mentioned may be sold.

Sect. 3 enacts, "that it shall and may be lawful for the several bakers or sellers of bread within the limits aforesaid, to make and sell, or offer for sale, in his, her, or their shop, or to deliver to his, her, or their customer or customers, bread made of such weight or size as such bakers or sellers of bread shall think fit; any law or usage to the contrary notwithstanding."

Bakers to make bread of any weight or size. (*a*)

Sect. 4 enacts, "that from and after the commencement of this act, all bread sold within the limits aforesaid, shall be sold by the several bakers or sellers of bread respectively within the said limits by weight; and in case any baker or seller of bread within the limits aforesaid shall sell, or cause to be sold, bread in any other manner than by weight, then and in such case every such baker or seller of bread shall, for every such offence, forfeit and pay any sum not exceeding forty shillings, which the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted, shall order and direct: provided always, that nothing in this act contained shall extend or be construed to extend to prevent or hinder any such baker or seller of bread from selling bread usually sold under the denomination of French or fancy bread, or rolls, without previously weighing the same."

Bread to be sold by weight and in no other manner, under penalty not exceeding 40*s*.

Proviso for French or fancy bread, or rolls.

Sect. 5 enacts, "that the several bakers or sellers of bread respectively within the said limits, in the sale of bread shall use the avoirdupoise weight of sixteen ounces to the pound, according to the standard in the exchequer, and the several gradations of the same for any less quantity than a pound; and in case any such baker or seller of bread shall at any time use any other than the avoirdupoise weight, and the several gradations of the same, he, she, or they shall, for every such offence, forfeit and pay any sum not exceeding five pounds, nor less than forty shillings, as the magistrate or magistrates, justice or justices, before whom such conviction shall take place, shall from time to time order and adjudge."

Bakers using any other weight than avoirdupoise weight.

Penalty not exceeding 5*l*. nor less than 40*s*.

Sect. 6 provides and enacts, "that it shall not be lawful for any baker or seller of bread within the limits aforesaid, during the space of two years from the commencement of this act, [29th Sept. 1822, s. 34,] to make and sell, or offer for sale in his, her, or their shop, or to deliver to his, her, or their customer or customers, any loaf or loaves of the description or denomination of the peck, half peck, quarter of a peck, or half-quarter of a peck loaf or loaves, or

The peck loaf and its subdivisions not to be made or sold during the next two years.

(*a*) In 4 *M. & S.* 214, it was held not an indictable offence to sell bread of short weight to the poor.

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any or either of them; and every such baker or seller of bread who shall at any time during the said term make, sell, or cause to be sold, or offer for sale any loaf or loaves of bread of the description or denomination aforesaid, or either of them, shall for every such offence forfeit and pay any sum not exceeding ten pounds nor less than forty shillings, as the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, shall order and direct."

3 Geo. 4, c. cvi.

Under penalty not exceeding 10*l.* nor less than 40*s.*

Selling bread not previously weighed.

Sect. 7 enacts, "that in case any such baker or seller of bread shall at any time before the expiration of two years from the commencement of this act, sell or deliver in his, her, or their shop, house, or premises, any bread which shall not have been previously weighed in the presence of the party purchasing the same, whether required by the purchaser so to do or not, except as aforesaid, then and in every such case every such baker or seller of bread so offending, shall, upon conviction in manner hereinafter mentioned, forfeit and pay for every such offence any sum not exceeding the sum of ten shillings, as the magistrate or magistrates, justice or justices, before whom such conviction shall take place, shall from time to time order and adjudge."

Penalty not exceeding 10*s.*

Bakers to provide in their shops beams, scales, and weights, &c. and to weigh bread, &c.

Sect. 8 enacts, "that every baker or seller of bread within the limits aforesaid, shall cause to be fixed in some conspicuous part of his, her, or their shop, on or near the counter, a beam and scales with proper weights, or other sufficient balance, in order that all bread there sold may from time to time be weighed in the presence of the purchaser or purchasers thereof, except as aforesaid; and in case any such baker or seller of bread shall neglect to fix such beam and scales, or other sufficient balance, in manner aforesaid, or to provide and keep for use proper beam and scales and proper weights or balance, or shall have or use any incorrect or false beam or scales or balance, or any false weight not being of the weight it purports to be, according to the standard in the exchequer, then and in every such case, he, she, or they shall, for every such false beam and scales and balance, or false weight, forfeit and pay any sum not exceeding five pounds, which the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted, shall order and direct."

Under a penalty not exceeding 5*l.*

Bakers and sellers of bread, and other persons delivering by cart, &c. to be provided with beams, scales, and weights, &c. for weighing bread.

Sect. 9 enacts, "that every baker or seller of bread within the limits aforesaid, and every journeyman, servant, or other person employed by such baker or seller of bread, who shall convey or carry out bread for sale in any cart or other carriage, drawn by a horse, mule, or ass, shall be provided with, and shall constantly carry in such cart or other carriage, a correct beam and scales with proper weights, or other sufficient balance, in order that all bread sold by every such baker or seller of bread, or by his or her journeyman, servant, or other person, may from time to time be weighed in the presence of the purchaser or purchasers thereof, except as aforesaid; and in case any such baker or seller of bread, or his or her journeyman, servant, or other person, shall at any time carry out or deliver any bread, without being provided with such beam and scales with proper weights, or other sufficient balance, or whose weights shall be deficient in their due weight according to the standard in the exchequer, or shall at any time refuse to weigh any bread purchased of him, her, or them, or delivered by his, her, or their journeyman, servant, or other person, in the presence of the person or persons purchasing or receiving the same; then and in every such case every such baker or seller of bread shall, for every such offence, forfeit and pay any sum not exceeding five pounds, which the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted, shall order and direct."

Under a penalty not exceeding 5*l.*

Bread not to be adulterated. Penalty not exceeding 10*l.* nor less than 5*l.* (*a*)

Sect. 10 enacts, "that no baker or other person or persons who shall make bread for sale within the limits aforesaid, nor any journeyman or other servant of any such baker or other person, shall at any time or times, in

(*a*) It is a misdemeanor at common law knowingly to give any person food injurious to eat, whether the offence be excited by malice, or a desire of gain; nor is it necessary he should be a public contractor, or the injury done to the public service, to render him criminally liable. 2 *East's P. C.* 822; 4 *Bls. Co.* 162; 6 *East*, 133.

A baker who sells bread containing

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3 Geo. 4, c. cvi.

the making of bread for sale within such limits, use any mixture or ingredient whatsoever in the making of such bread, other than and except as herein-before mentioned, on any account or under any colour or pretence whatsoever, upon pain that every such person, whether master or journeyman, servant or other person, who shall offend in the premises, and shall be convicted of any such offence, by the oath, or in case of a Quaker by affirmation, of one or more credible witness or witnesses, or by his, her, or their own confession, shall for every such offence forfeit and pay any sum not exceeding ten pounds nor less than five pounds, or in default thereof shall, by warrant under the hand and seal or hands and seals of the magistrate or magistrates, justice or justices, before whom such offender shall be convicted, be apprehended and committed to the house of correction, or some prison of the city, county, borough, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain for any time not exceeding six calendar months from the time of such commitment, unless the penalty shall be sooner paid, as any such magistrate or magistrates, justice or justices, shall think fit and order; and it shall be lawful for the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, to cause the offender's name, place of abode, and offence, to be published in some newspaper which shall be printed or published in or near the city of London or the liberty of Westminster, and to defray the expense of publishing the same out of the money to be forfeited as last mentioned, in case any shall be so forfeited, paid, or recovered."

Names of offenders to be published.

Sect. 11 enacts, "that if any person within the limits aforesaid shall put into any corn, meal, or flour, which shall be ground, dressed, bolted, or manufactured for sale within such limits, either at the time of grinding, dressing, bolting, or manufacturing the same, or at any other time, any ingredient or mixture whatsoever, not being the real and genuine produce of the corn or grain which shall be so ground; or if any person shall within the limits aforesaid knowingly sell, or offer or expose for sale, either separately or mixed, any meal or flour of one sort of corn or grain, as the meal or flour of any other sort of corn or grain, or any ingredient whatsoever mixed with the meal or flour so sold or offered or exposed for sale; then and in every such case every person so offending shall, upon conviction before any one or more magistrate or magistrates, justice or justices of the city, county, borough, or place where such offence shall have been committed, on the oath, or in the case of a Quaker by affirmation, of one or more credible witness or witnesses, or by his, her, or their own confession, forfeit and pay for every such offence any sum not exceeding twenty pounds, nor less than five pounds, which such magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order."

Adulterating corn, meal, or flour. Selling flour of one sort of corn as the flour of any other sort.

Penalty not exceeding 20*l.* nor less than 5*l.*

Sect. 12 enacts, "that every person who shall make for sale, or sell or expose for sale, within the limits aforesaid, any bread made wholly or partially of the meal or flour of any other sort of corn or grain than wheat, or of the meal or flour of any peas or beans, shall cause all such bread to be marked with a large Roman M; and if any person shall at any time, within the limits aforesaid, make or sell, or expose for sale, any such bread without

Bread made of mixed meal or flour to be marked with a Roman M.

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pernicious ingredients and unwholesome materials, or even alum in a shape which renders it noxious, is guilty of an indictable offence; although a small quantity of alum may be swallowed without injury, if taken in larger quantities, it deranges the stomach and occasions constipation of the bowels; its tendency is injurious to health, and it is unfit for the food of man. *R.* v. *Treve*, 2 *East's P. C.* 821; *R.* v. *Dixon*, 3 *M. & S.* 11; 4 *Campb.* 12, S. C.

But an indictment will not lie against a miller for receiving good barley to grind, and delivering a mixture of oat and barley in return which is unwholesome and musty. *R.* v. *Hayes*, 4 *M. & S.* 214.

It is not necessary in an indictment for such offence to set forth the materials which rendered the composition noxious; 3 *M. & S.* 16; or to state that defendant intended to injure the parties for whom the stuff was designed. *Id.*

See form of indictment, 2 Chit. C. L. 556, 557.

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3 Geo. 4, c. cvi. Under penalty not exceeding 10s.

such mark as herein-before directed, then and in every such case every person so offending shall, upon conviction in manner herein-after mentioned, forfeit and pay for every pound weight of such bread, and so in proportion for any less quantity, which shall be so made for sale or sold or exposed for sale, without being so marked as aforesaid, any sum not exceeding ten shillings, as the magistrate or magistrates, justice or justices, before whom such conviction shall take place, shall from time to time order and adjudge.'

Magistrates or peace officers, by their warrants, may search a baker's premises, and if any adulterated flour, bread, &c. be found, the same may be seized and disposed of as herein mentioned.

Scct. 13 enacts, "that it shall be lawful for any magistrate or magistrates, justice or justices of the peace, within the limits of their respective jurisdictions, and also for any peace officer or officers, authorised by warrant under the hand and seal or hands and seals of any such magistrate or magistrates, justice or justices, (and which warrant any such magistrate or magistrates, justice or justices, is and are hereby empowered to grant,) at seasonable times in the day-time, to enter into any house, mill, shop, stall, bakehouse, boltinghouse, pastry warehouse, outhouse, or ground of or belonging to any miller, mealman, or baker, or other person who shall grind grain, or dress or bolt meal or flour, or make bread for reward or sale, within the limits aforesaid, and to search or examine whether any mixture or ingredient not the genuine produce of the grain such meal or flour shall import or ought to be, shall have been mixed up with or put in o any meal or flour in the possession of such miller, mealman, or baker, either in the grinding of any grain at the mill, or in the dressing, bolting, or manufacturing thereof, whereby the purity of any meal or flour is or shall be in anywise adulterated; or whether any mixture or ingredient, other than is allowed by this act, shall have been mixed up with or put into any dough or bread in the possession of any such baker or other person, whereby any such dough or bread is or shall be in anywise adulterated; and also to search for any mixture or ingredient which may be intended to be used in or for any such adulteration or mixture; and if on any such search, it shall appear that any such meal, flour, dough, or bread, so found, shall have been so adulterated by the person in whose possession it shall then be, or any mixture or ingredient shall be found, which shall seem to have been deposited there in order to be used in the adulteration of meal, flour, or bread; then and in every such case, it shall be lawful for every such magistrate or magistrates, justice or justices of the peace, or officer or officers authorised as aforesaid respectively, within the limits of their respective jurisdictions, to seize and take any meal, flour, dough, or bread which shall be found in any such search, and deemed to have been adulterated, and all ingredients and mixtures which shall be found and deemed to have been used or intended to be used in or for any such adulteration as aforesaid; and such part thereof as shall be seized by any peace officer or officers authorised as aforesaid, shall, with all convenient speed after seizure, be carried to the nearest resident magistrate or magistrates, justice or justices of the peace, within the limits of whose jurisdiction the same shall have been so seized; and if any magistrate or magistrates, justice or justices, who shall make any such seizure in pursuance of this act, or to whom any thing so seized under the authority of this act shall be brought, shall adjudge that any such meal, flour, dough, or bread so seized shall have been adulterated by any mixture or ingredient put therein, other than is allowed by this act, or shall adjudge that any ingredient or mixture so found as aforesaid shall have been deposited or kept where so found for the purpose of adulterating meal, flour, or bread; then and in any such case, every such magistrate or magistrates, justice or justices of the peace, is hereby and required, within the limits of their respective jurisdictions, to dispose of the same as he or they, in his or their discretion, shall from time to time think proper."

Persons in whose shop, or other premises, ingredients for the adulteration of meal or bread shall be found:

Sect. 14 enacts, "that every miller, mealman, or baker, within the limits aforesaid, in whose house, mill, shop, stall, bakehouse, boltinghouse, pastry warehouse, outhouse, ground, or possession, any ingredient or mixture shall be found, which shall, after due examination, be adjudged by any magistrate or magistrates, justice or justices of the peace, to have been deposited there for the purpose of being used in adulterating meal, flour, or bread, shall on being convicted of any such offence, either by his, her, or their own con-

3 Geo. 4, c. cvi.

fession, or by the oath, or in the case of a Quaker by affirmation, of one or more credible witness or witnesses, forfeit and pay, on every such conviction, any sum of money not exceeding ten pounds nor less than forty shillings for the first offence; five pounds for the second offence, and ten pounds for every subsequent offence; or in default of payment thereof, shall, by warrant under the hand and seal or hands and seals of the magistrate or magistrates, justice or justices, before whom such offender shall be convicted, be apprehended and committed to the house of correction, or some prison of the city, county, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain for any time not exceeding six calendar months from the time of such commitment, (unless the penalty be sooner paid,) as any such magistrate or magistrates, justice or justices, shall think fit and order; and it shall be lawful for the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, to cause the offender's name, place of abode, and offence, to be published in some newspaper which shall be printed or published in or near the city of London, and to defray the expense of publishing the same out of the money to be forfeited as last mentioned, in case any shall be so forfeited, paid, or recovered."

First offence not exceeding 10*l.* nor less than 40*s.*

Second offence, 5*l.*

and 10*l.* for every subsequent offence.

Names of offenders to be published.

Sect. 15 enacts, "that if any person or persons shall wilfully obstruct or hinder any such search as herein-before is authorised to be made, or the seizure of any meal, flour, dough, or bread, or of any ingredient or mixture which shall be found on any such search, and deemed to have been lodged with an intent to adulterate the purity or wholesomeness of any meal, flour, dough, or bread, or shall wilfully oppose or resist any such search being made, or the carrying away any such ingredient or mixture as aforesaid, or any meal, flour, dough, or bread, which shall be seized as being adulterated, or as not being made pursuant to this act, he, she, or they so doing or offending in any of the cases last aforesaid, shall for every such offence, on being convicted thereof, forfeit and pay such sum, not exceeding 10*l.* as the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted, shall think fit and order: provided also, that if any person making or who shall make bread for sale within the limits aforesaid, shall at any time make complaint to any magistrate or magistrates, justice or justices of the peace, within his or their jurisdiction, and make appear to him or them, by the oath, or in the case of a Quaker by affirmation, of any credible witness, that any offence which such person shall have been charged with, and for which he or she shall have incurred and paid any penalty under this act, shall have been occasioned by or through the wilful act, neglect, or default of any journeyman or other servant employed by or under such person so making complaint, then and in any such case, any such magistrate or magistrates, justice or justices, may and is or are hereby required to issue out his or their warrant, under his or their hand and seal, or respective hands and seals, for bringing any such journeyman or servant before any such magistrate or magistrates, justice or justices, or any magistrate or justice of the peace acting in and for the city, county, division, or place where the offender can be found, and on any such journeyman or servant being thereupon apprehended and brought before any such magistrate or magistrates, justice or justices, he or they, within his or their respective jurisdiction, is and are hereby authorised and required to examine into the matter of such complaint, and on proof thereof upon oath or affirmation to the satisfaction of any such magistrate or magistrates, justice or justices of the peace, who shall hear such complaint, then any such magistrate or magistrates, justice or justices is and are hereby directed and authorised, by any order under his or their respective hand or hands, to adjudge and order what reasonable sum of money shall be paid by any such journeyman or servant to his master or mistress, as or by way of recompence to him or her for the money he or she shall have paid by reason of the wilful act, neglect, or default of any such journeyman or servant; and if any such journeyman or servant shall neglect or refuse, on his conviction, to make immediate payment of the sum of money which any such magistrate or magistrates, justice or justices, shall order him to pay by reason of such his said wilful neglect or default, then any such magistrate

Obstructing any search authorised by this act.

Penalty not exceeding 10*l.*

Offences occasioned by the wilful default of journeymen and servants.

Proceedings for.

Penalty.

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3 Geo. 4, c. cvi.

Imprisonment.

or magistrates, justice or justices, within his or their respective jurisdiction, is or are hereby authorised and required by warrant under his or their hand and seal, or hands and seals, to cause such journeyman or servant to be apprehended and committed to the house of correction, or some other prison of the city, county, division, or place, in which such journeyman or servant shall be apprehended or convicted, to be there kept to hard labour for any term not exceeding six calendar months from the time of such commitment, as to such magistrate or magistrates, justice or justices shall seem reasonable, unless payment shall be made of the money ordered after such commitment, and before the expiration of the said term of six months."

Bakers not to bake bread or rolls on the Lord's Day; nor sell bread, nor bake bread, pies, &c. except between certain hours.

Sect. 16 provides and enacts, "that no master, mistress, journeyman, or other person respectively, exercised or employed in the trade or calling of a baker within the limits aforesaid, shall, on the Lord's Day, or on any part thereof, make or bake any bread, rolls, or cakes of any sort or kind; or shall, on any other part of the said day than between the hours of nine of the clock in the forenoon and one of the clock in the afternoon, on any pretence whatsoever, sell or expose to sale, or permit or suffer to be sold or exposed to sale, any bread, rolls, or cakes, of any sort or kind; or bake or deliver, or permit or suffer to be baked or delivered, any meat, pudding, pie, tart, or victuals, except as herein-after is excepted, or in any other manner exercise the trade or calling of a baker, or be engaged or employed in the business or occupation thereof, save and except so far as may be necessary in setting and superintending the sponge to prepare the bread or dough for the following day's baking; and every person offending against the last-mentioned regulations, or any one or more of them, or making any sale or delivery hereby allowed otherwise than within the bakehouse or shop, and being thereof convicted before any justice of the peace of the city, county, or place where the offence shall be committed, within six days from the commission thereof, either upon the view of such justice, or on confession by the party, or proof by one or more credible witness or witnesses upon oath or affirmation, shall for every such offence pay and undergo the forfeiture, penalty, and punishment hereinafter mentioned; (that is to say), for the first offence the penalty of 10*s.*; for the second offence the penalty of 20*s.*; and for the third and every subsequent offence respectively the penalty of 40*s.*; and shall moreover, upon every such conviction, bear and pay the costs and expenses of the prosecution, such costs and expenses to be assessed, settled, and ascertained by the justice convicting, and the amount thereof, together with such part of the penalty as such justice shall think proper to be allowed to the prosecutor or prosecutors for loss of time in instituting and following up the prosecution, at a rate not exceeding 3*s. per diem*, and to be paid to the prosecutor or prosecutors for his, her, and their own use and benefit, and the residue of such penalty to be paid to such justice, and within seven days after his receipt thereof to be transmitted by him to the churchwardens or overseers of the parish or parishes where the offence shall be committed, to be applied for the benefit of the poor thereof; and in case the whole amount of the penalty, and of the costs and expenses aforesaid, be not forthwith paid after conviction of the offender or offenders, such justice shall and may, by warrant under his hand and seal, direct the same to be raised and levied by distress and sale of the goods and chattels of the offender or offenders; and in default or insufficiency of such distress, commit the offender or offenders to the house of correction, on a first offence for the space of seven days, for a second offence for the space of fourteen days, and on a third or any subsequent offence for the space of one month, unless the whole of the penalty, costs, and expenses be sooner paid and discharged: provided nevertheless, that it shall be lawful for every master or mistress baker, residing within the limits aforesaid, to deliver to his or her customers, on the Lord's Day, any bakings until half an hour past one of the clock in the afternoon of that day, without incurring or being liable to any of the penalties in this act contained."

Penalty for the first offence 10*s.* for the second offence 20*s.* and for every subsequent offence 40*s.*

Distress.

Imprisonment.

Bakings may be delivered till half-past one on Sundays.

Miller, mealman, or baker not to act as a justice of peace in the execution of this act. Penalty 100*l.*

Sect. 17 provides and enacts, "that no person who shall follow or be concerned in the business of a miller, mealman, or baker, shall be capable of acting or shall be allowed to act as a justice of the peace under this act, or in putting in execution any of the powers in or by this act granted; and if any

miller, mealman, or baker shall presume so to do, he or they so offending in the premises shall, for every such offence, forfeit and pay the sum of 100*l.* to any person or persons who will inform or sue for the same, to be recovered, together with full costs of suit, in any of his Majesty's courts of record at Westminster, by action of debt, bill, plaint, or information, wherein no essoign, wager of law, or more than one imparlance, shall be allowed.

3 Geo. 4, c. cvi.

Sect. 18 enacts, "that in case any person or persons shall resist or make forcible opposition against any person or persons employed in the due execution of this act, every such person offending therein shall for every such offence forfeit any sum not exceeding 10*l.* at the discretion of the magistrate or magistrates, justice or justices of the peace, before whom he or she shall be convicted of such offence."

Persons opposing the execution of this act.

Penalty not exceeding 10*l.*

Sect. 19 enacts, "that all penalties, forfeitures, and fines by this act inflicted or authorised to be imposed, (the manner of levying and recovering and applying whereof is not herein otherwise directed,) shall upon proof and conviction of the offences respectively before any magistrate or justice of the peace for the city, county, or place where the offence shall have been committed, (as the case may require,) either by the confession of the party offending, or by the oath (or in case of a Quaker on affirmation) of any credible witness or witnesses, (which oath or affirmation every such magistrate or justice is in every such case hereby fully authorised to administer,) be levied, together with the costs attending the information and conviction, by distress and sale of the goods and chattels of the party or parties offending, by warrant under the hand and seal of such magistrate or justice (which warrant such magistrate or justice is hereby empowered and required to grant;) and the overplus, (if any,) after such penalties, forfeitures, and fines, and the charges of such distress and sale, are deducted, shall be returned upon demand unto the owner or owners of such goods and chattels; and in case such fines, penalties, and forfeitures shall not be forthwith paid upon conviction, then it shall be lawful for such magistrate or justice to order the offender or offenders so convicted to be detained and kept in safe custody, until return can be conveniently made to such warrant of distress, unless the offender or offenders shall give sufficient security to the satisfaction of such magistrate or justice, for his or their appearance before such magistrate or justice on such day or days as shall be appointed for the return of such warrant of distress, such day or days not being more than seven days from the time of taking any such security, and which security the said magistrate or justice is hereby empowered to take by way of recognizance or otherwise; but if upon the return of such warrant it shall appear that no sufficient distress can be had thereupon, then it shall be lawful for any such magistrate or justice of the peace as aforesaid, and he is hereby authorised and required, by warrant or warrants under his hand and seal, to cause such offender or offenders to be committed to the common gaol or house of correction of the city, county, or place where the offender shall be or reside, there to remain without bail or mainprize for any time not exceeding one calendar month, (save and except as herein otherwise directed,) unless such penalties, forfeitures, and fines, and all reasonable charges attending the same, shall be sooner paid and satisfied; and the monies arising by such penalties, forfeitures, and fines respectively, when paid or levied, if not otherwise directed to be applied by this act, shall be from time to time paid, one moiety thereof to the informer or person suing for and recovering the same, and the other moiety to the churchwardens or overseers of the poor of the parish or place in which such offence shall have been committed, to be by them applied and disposed for the benefit of the poor thereof."

Recovery and application of penalties and forfeitures.

Distress.

Imprisonment.

Sect. 20 enacts, "that every summons to be served on every offender against any of the provisions of this act, shall be in the form or to the effect following:—

Summonses to be in the following form.

"*To A. B. of*

"*County of* } *WHEREAS complaint and information hath been made before me*
to wit. } *C. D. one of his Majesty's justices of the peace or magistrate for the said* [*county, &c.*] *by E. F. of that, &c.* [here state the

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3 Geo. 4, c. cvi.

nature and circumstances of the case, as far as it shall be necessary to show the offence, and to bring it within the authority of the justice or magistrate, and in doing that follow the words of the act as near as may be]: *These are therefore to require you personally to appear before me* [or *such other justice or magistrate as shall be then and there present*] *at in the said* [*county, &c.*] *on the day of next, at the hour of in the noon, to answer to the said complaint and information made by the said E. F. who is likewise directed to be then and there present to make good the same. Herein fail not. Given under my hand this day of .*"

Informations for offences to be in the following form.

Sect. 21 enacts, "that every information to be laid before any justice or magistrate for any offence against this act, shall be in the form or to the effect following:—

"*County of* } *BE it remembered, that on the day of A. B. of*
to wit. } *in the said county, informeth me, one of his Majesty's justices of the peace* [or *magistrate*, as the case may be,] *for the said county, that of in the said county,* [here describe the offence, with the time and place, and follow the words of the act as near as may be,] *contrary to the statute made in the third year of the reign of King George the Fourth, intituled, 'An Act to repeal the acts now in force relating to bread to be sold in the city of London and the liberties thereof, and within the weekly bills of mortality and ten miles of the Royal Exchange; and to provide other regulations for the making and sale of bread, and preventing the adulteration of meal, flour, and bread within the limits aforesaid,' which hath imposed a forfeiture of for the said offence. Taken the day of before me*" *A. B.*"

Informations to be laid before the acting magistrate of the district.

Sect. 22 provides and enacts, "that all offences committed against this act shall be laid before the magistrate or magistrates, justice or justices, usually acting in and for the district in which the offence shall have been committed, in a summary way upon complaint, and the said magistrate or magistrates, justice or justices, is and are hereby empowered to issue his or their summons for the purpose of hearing and determining the same."

Power to summon witnesses in prosecuting offences.

Sect. 23 enacts, "that if it shall be made appear by the oath or affirmation of any credible person or persons to the satisfaction of any magistrate or magistrates, justice or justices, that any person or persons within the jurisdiction of any such magistrate or magistrates, justice or justices, is or are likely to give or offer material evidence on behalf of the prosecutor of any offender or offenders against the true intent and meaning of this act, or on behalf of the person or persons accused, and will not voluntarily appear before such magistrate or magistrates, justice or justices, to be examined and give his, her, or their evidence concerning the premises, every such magistrate or magistrates, justice or justices, is and are hereby authorised and required to issue his or their summons to convene every such person or persons before any such magistrate or magistrates, justice or justices, at such seasonable time as in such summons shall be fixed; and if any person so summoned, after having been paid or tendered a reasonable sum for his, her, or their costs and expenses, shall neglect or refuse to appear at the time by such summons appointed, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been duly served upon the party or parties so summoned) every such magistrate and magistrates, justice and justices, is and are hereby authorised and required to issue his or their warrant under his hand and seal or their hands and seals, to bring every such person or persons before any such magistrate or magistrates, justice or justices; and on the appearance of any such person before any such magistrate or magistrates, justice or justices, every such magistrate or magistrates, justice or justices, is and are hereby authorised and empowered to examine upon oath or affirmation every such person; and if any such person on his or her appearance, or on being brought before any such magistrate or magistrates, justice or justices, shall refuse to be examined upon oath or affirmation concerning the premises without offering any just excuse for such refusal, any such magistrate or magistrates, justice or justices, within the limits of his or their jurisdiction, may by warrant under his hand and seal or their hands and seals commit any person or persons so refusing to be examined to the public prison of the city, county, division,

Tender of expenses.

liberty, or place in which such person or persons so refusing to be examined shall be, there to remain for any time not exceeding fourteen days, as any such magistrate or magistrates, justice or justices, shall direct."

Perjury, &c.

Sect. 24 enacts, "that if any person who shall take any oath or make any affirmation by this act directed to be taken or made, shall wilfully forswear himself or herself, or make any false affirmation, every such person shall be subject and liable to be prosecuted for perjury by indictment or information according to due course of law; and if convicted thereof, shall be subject and liable to the pains and penalties which persons convicted of wilful and corrupt perjury are subject and liable to."

Form of conviction.

Sect. 25 enacts, "that the magistrate or magistrates, justice or justices, before whom any person shall be convicted in manner prescribed by this act, shall cause every such conviction to be drawn up in the form or to the effect following; (that is to say,)

"} *BE it remembered, that on this day of in the year of*
to wit. } *the reign of A. B. is convicted before Majesty's justices of the*
peace for the said county of [or *for the division of the said county of*
or *for the city, liberty, or town of* [as the case shall happen to be]
for and do adjudge him [or *her* or *them*, as the case may be]
to pay and forfeit for the same the sum of . Given under the day and
year aforesaid."

Proceedings not to be quashed for want of form.

Sect. 26 enacts, "that no order, judgment, or conviction made touching or concerning any of the matters in this act contained, or of any proceedings to be had touching the conviction of any offender or offenders against this act, shall be quashed for want of form, or be removed or removable by certiorari or any other writ of process whatsoever into any of his Majesty's courts of record at Westminster; and where any distress shall be made for any sum or sums of money to be levied by virtue of this act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers, on account of any defect or want of form in the summons, conviction, warrant of distress, or any other proceeding relating thereto; nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio* on account of any irregularity which shall be afterwards committed by the party or parties distraining; but the person or persons aggrieved by such irregularity shall and may recover full satisfaction for the special damage, if any, in an action on the case; but no plaintiff or plaintiffs shall recover in any action for such irregularity as aforesaid, if tender of sufficient amends hath been made by or on behalf of the party distraining before such action brought."

Proviso for tender of amends.

Appeal to quarter sessions.

Sect. 27 provides and enacts, "that if any person or persons convicted of any offence punishable by this act, shall think, him, her, or themselves aggrieved by the judgment of the magistrate or magistrates, justice or justices, before whom he, she, or they shall have been convicted, it shall be lawful for such person or persons from time to time to appeal to the justices at the next general or general quarter sessions of the peace which shall be held for the city, county, division, liberty, town, or place where such judgment shall have been given; and that the execution of such judgment shall in such case be suspended, the person or persons so convicted entering into a recognizance within twenty-four hours of the time of such conviction, with two sufficient sureties in double the sum which such person or persons shall have been adjudged to pay or forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the justices at their said next general or general quarter sessions; which recognizance the magistrate or magistrates, justice or justices, before whom such conviction shall be had, is and are hereby empowered and required to take; and the justices in the said general or general quarter sessions are hereby authorised and required to hear and finally determine the matter of every such appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party; and if upon hearing the said appeal the judgment of the magistrate or magistrates, justice or justices, before

Recognizance.

Costs.

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3 Geo. 4, c. cvi.

whom the appellant or appellants shall have been convicted shall be confirmed, such appellant or appellants shall forthwith pay down the sum he, she, or they shall have been adjudged to have forfeited, together with such costs as the said justices in their said general or general quarter sessions shall award to be paid to the prosecutor or informer, for defraying the expenses sustained by reason of any such appeal; and in default of the appellant's paying the same, any two justices or any one magistrate or justice of the peace having jurisdiction in the place into which any such appellant or appellants shall escape, or where he, she, or they shall reside, shall and may by warrant under their hands and seals or his hand and seal, commit any such appellant or appellants to the common gaol of the city, county, division, or place where he, she, or they shall be apprehended, until he, she, or they shall make payment of such penalty and of the costs and charges which shall be adjudged on the conviction; but if the appellant or appellants in any such appeal shall make good his, her, or their appeal, and be discharged of the said conviction, reasonable costs shall be awarded to the appellant or appellants against such informer or informers who would (in case of such conviction) have been entitled to a moiety of the penalty to have been recovered as aforesaid; and which costs shall and may be recovered by the appellant or appellants against any such informer or informers in like manner as costs given at any general or general quarter sessions are recoverable: provided always, that no person shall be detained in prison for any such offence for any greater length of time than three calendar months."

Where conviction shall be had within six days of quarter sessions, the parties shall be allowed to appeal to the next or next following quarter sessions.

Sect. 28 provides and enacts, "that if any such conviction shall happen to be made within six days before any general or general quarter sessions of the peace shall be held for the city, county, division, town corporate, borough, or place where such conviction shall have been made, that the party or parties who shall think him, her, or themselves aggrieved by any such conviction, shall and may, on entering into a recognizance in manner and for the purposes before directed, be at liberty to appeal either to the then next or next following general or general quarter sessions of the peace which shall be held for any county, division, city, town corporate, borough, liberty, or place, where any such conviction shall have been made."

Limitation of actions.

Sect. 29 enacts, "that every action or suit which shall be brought or commenced against any magistrate or magistrates, justice or justices, or any peace officer or officers, for any matter or thing done or committed by virtue of or under this act, shall be commenced within six calendar months next after the fact committed, and not afterwards, and shall be laid or brought in the city, county, or place where the matter in dispute shall arise, and not elsewhere; and that the statute made in the twenty-fourth year of the reign of King George the Second, intituled 'An Act for rendering justices of the peace more safe in the execution of their office, and for indemnifying constables and others acting in obedience to their warrants, so far as the said act relates to the rendering the justices more safe in the execution of their office, shall extend and be construed to extend to the magistrate and magistrates, justice and justices of the peace acting under the authority or in pursuance of this act; and that no action or suit shall be had or commenced against, nor shall any writ be sued out, or copy of any writ be served upon any peace officer or officers, for any thing done in the execution of this act, until seven days after a notice in writing shall have been given to or left for him or them at his or their usual place of abode, by the attorney for the party intending to commence such action, which notice in writing shall contain the name and place of abode of the person intending to bring such action, and also of his attorney, and likewise the cause of action or complaint; and any peace officer or officers shall be at liberty and may, by virtue of this act, at any time within seven days after any such notice shall have been given to or left for him, tender or cause to be tendered any sum or sums of money, as amends for the injury complained of, to the party complaining, or to the attorney named in such notice; and if the same be not accepted, the defendant or defendants in any such action or actions may plead such tender in bar of such action or actions, together with the general issue, or any other

24 Geo. 2, c. 44, extended to this act.

Notice of action.

Tender of amends.

plea, with leave of the court in which the action shall be commenced; and if upon issue joined on such tender the jury shall find the amends tendered to have been sufficient, they shall find a verdict for the defendant or defendants; and in every such case, or if the plaintiff shall become nonsuit, or discontinue his action, or if judgment shall be given for the defendant or defendants upon demurrer, or if any action or suit shall be brought after the time limited by this act for bringing the same, or shall be brought in any other county or place than as aforesaid, then and in every such case the jury shall find a verdict for the defendant or defendants, and the defendant or defendants shall be entitled to his or their costs; but if the jury shall find that no such tender was made, or that the amends tendered were not sufficient, or shall find against the defendant or defendants on any plea or pleas by him or them pleaded, they shall then give a verdict for the plaintiff, and such damages as they shall think proper, and the plaintiff shall thereupon recover his costs against every such defendant or defendants."

Costs.

Sect. 30 enacts, "that if any action or suit shall be commenced against any other person or persons than a magistrate, justice, or peace officer, for any thing done in pursuance of this act, the defendant or defendants in any such action or suit may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if it shall appear so to have been done, or if a verdict shall be recorded for the defendant or defendants, or if the plaintiff or plaintiffs shall be non-suited, or discontinue his, her, or their action after the defendant or defendants shall have appeared, or if judgment shall be given upon a verdict or demurrer against the plaintiff or plaintiffs, the defendant or defendants in every such action shall and may recover treble costs, and have the like remedy for the same as any defendant or defendants hath or have in other cases by law for the recovery of his, her, or their costs."

General issue may be pleaded.

Treble Costs.

Sect. 31 provides and enacts, "that no person shall be convicted of any offence under this act, unless the complaint is made within forty-eight hours after the offence shall have been committed, except in cases of perjury; and that no person who shall be prosecuted to conviction for any offence done or committed against this act, shall be liable to be prosecuted for the same offence under any other law."

Limitation of information.

Sect. 32 enacts, "that all penalties and forfeitures by this act inflicted, and the application of which is not herein-before directed, shall, when recovered or paid, go and be disposed of in manner following; that is to say, one moiety thereof, where any offender or offenders shall be convicted, either by his, her, or their confession, or by the oath or affirmation of one or more credible witness or witnesses, shall go and be paid to the person or persons who shall inform against and prosecute to conviction any such offender or offenders; and the other moiety thereof, or in case there be no such person informing, then the whole thereof shall go and be paid to the churchwardens and overseers of the poor of the parish or parishes, for the use of the poor in the parish wherein such offence shall be committed, in such manner as such churchwardens and overseers of the poor shall in their discretion think fit."

Application of penalties.

Sect. 33 provides and enacts, "that this act, or any thing herein contained, shall not extend or be construed to extend in any way to affect, lessen, or infringe upon the rights and privileges of the city of London, or of the worshipful Company of Bakers of the said city, or of the wardmote inquests of the said city, or of the city or liberties of Westminster, or borough of Southwark; or any right or custom of any lord or lords of any leets, or the rights of any clerk or clerks of the market, in any place which may be exercised and enjoyed by them or any of them, by virtue of any charters, bye-laws, prescriptions, usages, customs, privileges, grants, or acts of Parliament; but that all such rights and privileges shall be held, exercised, and enjoyed by the parties respectively entitled thereto as fully and amply to all intents and purposes as the same were held, exercised, and enjoyed before the passing of this act; any thing herein contained to the contrary notwithstanding."

Saving rights to the cities of London and Westminster, &c.

WHERE AN ASSIZE IS SET.

Sect. 34 enacts, "that this act shall commence and take effect from and after the said twenty-ninth day of September, 1822."

3 Geo. 4, c. cvi. Commencement of act. Public act.

Sect. 35 enacts, "that this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded."

II. Baking Bread where an Assize is set.

50 Geo. 3, c. 73.

The 50 Geo. III. c. 73, enacts several regulations relating to *the baking of bread*.

Baking of bread beyond London, and ten miles from thence.

Sect. 1, after reciting that "Whereas an act was passed in the thirty-first year of the reign of his late Majesty King George the Second, intituled, 'An Act for the due making of bread, and to regulate the price and assize thereof, and to punish persons who shall adulterate meal, flour, or bread:' and whereas an act was passed in the third year of the reign of his present Majesty King George the Third, intituled, 'An Act for explaining and amending an act made in the thirty-first year of the reign of his late Majesty King George the Second, intituled, 'An Act for the due making of bread, and to regulate the price and assize thereof, and to punish persons who shall adulterate meal, flour, or bread:' and whereas an act was passed in the thirteenth year of his said present Majesty's reign, intituled, 'An Act for better regulating the assize and making of bread:' and whereas some of the regulations and provisions contained in the said several acts have been found defective, and in some respects injurious to the bakers and the public; and it is therefore expedient that the same should be altered and amended, and more effectual provisions made for ascertaining the due weight of bread, and for the better observance of the Lord's Day, commonly called Sunday:" enacts, "that if any person or persons residing beyond the city of London or the liberties thereof, or beyond ten miles of the Royal Exchange, who shall make any bread for sale, or who shall send out or expose to or for sale any bread which shall be deficient in weight, according to the assize which shall be set for any such bread from time to time to be sold at, in pursuance of any act or acts then in force for regulating the price and assize of bread, then it shall be lawful for any magistrate or magistrates, justice or justices of the peace within the limits of their respective jurisdictions, before whom any information shall be given upon the oath of one or more credible witnesses of any such deficiency in weight, and also for any peace officer or officers authorised by warrant under the hand and seal or hands and seals of any such magistrate or magistrates, justice or justices, (and which warrant any such magistrate or magistrates, justice or justices is and are hereby empowered to grant upon receiving such information upon oath as aforesaid,) at seasonable times in the day time to enter into any house, shop, stall, bakehouse, warehouse, or outhouse of or belonging to any such baker or seller of bread, against whom such information shall have been made as aforesaid, to search for, view, weigh and try all such bread as shall be then and there found, and shall have been baked within twenty-four hours next preceding the time of the same having been so weighed, and which bread shall be weighed by the bushel, or in any larger or smaller quantity, as may be found most convenient; and if on the weighing of such bread any deficiency shall be found in its due weight on the average of the whole weight of all such bread as shall be then and there found, and which shall have been baked within twenty-four hours as aforesaid, and which deficiency shall be proved before such magistrate or magistrates, justice or justices, upon the oath or oaths of the party or parties weighing the same, then he or they so offending in the premises, and being thereof convicted, shall forfeit and pay a sum not exceeding five shillings for every ounce of bread which shall be so found deficient in weight on the average of all such bread as shall have been so weighed, and so in proportion for

Penalty on bakers for selling bread short of weight, to be weighed within twenty-four hours after baking.(a)

(a) It is no indictable offence to sell bread of short weight, *ante*, 405.

every deficiency of weight less than an ounce, as any such magistrate or magistrates, justice or justices, before whom any such deficiency in weight shall be proved as aforesaid shall think fit to order, except as hereafter is excepted; and any such magistrate or magistrates, justice or justices, peace officer or officers, within the limits of their respective jurisdictions, may in such case, where there is a deficiency of weight on the average as aforesaid, seize all such loaves as shall be so found deficient in their due weight; and any such magistrate or magistrates, justice or justices, may dispose thereof as he or they in his or their discretion shall think fit, except it shall be proved to any such magistrate or magistrates, justice or justices, by or on the behalf of the parties against whom such information shall be made by the oath, or affirmation, being a Quaker, of any one or more respectable housekeeper, that such deficiency in weight wholly arose from some unavoidable accident in baking or otherwise, or was occasioned by or through some contrivance or confederacy."

Bakers to have weights and scales in their shops, &c.

Sect. 2 enacts, "that every baker and seller of bread beyond the said city of London and the liberties thereof, and beyond the said ten miles of the Royal Exchange, shall have fixed in some convenient place of his or her shop a beam and scales, with proper weights of the assize weight of a half-peck loaf, a quartern loaf, and a half-quartern loaf; and also of an eighteen-penny, one shilling, sixpenny, and threepenny loaf; and that any person or persons who may purchase any such loaf or loaves of bread from any such baker or seller of bread, may, if he, she, or they shall think proper, require the same to be weighed in his, her, or their presence; and if any such loaf or loaves shall be found deficient in weight, then the person or persons demanding the same to be so weighed, shall have the deficiency made up with other bread or another loaf or loaves given in lieu thereof, as may be required by such person or persons; and any such baker or seller of bread as aforesaid, who shall neglect to fix such beam and scales in some convenient part of his or her shop, or to provide and keep for use proper weights, or whose weights shall be deficient in their due weight, or who shall refuse to weigh any half-peck loaf, quartern loaf, or half-quartern loaf or loaves purchased in his, her, or their shop, in presence of the party or parties requiring the same, and shall be thereof convicted, either by the oath of one or more credible witness or witnesses, or his, her, or their own confession, he, she, or they shall, for every such offence, forfeit and pay a sum not exceeding ten shillings, as the magistrate or magistrates, justice or justices, before whom such offender shall be convicted shall think fit."

Penalty.

Limitation as to baking on Sundays.

Sect. 3 provides and enacts, "that no master, mistress, journeyman, or other person respectively exercising or employed in the trade or calling of a baker, beyond the said city of London or the liberties thereof, or beyond the said ten miles of the Royal Exchange, shall, on the Lord's Day, commonly called Sunday, or any part thereof, make or bake any household or other bread, rolls, or cakes of any sort or kind, or shall on any part of the said day, excepting between the hours of ten of the clock in the forenoon and half-past one of the clock in the afternoon, on any pretence whatsoever, sell or expose to sale, or permit or suffer to be sold or exposed to sale, any bread, rolls, or cakes of any sort or kind, or bake or deliver, or permit or suffer to be baked or delivered, any meat, pudding, pie, tart, or victuals, at any time after half-past one of the clock in the afternoon of that day, or in any other manner exercise the trade or calling of a baker, or be engaged or employed in the business or occupation thereof, save and except so far as may be necessary in setting and superintending the sponge to prepare the bread or dough for the following day's baking, and that no meat, pudding, pie, tart, or victuals shall be brought to or taken from any bakehouse during the time of divine service in the church of the parish, hamlet, or place where the same is situate, nor within one quarter of an hour of the time of commencement thereof; and every person offending against the foregoing regulations, or any one or more of them, or making any sale or delivery, hereby allowed between the hours aforesaid, otherwise than within the bakehouse or shop, and being thereof convicted before any justice of the peace of the county, city, or place

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where the offence shall be committed, within two days from the commission thereof, either upon the view of such justice, or on confession by the party, or proof by one or more witness or witnesses upon oath, shall, for every such offence, forfeit, pay, and undergo the forfeiture, penalty, and punishment hereinafter mentioned, that is to say, for the first offence any sum not exceeding five shillings, for the second offence any sum not exceeding ten shillings, and for the third and every subsequent offence respectively any sum not exceeding fifteen shillings, and shall moreover on every such conviction, bear and pay the costs and expenses of the prosecution, such costs and expenses to be assessed, settled, and ascertained by the justice convicting; and the amount thereof, together with such part of the penalty as such justice shall think proper, to be allowed to the prosecutor or prosecutors for loss of time in instituting and following up the prosecution, at a rate not exceeding three shillings per diem, and be paid to the prosecutor or prosecutors for his and their own use and benefit, and the residue of such penalty to be paid to such justice, and within seven days after his receipt thereof to be transmitted by him to the churchwardens or overseer or overseers of the parish or parishes where the offence shall be committed, to be applied for the benefit of the poor thereof; and in case the whole amount of the penalty, and of the costs and expenses as aforesaid, be not paid within three days after conviction of the offender or offenders, such justice shall and may, by warrant under his hand and seal, direct the same to be levied and raised by distress and sale of the goods and chattels of the offender or offenders, and in default or insufficiency of such distress, commit the offender or offenders to the house of correction on a first offence for any time not exceeding seven days, on the second offence for any time not exceeding fourteen days, and on the third or any subsequent offence for any time not exceeding twenty-one days, unless the whole of the penalty, costs, and expenses be sooner paid and discharged."

50 Geo. 3, c. 73.

First offence.

Second offence.

Third offence.

Distress.

Commitment.

Saving rights of Universities.

Sect. 4 provides and enacts, "that neither this act nor any thing herein contained shall extend or be construed to extend to prejudice the ancient right or custom of the two Universities of Oxford and Cambridge, or either of them, or of their or either of their clerks of the market, or the practice within the several jurisdictions of the said Universities, or either of them, used to ascertain and appoint the weight of all sorts of bread to be sold or exposed to sale within their several jurisdictions, but that they and every of them shall and may severally and respectively from time to time, as there shall be occasion, ascertain and appoint within their several and respective jurisdictions the weight of all sorts of bread to be sold or exposed to sale by any baker or other person whatsoever within the limits of their several jurisdictions, and shall and may inquire and punish the breach thereof as fully and freely in all respects as they used to do, and as if this act had never been made, any thing herein contained to the contrary notwithstanding."

Powers of former acts extended to this.

Sect. 5 enacts, "that all powers, authorities, provisions, directions, penalties, forfeitures, clauses, matters, and things contained in the several acts now in force, not altered or varied by any of the provisions of this act, as far as the same are or can be made applicable, and can be applied for the carrying into execution the purposes of this act, shall be used, exercised, and put in execution for enforcing the regulations, provisions and directions of this act, in such and the same manner as if the same were herein contained, and were at large re-enacted and made part of this act, and the penalties by this act inflicted shall be recovered and applied in like manner as the penalties by the said several other acts inflicted are directed to be recovered and applied."

Sect. 6 enacts, "that this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded."

By 31 Geo. 2, c. 29, former acts relative to assize of bread repealed.

Stat. 31 Geo. II. c. 29, recites, that "whereas by an act of parliament made in the one and fiftieth year of the reign of King Henry the Third, intituled, 'Assisa Panis & Cervisiæ,' provision was made, amongst other things, for settling the assize of bread: and whereas by an act of parliament made in the eighth year of the reign of her late majesty Queen Ann, intituled,

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'An Act to regulate the price and assize of bread,' so much of the said act (intituled, 'Assisa Panis & Cervisiæ,) as related to the assize of bread was repealed, annulled, and made void; and the said act made in the said eighth year of the reign of her said late majesty Queen Ann was only made to continue in force for three years, and from thence to the end of the then next session of parliament, but by some subsequent acts of parliament the said in part recited act made in the said eighth year of her said majesty Queen Ann, with several alterations and amendments thereto, hath been continued until the twenty-fourth day of June, one thousand seven hundred and fifty-seven, and from thence to the end of the then next session of parliament: and whereas it is expedient to reduce into one act the several laws now in force relating to the due making and to the price and assize of bread, and to make some alterations in and amendments to the same:" and by sect. 1 enacts, "that the said act made in the said eighth year of the reign of her said late majesty Queen Ann, and all alterations and amendments made by any acts of parliament subsequent thereto, for continuing, explaining, or amending the same, is and are hereby further continued from the expiration thereof, until the twenty-ninth day of September, one thousand seven hundred and fifty-eight; and that from and after the said twenty-ninth day of September, one thousand seven hundred and fifty-eight, so much of the said statute (intituled 'Assisa Panis & Cervisiæ') as relates to the assize of bread, and which would otherwise be revived when the said recited act made in the said eighth year of the reign of her said late majesty Queen Ann shall expire; and also the said act of parliament made in the said eighth year of the reign of her said late majesty Queen Ann, and all the alterations and amendments made by any acts of parliament subsequent thereto, for continuing, explaining, or amending the same, shall be and are hereby repealed, annulled, and made void."

31 Geo. 2, c. 29.

Power to set the assize.

Sect. 2, "And, to the intent that from and after the said twenty-ninth day of September, a plain and constant rule and method may be duly observed and kept in the making and assizing of the several sorts of bread which shall be made for sale in any place or places where an assize of bread shall at any time be thought proper to be set in pursuance of this act," further enacts, "that from and after the said twenty-ninth day of September, it shall be lawful for the court, or person or persons hereinafter authorised by this act to set the assize of bread, to set, ascertain, and appoint, in any place or places within their respective jurisdictions, the assize and weight of all sorts of bread, which shall, in any such place or places, be made for sale, or exposed to sale, and the price to be paid for the same respectively, when, and as often, from time to time, as any such court, or person or persons as aforesaid, shall think proper; and that in every assize of bread which shall be set in pursuance of this act, respect shall, from time to time, be had by the court, person or persons as aforesaid, who shall set the same, to the price which the grain, meal, or flour, whereof such bread shall be made, shall bear in the public market or markets, in or near the place or places for which any such assize shall be so at any time set; and making, from time to time, reasonable allowance to the makers of bread for sale, where any such assize shall be so set, for their charges, labour, pains, livelihood, and profit, as such court, or person or persons as aforesaid respectively, who shall at any time think fit to set any such assize, shall, from time to time, deem proper."

In proportion to the price of corn.

Allowance to the bakers.

Penalty of disobeying the assize.

Sect. 3 enacts, "that from and after the said twenty-ninth day of September, where an assize of bread shall at any time be thought proper to be set for any place or places by virtue of this act, no person or persons shall there make for sale, or sell, or expose to or for sale, any sort of bread, except wheaten and household, otherwise brown bread, and such other sort or sorts of bread as in such place or places shall be publicly allowed to be made or sold by the court, or person or persons, who by this act are authorised to set an assize of bread for any such place or places; but where it hath been usual to make bread with the meal or flour of rye, barley, oats, beans, or pease, or with the meal or flour of any such different sorts of grain mixed together, or the court or person or persons empowered to set an assize of bread by virtue

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31 Geo. 2, c. 29.

of this act, shall at any time think fit to order or allow in any place or places within the limits of their respective jurisdictions, bread to be made with rye, barley, oats, beans, or pease, or with the flour or meal thereof, or with the meal or flour of any such different sorts of grain mixed together, such bread shall and may be there made and sold; and if any person shall offend in the premises, and shall be convicted of any such offence, either by his, her, or their own confession, or by the oath of one or more credible witness or witnesses, before any magistrate or magistrates, justice or justices of the peace, within the limits of his or their jurisdiction, every one so offending, shall, on every such conviction, forfeit and pay any sum not exceeding 40*s.* nor less than 20*s.*, as any such magistrate or magistrates, justice or justices, shall think fit and order."

Allowance in the assize for the additional duty on salt.

And by 38 Geo. III. c. 62, after reciting that "whereas by an act made in this present session of parliament, intituled, 'An Act for granting to his Majesty additional duties on salt,' the price of that article is materially increased, by reason whereof the bakers will be considerably injured, if some allowance be not made to them on account of such additional duties," it is enacted "that from time to time, when and so often as any magistrates or justices of the peace within the limits of their respective jurisdictions shall, by virtue of any law or statute, laws or statutes, made for that purpose, set the assize of bread, they shall, immediately before setting such assize, add to what shall appear to be the average price per quarter of wheat fit for the making of wheaten bread, the sum of five-pence, on account of the additional duty on salt, so as to increase such average price five-pence per quarter, and shall then, in setting the assize of bread, make use of such increased average price in all respects as if the same were the real average price of wheat, so long as such additional duty on salt shall continue, but no longer."

Tables of assize.

And in every place where an assize shall be thought proper to be set, the assize and weight of the several sorts of bread which shall be there made shall be set according to the following tables. The stat. 31 Geo. II. c. 29, sect. 4, here contained several tables, but now the 53 Geo. III. c. 116, regulates the mode of setting an assize in places beyond London and ten miles from the Royal Exchange, and, by sect. 7, other tables are substituted for those in the 31 Geo. II. See *post*, 426, 429.

31 Geo. 2, c. 29. Assize to be set in avoirdupois weight.

The 31 Geo. II. c. 29, s. 5, enacts, "that from and after the said 29th day of September, 1758, every assize which shall, from time to time, be set in any city, town corporate, hundred, division, liberty, rape, or wapentake, in pursuance of this act, shall be always set in avoirdupois weight, of sixteen ounces to the pound, and not troy weight, and in the several proportions directed in or by the said tables above set forth, or as near the same as may be, as to the several sorts of bread in this act specified; and that the said tables shall extend as well to such bread which shall be made with the flour of wheat mixed with the flour of other grain, as also to bread which shall be made with the flour of other grain or grains than wheat, which shall be publicly licensed and allowed to be made into bread, in any place or places in pursuance of this act; and that the assize of all such mixed bread shall be set and ascertained, as near as may be, according to the said tables."

Prices of grain, how to be certified in cities and towns corporate.

Sect. 7 enacts, "that from and after the said 29th day of September, the court of mayor and aldermen of every other city, where there shall be any such court and when such court shall sit, and where there shall be no such court, or, there being any such, when the same shall not sit, the mayor, bailiffs, or other chief magistrate or magistrates of every such other respective city, and in towns corporate or boroughs, the mayor, bailiffs, aldermen, or other chief magistrate or magistrates for the time being of every such town corporate or borough, or two or more justices of the peace in such towns and places where there shall be no such mayor, bailiffs, aldermen, or chief magistrates, shall and may, severally and respectively, from time to time as there shall be occasion, within their several and respective jurisdictions, cause the respective prices which the several sorts of grain, meal and flour, fit and proper to make the different sorts of bread which shall be allowed to be made

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31 Geo. 2, c. 29.

in every such other respective city, town corporate, borough, town, or place, shall, from time to time, *bonâ fide*, sell for, in the respective public markets in or near to every such other town corporate, borough, town, or place, during the whole market, and not at particular times thereof, or on particular contracts only, from time to time be given in and certified, upon oath, unto such court, mayor, bailiffs, aldermen, chief magistrate or magistrates, or justices, as aforesaid respectively, within their several jurisdictions, in such manner and by such person or persons, and on such day in every week, as any such respective court, mayor, bailiffs, aldermen, chief magistrate or magistrates, or justices, as aforesaid, within their respective jurisdictions, shall from time to time appoint; and the price which shall be so certified, shall, from time to time, be entered by the respective person or persons who shall certify the same in some book or books to be provided by such respective person or persons, and kept by him or them for that purpose: and within two days after every such price shall be so returned, the assize and weight of bread for every such other respective city, town corporate, borough, town, and place, and the price to be paid for the same, shall, from time to time, be set by the court of mayor and aldermen of every such other city where there shall be any such court, and when the same shall sit; and when such court shall not sit, by the mayor of every such other respective city; and where there shall be no such court of mayor and aldermen in any such other city, then by the mayor, bailiffs, or other chief magistrate or magistrates of every such other city; and in towns corporate and boroughs, by the mayor, bailiffs, aldermen, or other chief magistrate or magistrates of every such town corporate or borough; and by two or more justices of the peace in towns or places where there shall be no such mayor, bailiffs, aldermen, or chief magistrate or magistrates: and the assize and weight of bread, and price to be paid for the same, which shall be so from time to time set in every such other city, and in every town corporate or borough, and in every town and place where there shall be no such mayor, bailiffs, aldermen, or chief magistrate or magistrates, as aforesaid, shall commence and take place on such day in every week, and be in force for such time, not exceeding seven days from the setting of every such assize, and shall be made public in such manner, as such court of mayor and aldermen in every such other city where there shall be any such court, and when the same shall sit, and where there shall be no such court of mayor and aldermen, or there being any such, when the same shall not sit, as the mayor, bailiffs, or other chief magistrate or magistrates, as aforesaid, of every such other city, and as the mayor, bailiffs, aldermen, or other chief magistrate or magistrates, as aforesaid, of every such town corporate, or borough, and in towns and places where there shall be no such mayor, bailiffs, aldermen, or chief magistrate or magistrates, as aforesaid, as any such two justices, as aforesaid, shall, within their respective jurisdictions, from time to time direct."

Chief magistracy vested in two bailiffs.

By stat. 13 Geo. III. c. 62, sect. 19, where the chief magistracy of any borough or corporation lies and is vested in two bailiffs, one of the two in the absence of the other may set the assize, and do every thing in this act directed for setting the same.

How in places within counties at large.

Stat. 31 Geo. II. c. 29, s. 8, enacts, "that from and after the said 29th day of September, if any two or more justices of the peace of counties at large, ridings or divisions, shall at any time think fit to set an assize of bread for any place or places within the limits of their respective jurisdictions, then, and in any such case, it shall be lawful for any such two or more justices, within the limits of their respective jurisdictions, to cause the price which grain, meal and flour, fit to make the several sorts of bread which shall be made for sale in any such place or places, shall from time to time, *bonâ fide*, sell for in the respective public corn market or corn markets, in or near any such place or places respectively, during the whole market, and not at particular times thereof or on special contracts only, to be from time to time given, and certified on oath, to them at their respective houses or places of abode in any such county, riding or division, on such day in every week as any such two or more justices shall

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for that purpose fix on and appoint, by the respective clerks of the market of the several markets in or near such respective place or places, or such other person or persons as any such two or more justices as aforesaid respectively, within their respective jurisdictions, shall for that purpose appoint; and that the price of grain, meal and flour, which shall be so returned, shall, from time to time, be entered by the respective person or persons who shall so return the same in some book or books, to be provided by him or them and kept for that purpose; and within two days after any such return of the price of grain, meal and flour, shall be made to any such two or more justices as aforesaid, the price and assize of bread may be by them, or any two of them, set for every such place or places, for any time not exceeding fourteen days from every setting thereof: and the assize which shall be so from time to time set shall commence and be in force at such time after every setting thereof, and be made public in such place or places for which the same shall be so set, in such manner as the justices who shall set the same shall order or direct."

31 Geo. 2, c. 29.

Bakers may inspect the certificate.

Sect. 9 enacts, "that any maker of bread for sale in any such other city, town corporate, borough or place, where the price and assize of bread, in pursuance of this act, shall at any time be thought proper to be set, shall have liberty at all seasonable times, in the day time, the next day after every return of the price of grain, meal and flour shall be made for any such other city, town corporate, borough, town or place, and entered in the propor book hereby directed to be provided and kept for that purpose, to see the entry which shall be made in such book of the price of grain, meal and flour, without paying any thing for the same; to the intent that every such maker of bread for sale may have an opportunity, on the said next day after any such entry as aforesaid shall be made as hereby is directed, to offer to any such court, mayor, bailiffs, aldermen, or other chief magistrate or magistrates, or justices as aforesaid, who shall think fit to set any such assize of bread within their respective jurisdictions, and before any such assize shall be set, such objections as any such maker of bread for sale can reasonably make against any advance or reduction being at any time made in the assize or price of bread in any such other city, town corporate, borough, town, or place."

Bakers to pay no fee for the assize.

Sect. 10 enacts, "that no baker or maker of bread for sale shall be liable or compellable to pay any fee, gratuity or reward, to any person or persons for, or by means of, any assize of bread being at any time set, altered, or published, by virtue of or under this act."

53 Geo. 3, c. 116.

By stat. 53 Geo. III. c. 116, s. 1, reciting that "whereas by an act passed in the 31st year of the reign of his late Majesty King George the Second, intituled 'An Act for the due making of bread, and to regulate the price and assize thereof, and to punish persons who shall adulterate meal, flour, or bread;' and by another act, passed in the 13th year of the reign of his present Majesty, intituled 'An Act for better regulating the assize and making of bread;' provision is made for setting the price and assize of bread, according to the several regulations contained in the said acts for that purpose: and whereas by an act passed in the 37th year of the reign of his present Majesty, intituled 'An Act to amend and render more effectual an act made in the 31st year of the reign of his late Majesty King George the Second, intituled 'An Act for the due making of bread, and to regulate the price and assize thereof, and to punish persons who shall adulterate meal, flour, or bread,' so far as the same relates to the assize and making of bread to be sold in the city of London and the liberties thereof, and within the weekly bills of mortality, and within ten miles of the Royal Exchange; and by another act passed in the 45th year of the reign of his said present Majesty, intituled 'An Act for amending an act passed in the 37th year of his present Majesty, to amend and render more effectual an act made in the 31st year of his late Majesty, for the due making of bread, and to regulate the price and assize thereof, and to punish persons who shall adulterate meal, flour, or bread, so far as the same relates to the assize and making of bread to be sold in the city of London and the liberties thereof, and within the weekly bills of mor-

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53 Geo. 3, c. 116.

tality, and ten miles of the Royal Exchange; certain other provisions and regulations are made for carrying the purposes of the said act of the 31st year of the reign of King George the Second into execution, so far as relates to the assize and making of bread to be sold in the city of London and the liberties thereof, and within the weekly bills of mortality, and within ten miles of the Royal Exchange; (*a*) and by the said acts a fixed allowance is given to the makers and sellers of bread residing within those limits: and whereas it is expedient that the makers and sellers of bread residing beyond the said limits, in places where an assize and price of bread is set, should also receive an allowance for their charges, pains, labour, livelihood and profit; and that regulations should be made for procuring more correct returns of the prices for which wheat and wheat flour are sold, in or near places where an assize of bread is set:" it is enacted, " that when and so often as the court of mayor and aldermen, in any city where there shall be any such court, and when such court shall sit; and where there shall be no such court, or there being any such, when the same shall not sit, the mayor, bailiffs, or other chief magistrate of any such city, and in towns corporate or boroughs, the mayor, bailiffs, aldermen, or other chief magistrate or magistrates for the time being of any such town corporate or borough; or two or more justices of the peace in such towns and places where there shall be no such mayor, bailiffs, aldermen, or chief magistrate; and when and so often as any two or more justices of the peace of counties at large, ridings, divisions or districts, and whose respective jurisdictions shall be beyond the city of London and the liberties thereof, and beyond the weekly bills of mortality, and ten miles of the Royal Exchange, shall deem it expedient to regulate the price and assize of bread within their several and respective jurisdictions, (*b*) every such court, mayor, bailiffs, aldermen, or other chief magistrate or magistrates, or justices of the peace, shall and they are hereby authorised and required, before they shall set any price or assize of bread, to nominate and appoint a fit and proper person, (not being a cornfactor, miller, maltster, baker, clerk, agent, or other person buying, selling, or dealing in wheat or wheat flour, or bread made thereof), residing within or near such city, town corporate or borough, county, division, riding, district or other place, to receive weekly the returns hereafter directed to be made of the prices and quantities of wheat and wheat flour bought or sold in or near any such city, town corporate, or borough, division, riding, district or other place where an assize is intended to be set, and the person so to be appointed shall be called ' receiver of assize returns' for such city, town corporate or borough, county, division, riding, district or other place; and every such court, mayor, bailiffs, aldermen, or other chief magistrate or magistrates, or justices of the peace, shall and they are hereby authorised and required in the same manner from time to time, upon the death, removal, or resignation of any such receiver, to appoint some other fit and proper person as aforesaid to be receiver of assize returns for any such city, town corporate or borough, county, division, riding, district or other place."

Receiver of assize returns to be appointed where assize is to be fixed.

Sect. 2 enacts, " that every person so to be appointed receiver of assize returns as aforesaid shall, previous to his taking upon him the said office, take and subscribe, before the mayor, bailiff, or other chief magistrate of the city, town corporate, borough or other place, for which he shall be appointed receiver, or before any one justice of the peace for any county, division, riding or district, for which he shall be appointed receiver, the following oath, [or, being of the people called Quakers, affirmation], which oath or affirmation every such mayor, bailiff, or other chief magistrate or justice of the peace, is hereby authorised and required to administer; (*videlicet*)

Receiver of assize returns to take an

I A. B. do swear [or *affirm*] *that I will at all times during the time I hold the office of receiver of assize returns for* [the name of the place for which appointed,] *make true and correct returns of the whole quantities and prices of wheat, and true*

Oath.

(*a*) But see the 55 Geo. III. c. xcix, *ante*, 404, repealed by 3 Geo. IV. c. cvi.
(*b*) See stat. 5 Geo. IV. c. 50, s. 1, *post*, 432, n. (*a*).

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53 Geo. 3. c. 116.

and correct returns of the whole quantities and prices of wheaten flour fit for making wheaten bread, standard wheaten bread, and household bread, taken separately, which shall, by means of the returns made to me as receiver of assize returns, under the directions and regulations of an act passed in the fifty-third year of the reign of King George the Third, intituled [here insert the title of this act], *appear to have been bought within the time specified in the said returns; and also that I will at all times as aforesaid make a true and correct average of the prices of the whole quantity of wheat, and a true and correct average of the prices of the whole quantity of wheaten flour fit for making wheaten bread, standard wheaten bread, and household bread, taken separately, which by means of the said returns made to me shall appear to have been so bought, according to the directions and regulations of the said act; and that I will in all things, to the best of my skill and judgment, conform myself, as receiver of assize returns, to the directions of the said act.*"

Returns of wheat and flour to be made.

Sect 3 enacts, "that as soon as a receiver of assize returns shall be appointed for any city, town corporate or borough, county, division, riding, district, or other place, where it is intended to set any assize of bread within the same, pursuant to the directions of this act, the court of mayor and aldermen of any such city where there shall be any such court, and when such court shall sit; and where there shall be no such court, or there being any such, when the same shall not sit, the mayor, bailiffs, or other chief magistrate or magistrates of any such city, and in towns corporate or boroughs, the mayor, bailiffs, aldermen, or other chief magistrate or magistrates for the time being of any such town corporate or borough; or two or more justices of the peace in such towns and places where there shall be no such mayor, bailiffs, aldermen or chief magistrate; and two or more justices of the peace of any such county, division, riding, district or other place, shall cause notice to be given according to the form annexed to this act, and in such manner as to such court, or person or persons shall seem proper, requiring all cornfactors, millers, mealmen, bakers, and other persons who are dealers in wheat or wheat flour, and residing or following their trade within their respective jurisdictions, or who shall buy or sell wheat or wheat flour, either in the public market or by private contract within the same, to make returns on some certain day in each week to the receiver of assize returns appointed for any such city, town corporate or borough, county, division, riding, district or other place, and at such place as shall be specified for that purpose, of the true and precise quantities of all wheat and wheaten flour respectively fit for making wheaten bread, standard wheaten bread, and household bread, which shall have been bought or sold by such cornfactors, millers, mealmen, bakers, or other persons dealers in wheat or wheat flour respectively, within seven days then preceding, and which returns shall specify the true and exact prices for which such wheat or wheaten flour shall have been respectively bought or sold, and the names and residences of the persons of whom bought, or to whom sold, and which returns shall be made according to the forms annexed to this act, and be signed by the party making the same: provided always, that no person or persons buying or selling, in the course of the seven days then preceding, a less quantity than one quarter of wheat, or one sack of flour, shall be required to make any such returns; and provided also, that when any court, mayor, bailiffs, or other chief magistrate or magistrates of any city, town corporate or borough, or any two or more justices of the peace of any county, division, riding, district or other place, shall be well and duly satisfied that any merchant, dealer or other person, shall buy or sell wheat or wheat flour solely for the purpose of being sent coastwise, and which shall not be intended to be used or consumed in or within fifteen miles of the place for which such returns are required, it shall be lawful for any such court, or person or persons, if they shall think fit, not to require returns from any such merchant, dealer or other person, of any such wheat or wheat flour so intended to be sent coastwise, and not to be used or consumed within fifteen miles of any such place.

Proviso.

Obtaining returns where no sufficient market is held.

Sect. 4 enacts, "than when in any city, town corporate, or borough, or in any division, district, or riding of any county, or in any other place where any court, mayor, bailiffs, or other chief magistrate or magistrates, or justices

of the peace, authorised by this act to set an assize and price of bread within their respective jurisdictions, shall be desirous of setting the same, and where by reason of there not being a sufficient market, sufficient and satisfactory returns of the quantities and prices of wheat and wheat flour bought and sold within their respective jurisdictions cannot be obtained, then and in every such case it shall be lawful for any such court, mayor, bailiffs, or other chief magistrate or magistrates, or justices of the peace, from time to time to require returns to be made of all quantities of wheat and wheaten flour, bought or sold by all cornfactors, millers, mealmen, bakers, and other persons who are dealers in wheat or wheat flour, and who shall be residing or following their trade within the distance of five miles of the respective jurisdictions of such court, or person or persons as aforesaid, requiring the same; or who shall buy or sell wheat or wheat flour, either in any public market or by private contract within the said distance; or it shall be lawful for any such court, mayor, bailiffs, or other chief magistrate or magistrates, or justices of the peace, from time to time to require of any receiver of assize returns of any place near any such city, town corporate or borough, division, district, or riding, from which any wheat or wheat flour may from time to time be brought for the supply of any such place or places, district, division, or riding, a duplicate of the returns which shall be from time to time made by such receiver of assize returns, of the quantities and prices of wheat and wheat flour bought and sold within the jurisdiction for which such receiver shall be appointed, although such cornfactors, millers, mealmen, bakers, or other persons, or receiver of assize returns, shall not be within the jurisdiction of the court, mayor, bailiffs, or other chief magistrate or magistrates, or justices of the peace, requiring such returns; and every such cornfactor, miller, mealman, baker, or other persons who are dealers in wheat or wheat flour, and every receiver of assize returns, who shall be required to make any such returns, shall make the same in like manner and under the like regulations in every respect as the like returns of wheat and wheat flour are required to be made by this act; and the said returns which shall be so made of the quantities and prices of wheat and wheat flour, bought and sold either within five miles of the jurisdiction of any place, or which shall be so made by any receiver of assize returns for any other place than the place in which an assize of bread is intended to be set, shall from time to time, in computing the average prices of wheat and wheat flour hereafter directed to be made, be added to and form part of the returns of wheat and wheat flour which shall be made for the place for which an assize of bread is intended to be set."

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53 Geo. 3, c. 116.

Sect. 5 enacts, "that every cornfactor, miller, mealman, baker, and other persons who are or shall be dealers in wheat or wheat flour, and who shall be required by this act to make any returns of wheat or wheat flour bought or sold by them, shall within one month after they shall be required to make such returns, make a declaration in the form following; that is to say,

Returns to be made on declaration.

'I A. B. do hereby declare, that the returns of the quantities and prices of wheat and wheat flour bought or sold by me, which I shall hereafter make, shall, to the best of my knowledge and belief, be true and just, and to the best of my judgment conformable to the directions of an act passed in the fifty-third year of the reign of King George the Third, intituled 'An Act to alter and amend two acts of the thirty-first year of King George the Second, and the thirteenth year of his present Majesty, so far as relates to the price and assize of bread to be sold out of the city of London, and the liberties thereof, and beyond the weekly bills of mortality, and ten miles of the Royal Exchange.'

which declaration shall be in writing, and shall be subscribed with the hand of such miller, mealman, baker, or other person who shall be a dealer in wheat or wheat flour, and shall be by them or their agents respectively forthwith delivered to the court, mayor, bailiff, or other chief magistrate or magistrates of the city, town corporate, or borough, or to some justice of the peace of the county, division, district, or other place, where the party making the same shall reside, who is hereby required to certify the same to, and such certificate is hereby required to be filed by, the clerk of the peace for such county, riding, division, or other place, or by the town clerk for such city or

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town respectively; and in case any person shall buy or sell any wheat or wheat flour without having made the said declaration, such person shall for every such neglect forfeit and pay a sum not exceeding five pounds."

53 Geo. 3, c. 116.

Receiver of assize returns to make up a general return.

Sect. 6 enacts, "that from the said returns of wheat and flour so to be made as aforesaid in every city, town corporate, or borough, county, riding, division, or place, where the same shall be made, a general return or account of the quantities, sorts, and prices of all wheat, and flour made of wheat, which shall, by means of the said returns, appear to have been bought within the time specified therein, together with the average price of the whole quantity of wheat, and the average prices of the whole quantity of wheaten flour fit for making wheaten bread, standard wheaten bread, and household bread, taken separately and respectively, shall be prepared and computed by the receiver of assize returns for every such place, within one day from the receiving of the same; and the said general return shall be entered and signed by him in some book to be provided for that purpose, in such manner and form as any such respective court, mayor, bailiff, aldermen, chief magistrate or magistrates, or justices as aforesaid, within their respective jurisdictions, shall from time to time appoint; and every such general return and average, when so entered, shall be submitted to such court, or person or persons, for their consideration or correction: provided always, that if any court, mayor, bailiffs, aldermen, chief magistrate or magistrates, or justices as aforesaid, shall at any time suspect that any returns to be made as aforesaid are not truly and *bonâ fide* made, and shall have issued a summons to the party or parties making the same, for the purpose of examining into the truth of the same, pursuant to the power and authority hereafter contained for that purpose, then and in that case the said return or returns whilst under examination shall not be included in or form part of the said general return from which the average prices of wheat and of flour are to be computed as aforesaid."

Proviso.

Setting the assize.

Sect. 7 enacts, "that within two days after every such general return and average shall be so made and entered as aforesaid, the assize and weight of each sort of bread on which an assize is intended to be set for every city, town corporate, or borough, county, riding, division, and place, where the same shall be made, and the prices to be paid for the same respectively, shall from time to time be set and ascertained by the court of mayor and aldermen of every such city where there shall be any such court, and when the same shall sit, and when such court shall not sit, by the mayor of every such city; and where there shall be no such court of mayor and aldermen in any such city, then by the mayor, bailiffs, or other chief magistrate or magistrates of every such other city; and in towns corporate and boroughs by the mayor, bailiffs, aldermen, or other chief magistrate or magistrates of every such town corporate or borough; and by two or more justices of the peace in towns or places where there shall be no such mayor, bailiffs, aldermen, chief magistrate or magistrates; and in counties at large by two or more justices of the peace within their respective jurisdictions; from the said average prices either of wheat or of flour, according to the prices in the tables annexed to this act, either of wheat or of flour, nearest to the said average prices, in lieu and place of the tables directed to be made use of by the said acts of the thirty-first year of the reign of King George the Second, and the thirteenth year of the reign of his present Majesty; and if at any time the price of the bushel of wheat or sack of flour shall not amount to the lowest price mentioned in the said table, or shall exceed the highest price mentioned therein, then in either of the said cases it shall be lawful for all courts, and person and persons duly authorised, to continue to set and ascertain within their several jurisdictions the assize and price of bread made for sale or exposed to sale, whatever the price of the bushel of wheat or sack of flour may be: provided always, that in setting and ascertaining the same, such court, or person or persons respectively, shall duly observe the proportions contained in the said tables annexed to this act, as near as can be; and provided also, that the allowance of five-pence per quarter on wheat, which, by an act passed in the thirty-eighth year of the reign of his present Majesty, intituled 'An Act to empower

38 Geo. 3, c. 62.

magistrates and justices of the peace in setting the assize of bread to make an allowance on account of the additional duty on salt,' magistrates are directed to make the bakers in setting the assize of bread on account of the then additional duty on salt, shall be considered and taken as included in the allowance given to the bakers by the said tables annexed to this act."

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53 Geo. 3, c. 116.

Sect. 8 enacts, "that every assize which shall be set in pursuance of this act, for any city, town corporate, or borough, shall commence and take place on such day in every week, and be in force for such time not exceeding seven days from the setting of the same, and shall be made public in such manner as the court, mayor, bailiffs, or other chief magistrate or magistrates who shall set the same, shall from time to time direct and appoint; and that every assize which shall be set in pursuance of this act for any county, division, riding, or district, shall commence and take place on such day in every week, and be in force for such time, not exceeding fourteen days from the setting of the same, and shall be made public in such manner as the justices of the peace who shall set the same shall from time to time direct and appoint."

Assize to commence and continue as directed by the court.

Sect. 9 enacts, "that in cases where the prices and quantities of wheat or wheat flour bought or sold in distant places shall be returned, and be included in the prices from which the general average price of wheat and of flour is made for any city, town corporate, or borough, county, division, riding, or place, where an assize of bread is set as hereinbefore directed, it shall be lawful for the court, mayor, bailiffs, or other chief magistrate or magistrates of any such city, town corporate, or borough, or the justices of the peace in any such county, division, or riding, and they are hereby required, previous to such average being made, to add such an allowance for the expense and risk of carriage or transportation, as from the inquiry or proof made shall to such court or courts, mayor, bailiffs, or other chief magistrate or magistrates, or justices of the peace, appear just and reasonable, so as that the average price of wheat and wheaten flour, for any such city, town corporate, or borough, county, division, riding, or place, may be from time to time ascertained according to what such wheat or wheaten flour may truly have cost the person or persons who may have bought the same."

Where wheat or flour has been brought from a distance, an addition may be made to the assize.

Sect. 10 enacts, "that every cornfactor, miller, mealman, baker, or other person, who is or hereafter shall be a dealer in wheat or flour, and every receiver of assize returns who shall be required by this act to make any return, who shall refuse or neglect to make any such return in manner and form by this act directed, and at the time and place specified for that purpose, or who shall make any false return, shall forfeit for every such offence any sum not exceeding 10*l.*, as the court, or person or persons before whom any such offender or offenders shall be convicted, shall think fit and order."

Punishing persons refusing or making false returns.

Sect. 11 enacts, "that if any court, mayor, bailiffs, or other chief magistrate or magistrates, or justice or justices of the peace authorised as aforesaid, who shall have thought proper to have ordered any return to be made of the price of wheat or flour, shall at any time, within the space of fourteen days after any such return shall have been made, suspect that the same was not truly and *bonâ fide* made, then and in any such case it shall be lawful for any such court, or person or persons, to summon before them respectively the person or persons making such return, or any other person or persons who shall be thought to be likely to give any information concerning the premises, and to examine them respectively upon oath touching the rates and prices the several sorts of wheat or of flour mentioned in the said return were there really and *bonâ fide* bought at or sold for, or agreed so to be, by him, her, or them respectively, at any time or times within the space mentioned in the said return; and if any person or persons who shall be so summoned as aforesaid shall neglect or refuse to appear on such summons (and proof shall be made on oath of such summons having been duly served upon him, her, or them for that purpose), or if any person or persons so summoned shall appear, and neglect or refuse to answer such lawful questions touching the premises as shall be proposed to him, her, or them, by any such court, or person or persons as aforesaid, without some just or reasonable excuse, to be allowed of by any such court, or person or persons as aforesaid, he, she, or they so offending, on being convicted of any

Ascertaining the correctness of returns.

Penalty.

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such offence, either by the oath of one or more credible witness or witnesses, or his or their own confession before any such court, or person or persons, shall on every such conviction forfeit and pay any sum not exceeding 10*l.*, as any such court or person or persons shall think fit and order; and if any person who shall be so examined on oath shall wilfully forswear him or herself, every such person shall be subject and liable to be prosecuted as for perjury, by indictment or information, by due course of law, and if convicted shall be liable to the penalties persons convicted of perjury are subject and liable to."

53 Geo. 3, c. 116.

Perjury.

Saving rights of the Universities.

Sect. 12 enacts, "that neither this act nor any thing herein contained shall extend or be construed to extend to prejudice the ancient right or custom of the two Universities of Oxford or Cambridge, or either of them, or of their or either of their clerks of the market, or the practice within the several jurisdictions of the said Universities, or either of them, used to set, ascertain, and appoint the assize and weight of all sorts of bread to be sold or exposed to sale within their several jurisdictions; but that they and every of them shall and may severally and respectively from time to time as there shall be occasion, set, ascertain, and appoint, within their several and respective jurisdictions, the assize and weight of all sorts of bread to be sold or exposed for sale by any baker or other person whatsoever within the limits of their several jurisdictions, and shall and may inquire into and punish any breach thereof, fully and freely in all respects as they used to do, and as if this act had never been made; any thing herein contained to the contrary thereof notwithstanding."

Powers of former acts extended to this act.

Sect. 13 enacts, "that all powers, authorities, provisions, directions, penalties, forfeitures, clauses, matters, and things, contained in the said acts of the thirty-first year of the reign of King George the Second, and the thirteenth year of the reign of his present Majesty, or either of them, not altered or varied by any of the provisions of this act, as far as the same are or can be made applicable, and can be applied for carrying into execution the purposes of this act, shall be used, exercised, and put in execution for enforcing the regulations, provisions, and directions of this act, in such and the same manner as if the same were herein contained, and were at large re-enacted and made part of this act; and the penalties by this act inflicted shall be recovered and applied in like manner as the penalties inflicted by the said act of the thirty-first year of the reign of King George the Second are directed to be recovered and applied."

Commencement of act.

Sect. 14 enacts, "that this act shall commence and take effect from and immediately after one calendar month from the passing thereof."

Public act.

Sect. 15 enacts, "that this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded."

Schedules.

The act then gives the following schedules.

SCHEDULES to which the 53 Geo. III. c. 116, refers.

Schedule, No. 1.

FORM OF RETURN OF WHEAT.

AN ACCOUNT of all the Wheat fit for the Purpose of making Wheaten Bread, bought or sold, [*as the case may be*] by [*insert Name*] of [*insert Residence*] in the Parish of from to [*insert Dates*] both inclusive.

Date when bought or sold.	Seller's or Buyer's Name and Residence.	Quantities of Wheat. Qrs. Bush.	Price per Quarter.	Total Price.

Schedule, No. 2.

FORM OF RETURN OF WHEATEN FLOUR.

AN ACCOUNT of all the Flour fit for making Wheaten Bread, bought or sold, [*as the case may be*] by [*Name*] of [*Residence*] in the Parish of from to [*insert Dates*] both inclusive.

Date when bought or sold.	Seller's or Buyer's Name and Residence.	Number of Sacks.	Price per Sack.

Schedule, No. 3.

FORM OF RETURN OF STANDARD WHEATEN FLOUR.

AN ACCOUNT of all the Flour fit for making Standard Wheaten Bread, bought or sold, [*as the case may be*] by [*Name*] of [*Residence*] in the Parish of from to [*insert Dates*] both inclusive.

Date when bought or sold.	Seller's or Buyer's Name and Residence.	Number of Sacks.	Price per Sack.

N. B.—The flour included in this return is to weigh three-fourths of the weight of the Wheat of which it is made.

Schedule, No. 4.

FORM OF RETURN OF HOUSEHOLD FLOUR.

AN ACCOUNT of all the Flour fit for making Household Bread, bought or sold [*as the case may be*] by [*Name*] of [*Residence*] in the Parish of from to [*insert Dates*] both inclusive.

Date when bought or sold.	Seller's or Buyer's Name and Residence.	Number of Sacks.	Price per Sack.

Schedule, No. 5.

FORM of NOTICE when an Assize of Bread is intended to be set for any place.

[Insert name of place] } *NOTICE is hereby given, that by virtue of an act of parlia-*
to wit. } *ment passed in the fifty-third year of the reign of King George the Third, intituled, "An Act,"* [here insert the title of this act] *an assize of bread is intended to be set for this* [insert city or what it may be]; *and all corn-factors, millers, mealmen, bakers, and other persons who are dealers in wheat or wheat flour, and residing or carrying on their business within this jurisdiction, or who buy or sell wheat or wheat flour, either in the public market or by private contract within the same, or within five miles thereof,* [to be added where it is intended to call for returns within that distance] *are hereby required, on* [insert day] *in each week, till further notice, to make returns according to the forms annexed to the said act, and according to the regulations of the same, to* [insert name] *who has been duly appointed receiver of assize returns under the said act, at* [insert place where returns to be made] *of the true and precise quantities of all wheat and wheaten flour respectively, fit for making wheaten bread, standard wheaten bread, and household bread, which shall have been bought or sold by them within seven days preceding in each week, and the true and exact prices for which such wheat or wheaten flour shall have been respectively bought or sold, and the names and residences of the persons of whom bought, or to whom sold; and which returns are to be signed by the party making the same: and all persons required by this notice to make any such returns who shall neglect or refuse to make the same, or who shall make any false returns, will be liable to a penalty for each offence not exceeding the sum of ten pounds.*

(Signed) *A. B.*
Receiver of assize returns for
[Insert name of place.]

THE PRICE TABLE.

When the Average Price of WHEAT				OR	When the Average Price of FLOUR		BREAD.			
Is returned at			Add for Grinding, Baking, &c. 15s. 10d. per Quarter, or 8d. per Peck Loaf. (a)		Is returned at	Add Baking, &c. 13s. 4d. per Sack. (a)				
No.	per Quarter.	per Bushel.	Total Price, and Baking, per Quarter.		per Sack.	Total Price, and Baking, per Sack.	Price of Peck Loaf. To weigh 17lb. 6oz.	Price of Half Peck Loaf. To weigh 8lb. 11oz.	Price of Quartern Loaf. To weigh 4 lb. 5 oz. 8 dr.	Price of Half Quartern Loaf. To weigh 2 lb. 2 oz. 12 dr.
	s. d.	s. d.	s. d.		s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
1.	39 8	4 11½	55 6		33 4	46 8	2 4	1 2	0 7	0 3½
2.	41 8	5 2½	57 6		35 0	48 4	2 5	1 2½	0 7½	0 3¾
3.	43 8	5 5½	59 6		36 8	50 0	2 6	1 3	0 7½	0 3¾
4.	45 8	5 8½	61 6		38 4	51 8	2 7	1 3½	0 7½	0 3¾
5.	47 8	5 11½	63 6		40 0	53 4	2 8	1 4	0 8	0 4
6.	49 8	6 2½	65 6		41 8	55 0	2 9	1 4½	0 8½	0 4¼
7.	51 8	6 5½	67 6		43 4	56 8	2 10	1 5	0 8½	0 4¼
8.	53 8	6 8½	69 6		45 0	58 4	2 11	1 5½	0 8½	0 4¼
9.	55 8	6 11½	71 6		46 8	60 0	3 0	1 6	0 9	0 4½
10.	57 8	7 2½	73 6		48 4	61 8	3 1	1 6½	0 9½	0 4¾

(*continued*)

Allowance to bakers under 53 Geo. 3, c. 116, to be reduced in manner herein mentioned.

(a) The stat. 5 Geo. IV. c. 50, s. 1, after reciting, "that whereas stat. 53 Geo. III. c. 116, was passed, and whereas by reason of the great decrease that has taken place in the prices of the several articles in the making and baking of bread, since the passing of stat. 53 Geo. III. c. 116, it is necessary and expedient that the makers and bakers of bread for sale should receive a less allowance for their charges, labour, pains, and profit, than is granted by stat. 53 Geo. III. c. 116," enacts, "that from 1st July, 1824, and from time to time afterwards, and when and as often as any court of mayor and aldermen of any city, town corporate, or borough, county, riding, division, and place within that part of the United Kingdom of Great Britain and Ireland called Great Britain, where there shall be any such court, and when the same shall sit, and when such court shall not sit, the mayor of every such city; and where there shall be no such court of mayor and aldermen in any such city, then the mayor, bailiffs, or other chief magistrate or magistrates of every such other city; and in towns corporate and boroughs, the mayor, bailiffs, aldermen, or other chief magistrate or magistrates of every such town corporate or borough; and any two or more justices of the peace in towns or places where there shall be no such mayor, bailiffs, aldermen, chief magistrate or magistrates; and in counties at large, any two or more of his Majesty's justices of the peace, within their respective jurisdictions, shall set an assize of bread, in execution of the said stat. 53 Geo. III. c. 116; the allowance to the baker, when the assize shall be set from the average price of wheat, shall be 13s. 10½d. per quarter, and when the assize shall be set from the average price of flour, such allowance shall be 11s. 8d. per sack of flour, being in each case a decrease of one half an assize, or of one farthing in the quartern loaf, of the allowance given to the baker by stat. 53 Geo. III. c. 116; and the said court of mayor and aldermen of any such city, town corporate, or borough, county, riding, division, and place where there shall be any such court, and when the

Allowance specified.

BREAD, from the PRICE of WHEAT, and from the PRICE OF FLOUR.

THE ASSIZE TABLE.

No. of Assize and Price.	The Penny Loaf, To weigh	The Two-penny Loaf, To weigh	The Three-penny Loaf, To weigh	The Six-penny Loaf, To weigh	The Twelve-penny Loaf, To weigh	The Eighteen-penny Loaf, To weigh	No.
	oz. dr.	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	
1.	9 14	1 3 13	1 13 12	3 11 9	7 7 2	11 2 11	1.
2.	9 9	1 3 2	1 12 12	3 9 8	7 3 0	10 12 8	2.
3.	9 4	1 2 8	1 11 12	3 7 9	6 15 3	10 6 12	3.
4.	8 15	1 1 14	1 10 14	3 5 12	6 11 9	10 1 6	4.
5.	8 11	1 1 6	1 10 1	3 4 2	6 8 4	9 12 6	5.
6.	8 6	1 0 13	1 9 4	3 2 8	6 5 1	9 7 10	6.
7.	8 2	1 0 5	1 8 8	3 1 0	6 2 1	9 3 2	7.
8.	7 15	0 15 14	1 7 13	2 15 10	5 15 5	8 14 15	8.
9.	7 11	0 15 7	1 7 2	2 14 5	5 12 10	8 11 0	9.
10.	7 8	0 15 0	1 6 8	2 13 1	5 10 2	8 7 3	10.

(*continued.*)

same shall sit, and when such court shall not sit, the mayor of every such city; and where there shall be no such court of mayor and aldermen in any such city, then the mayor, bailiffs, or other chief magistrate or magistrates of every such other city; and in towns corporate and boroughs, the mayor, bailiffs, aldermen, or other chief magistrate or magistrates of every such town corporate or borough; and any two or more justices of the peace in towns or places where there shall be no such mayor, bailiffs, aldermen, chief magistrate or magistrates; and in counties at large any two or more justices of the peace, within their respective jurisdictions, in setting the said assize, shall make such decrease by taking one half of an assize from each of the prices specified in the tables annexed to 53 Geo. III. c. 116, according to the rules and proportions contained in the said tables, as nearly as can be."

Sect. 2 enacts, "that neither this act, or any thing herein contained, shall extend to prejudice the ancient right or custom of the two Universities of Oxford or Cambridge, or either of them, or of their or either of their clerks of the market, or the practice within the several jurisdictions of the said Universities, or either of them, used to set, ascertain, and appoint the assize and weight of all sorts of bread to be sold or exposed to sale within their several jurisdictions, but that they and every of them shall and may severally and respectively from time to time, as there shall be occasion, set, ascertain, and appoint, within their several and respective jurisdictions, the assize and weight of all sorts of bread to be sold or exposed to sale by any baker or other person whatsoever within the limits of their several jurisdictions; and shall and may inquire into and punish any breach thereof fully and freely in all respects as they used to do, and as if this act had never been made; any thing herein contained to the contrary thereof notwithstanding."

Not to affect the privileges of the Universities of Oxford and Cambridge in appointing the assize and weight of bread.

Sect. 3. This act to commence on 1st July, 1824.

Sect. 4. This act is made a public one.

THE PRICE TABLE.

When the Average Price of WHEAT				OR	When the Average Price of FLOUR		BREAD.			
Is returned at			Add for Grinding, Baking, &c. 15s. 10d. per Quarter, or 8d. per Peck Loaf. (a)		Is returned at	Add Baking, &c. 13s. 4d. per Sack. (a)				
No.	per Quarter.	per Bushel.	Total Price, and Baking, per Quarter.		per Sack.	Total Price, and Baking, per Sack.	Price of Peck Loaf. To weigh 17lb. 6oz.	Price of Half Peck Loaf. To weigh 8lb. 11oz.	Price of Quartern Loaf. To weigh 4lb. 5oz. 8dr.	Price of Half Quartern Loaf. To weigh 2lb. 2oz. 12dr.
	s. d.	s. d.	s. d.		s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
11.	59 8	7 5½	75 6		50 0	63 4	3 2	1 7	0 9¼	0 4¾
12.	61 8	7 8¼	77 6		51 8	65 0	3 3	1 7¾	0 9¾	0 4¾
13.	63 8	7 11¼	79 6		53 4	66 8	3 4	1 8	0 10	0 5
14.	65 8	8 2¼	81 6		55 0	68 4	3 5	1 8½	0 10¼	0 5¼
15.	67 8	8 5¼	83 6		56 8	70 0	3 6	1 9	0 10½	0 5¼
16.	69 8	8 8½	85 6		58 4	71 8	3 7	1 9½	0 10¾	0 5½
17.	71 8	8 11½	87 6		60 0	73 4	3 8	1 10	0 11	0 5½
18.	73 8	9 2½	89 6		61 8	75 0	3 9	1 10½	0 11¼	0 5¾
19.	75 8	9 5½	91 6		63 4	76 8	3 10	1 11	0 11½	0 5¾
20.	77 8	9 8½	93 6		65 0	78 4	3 11	1 11½	0 11¾	0 5¾
21.	79 8	9 11½	95 6		66 8	80 0	4 0	2 0	1 0	0 6
22.	81 0	10 1½	96 10		68 4	81 8	4 1	2 0½	1 0¼	0 6¼
23.	83 0	10 4½	98 10		70 0	83 4	4 2	2 1	1 0½	0 6¼
24.	85 0	10 7½	100 10		71 8	85 0	4 3	2 1½	1 0¾	0 6¼
25.	87 0	10 10½	102 10		73 4	86 8	4 4	2 2	1 1	0 6½
26.	89 0	11 1½	104 10		75 0	88 4	4 5	2 2½	1 1¼	0 6¾
27.	91 0	11 4½	106 10		76 8	90 0	4 6	2 3	1 1½	0 6¾
28.	93 0	11 7½	108 10		78 4	91 8	4 7	2 3½	1 1¾	0 6¾
29.	95 0	11 10½	110 10		80 0	93 4	4 8	2 4	1 2	0 7
30.	97 0	12 1½	112 10		81 8	95 0	4 9	2 4½	1 2¼	0 7¼
31.	99 0	12 4½	114 10		83 4	96 8	4 10	2 5	1 2½	0 7¼
32.	101 0	12 7½	116 10		85 0	98 4	4 11	2 5½	1 2¾	0 7¼
33.	103 0	12 10½	118 10		86 8	100 0	5 0	2 6	1 3	0 7½
34.	105 0	13 1½	120 10		88 4	101 8	5 1	2 6½	1 3¼	0 7¾
35.	107 0	13 4½	122 10		90 0	103 4	5 2	2 7	1 3½	0 7¾
36.	109 0	13 7½	124 10		91 8	105 0	5 3	2 7½	1 3¾	0 7¾
37.	111 0	13 10½	126 10		93 4	106 8	5 4	2 8	1 4	0 8
38.	113 0	14 1½	128 10		95 0	108 4	5 5	2 8½	1 4¼	0 8¼
39.	115 0	14 4½	130 10		96 8	110 0	5 6	2 9	1 4½	0 8¼
40.	117 0	14 7½	132 10		98 4	111 8	5 7	2 9½	1 4¾	0 8¼

(a) But see 5 Geo. IV. c. 50, s. 1, *ante*, p. 432, note.

BREAD, from the PRICE of WHEAT, and from the PRICE of FLOUR—*continued.*

THE ASSIZE TABLE.

No. of Assize and Price.	The Penny Loaf, To weigh	The Two-penny Loaf, To weigh	The Three-penny Loaf, To weigh	The Six-penny Loaf, To weigh	The Twelve-penny Loaf, To weigh	The Eighteen-penny Loaf, To weigh	No.
	oz. dr.	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	
11.	7 5	0 14 10	1 5 15	2 11 14	5 7 12	8 3 10	11.
12.	7 2	0 14 4	1 5 6	2 10 12	5 5 8	8 0 4	12.
13.	6 15	0 13 14	1 4 13	2 9 11	5 3 6	7 13 1	13.
14.	6 12	0 13 8	1 4 5	2 8 10	5 1 5	7 10 0	14.
15.	6 9	0 13 3	1 3 13	2 7 11	4 15 6	7 7 2	15.
16.	6 7	0 12 14	1 3 6	2 6 12	4 13 9	7 4 5	16.
17.	6 5	0 12 10	1 2 15	2 5 14	4 11 13	7 1 11	17.
18.	6 2	0 12 5	1 2 8	2 5 1	4 10 2	6 15 3	18.
19.	6 0	0 12 1	1 2 2	2 4 4	4 8 8	6 12 12	19.
20.	5 14	0 11 13	1 1 11	2 3 7	4 6 15	6 10 7	20.
21.	5 12	0 11 9	1 1 6	2 2 12	4 5 8	6 8 4	21.
22.	5 10	0 11 5	1 1 0	2 2 0	4 4 1	6 6 1	22.
23.	5 8	0 11 1	1 0 10	2 1 5	4 2 11	6 4 1	23.
24.	5 7	0 10 14	1 0 5	2 0 11	4 1 6	6 2 1	24.
25.	5 5	0 10 11	1 0 0	2 0 1	4 0 2	6 0 3	25.
26.	5 3	0 10 7	0 15 11	1 15 7	3 14 15	5 14 6	26.
27.	5 2	0 10 4	0 15 7	1 14 14	3 13 12	5 12 10	27.
28.	5 0	0 10 1	0 15 2	1 14 5	3 12 10	5 10 15	28.
29.	4 15	0 9 14	0 14 14	1 13 13	3 11 11	5 9 8	29.
30.	4 14	0 9 12	0 14 10	1 13 4	3 10 8	5 7 12	30.
31.	4 12	0 9 9	0 14 6	1 12 12	3 9 8	5 6 4	31.
32.	4 11	0 9 6	0 14 2	1 12 4	3 8 8	5 4 3	32.
33.	4 10	0 9 4	0 13 14	1 11 12	3 7 9	5 3 6	33.
34.	4 8	0 9 1	0 13 10	1 11 5	3 6 11	5 2 0	34.
35.	4 7	0 8 15	0 13 7	1 10 14	3 5 12	5 0 11	35.
36.	4 6	0 8 13	0 13 3	1 10 7	3 4 15	4 15 6	36.
37.	4 5	0 8 11	0 13 0	1 10 1	3 4 2	4 14 3	37.
38.	4 4	0 8 8	0 12 13	1 9 10	3 3 5	4 12 15	38.
39.	4 3	0 8 6	0 12 10	1 9 4	3 2 8	4 11 13	39.
40.	4 2	0 8 4	0 12 7	1 8 14	3 1 12	4 10 10	40.

(continued.)

53 G. 3, c. 116. Schedule, No. 6.—TABLE of the PRICE and ASSIZE of WHEATEN

THE PRICE TABLE.

When the Average Price of WHEAT Is returned at							When the Average Price of FLOUR Is returned at		BREAD.			
				Add for Grinding, Baking, &c. 15s. 10d. per Quarter, or 8d. per Peck Loaf. (a)		OR		Add Baking, &c. 13s. 4d. per Sack. (a)				
No.	per Quarter.		per Bushel.		Total Price, and Baking, per Quarter.		per Sack.	Total Price, and Baking, per Sack.	Price of Peck Loaf. To weigh 17lb. 6oz.	Price of Half Peck Loaf. To weigh 8lb. 11oz.	Price of Quartern Loaf. To weigh 4lb. 5oz. 8dr.	Price of Half Quartern Loaf. To weigh 2lb. 2oz. 12dr.
	s.	d.	s.	d.	s. d.		s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
41.	119	0	14	10½	134 10		100 0	113 4	5 8	2 10	1 5	0 8½
42.	121	0	15	1½	136 10		101 8	115 0	5 9	2 10½	1 5½	0 8½
43.	123	0	15	4½	138 10		103 4	116 8	5 10	2 11	1 5½	0 8½
44.	125	0	15	7½	140 10		105 0	118 4	5 11	2 11½	1 5½	0 8½
45.	127	0	15	10½	142 10		106 8	120 0	6 0	3 0	1 6	0 9
46.	129	0	16	1½	144 10		108 4	121 8	6 1	3 0½	1 6½	0 9½
47.	131	0	16	4½	146 10		110 0	123 4	6 2	3 1	1 6½	0 9½
48.	133	0	16	7½	148 10		111 8	125 0	6 3	3 1½	1 6½	0 9½
49.	135	0	16	10½	150 10		113 4	126 8	6 4	3 2	1 7	0 9½
50.	137	0	17	1½	152 10		115 0	128 4	6 5	3 2½	1 7½	0 9½
51.	139	0	17	4½	154 10		116 8	130 0	6 6	3 3	1 7½	0 9½
52.	141	0	17	7½	156 10		118 4	131 8	6 7	3 3½	1 7½	0 9½
53.	143	0	17	10½	158 10		120 0	133 4	6 8	3 4	1 8	0 10
54.	145	0	18	1½	160 10		121 8	135 0	6 9	3 4½	1 8½	0 10½
55.	147	0	18	4½	162 10		123 4	136 8	6 10	3 5	1 8½	0 10½
56.	149	0	18	7½	164 10		125 0	138 4	6 11	3 5½	1 8½	0 10½
57.	150	0	18	9	166 10		126 8	140 0	7 0	3 6	1 9	0 10½
58.	152	6	19	0½	168 4		128 4	141 8	7 1	3 6½	1 9½	0 10½
59.	154	6	19	3½	170 4		130 0	143 4	7 2	3 7	1 9½	0 10½
60.	156	6	19	6½	172 4		131 8	145 0	7 3	3 7½	1 9½	0 10½
61.	158	6	19	9½	174 4		133 4	146 8	7 4	3 8	1 10	0 11
62.	160	6	20	0½	176 4		135 0	148 4	7 5	3 8½	1 10½	0 11½
63.	162	6	20	3½	178 4		136 8	150 0	7 6	3 9	1 10½	0 11½
64.	164	6	20	6½	180 4		138 4	151 8	7 7	3 9½	1 10½	0 11½
65.	166	6	20	9½	182 4		140 0	153 4	7 8	3 10	1 11	0 11½
66.	168	6	21	0½	184 4		141 8	155 0	7 9	3 10½	1 11½	0 11½
67.	170	6	21	3½	186 4		143 4	156 8	7 10	3 11	1 11½	0 11½
68.	172	6	21	6½	188 4		145 0	158 4	7 11	3 11½	1 11½	0 11½
69.	174	6	21	9½	190 4		146 8	160 0	8 0	4 0	2 0	1 0
70.	176	6	22	0½	192 4		148 4	161 8	8 1	4 0½	2 0½	1 0½
71.	178	6	22	3½	194 4		150 0	163 4	8 2	4 1	2 0½	1 0½
72.	180	6	22	6½	196 4		151 8	165 0	8 3	4 1½	2 0½	1 0½

(a) But see 5 Geo. IV. c. 50, s. 1, *ante*, p. 432, note.

N.B. By this Table the Number of Pounds of Bread to be sold as the Price of a and for the Sack of Flour

BREAD, from the PRICE of WHEAT, and from the PRICE of FLOUR—*continued.*

THE ASSIZE TABLE.

No. of Assize and Price.	The Penny Loaf, To weigh	The Two-penny Loaf, To weigh	The Three-penny Loaf, To weigh	The Six-penny Loaf, To weigh	The Twelve-penny Loaf, To weigh	The Eighteen-penny Loaf, To weigh	No.
	oz. dr.	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	
41.	4 1	0 8 2	0 12 4	1 8 8	3 1 0	4 9 9	41.
42.	4 0	0 8 0	0 12 1	1 8 2	3 0 5	4 8 8	42.
43.	3 15	0 7 15	0 11 14	1 7 13	2 15 10	4 7 7	43.
44.	3 14	0 7 13	0 11 11	1 7 7	2 14 15	4 6 7	44.
45.	3 13	0 7 11	0 11 9	1 7 2	2 14 5	4 5 8	45.
46.	3 12	0 7 9	0 11 6	1 6 13	2 13 11	4 4 8	46.
47.	3 12	0 7 8	0 11 4	1 6 8	2 13 1	4 3 9	47.
48.	3 11	0 7 6	0 11 1	1 6 3	2 12 7	4 2 11	48.
49.	3 10	0 7 5	0 10 15	1 5 15	2 11 14	4 1 13	49.
50.	3 9	0 7 3	0 10 13	1 5 10	2 11 5	4 0 15	50.
51.	3 9	0 7 2	0 10 11	1 5 6	2 10 12	4 0 2	51.
52.	3 8	0 7 0	0 10 8	1 5 1	2 10 3	3 15 15	52.
53.	3 7	0 6 15	0 10 6	1 4 13	2 9 11	3 14 9	53.
54.	3 6	0 6 13	0 10 4	1 4 9	2 9 2	3 13 12	54.
55.	3 6	0 6 12	0 10 2	1 4 5	2 8 10	3 13 0	55.
56.	3 5	0 6 11	0 10 0	1 4 1	2 8 3	3 12 4	56.
57.	3 4	0 6 9	0 9 14	1 3 13	2 7 11	3 11 9	57.
58.	3 4	0 6 8	0 9 12	1 3 9	2 7 3	3 10 13	58.
59.	3 3	0 6 7	0 9 11	1 3 6	2 6 12	3 10 2	59.
60.	3 3	0 6 6	0 9 9	1 3 2	2 6 5	3 9 8	60.
61.	3 2	0 6 5	0 9 7	1 2 15	2 5 14	3 8 13	61.
62.	3 1	0 6 3	0 9 5	1 2 11	2 5 7	3 8 3	62.
63.	3 1	0 6 2	0 9 4	1 2 8	2 5 1	3 7 9	63.
64.	3 0	0 6 1	0 9 2	1 2 5	2 4 10	3 6 15	64.
65.	3 0	0 6 0	0 9 1	1 2 2	2 4 4	3 6 6	65.
66.	2 15	0 5 15	0 8 14	1 1 13	2 3 10	3 5 7	66.
67.	2 15	0 5 14	0 8 13	1 1 11	2 3 7	3 5 3	67.
68.	2 14	0 5 13	0 8 12	1 1 8	2 3 1	3 4 10	68.
69.	2 14	0 5 12	0 8 11	1 1 6	2 2 12	3 4 2	69.
70.	2 13	0 5 11	0 8 9	1 1 3	2 2 6	3 3 9	70.
71.	2 13	0 5 10	0 8 8	1 1 0	2 2 0	3 3 0	71.
72.	2 12	0 5 9	0 8 6	1 0 13	2 1 11	3 2 8	72.

Quarter of Wheat, including the Allowance as above, is 413 Pounds Avoirdupois, 347 Pounds 8 Ounces Avoirdupois.

THE PRICE TABLE.

When the Average Price of WHEAT				When the Average Price of FLOUR		BREAD.			
Is returned at			Add for Grinding, Baking, &c. 16s. 8d. per Quarter, or 8d. per Peck Loaf. (a)	Or Is returned at	Add Baking, &c. 13s. 4d. per Sack. (a)				
No.	per Quarter.	per Bushel.	Total Price, and Baking, per Quarter.	per Sack.	Total Price, and Baking, per Sack.	Price of Peck Loaf. To weigh 17lb. 6oz.	Price of Half Peck Loaf. To weigh 8lb. 11oz.	Price of Quartern Loaf. To weigh 4lb. 5oz. 8dr.	Price of Half Quartern Loaf. To weigh 2lb. 2oz. 12dr.
	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
1.	39 6	4 11½	56 2	31 8	45 0	2 3	1 1½	0 6¾	0 3½
2.	41 6	5 2¼	58 2	33 4	46 8	2 4	1 2	0 7	0 3½
3.	43 8	5 5½	60 4	35 0	48 4	2 5	1 2½	0 7¼	0 3¾
4.	45 8	5 8½	62 4	36 8	50 0	2 6	1 3	0 7½	0 3¾
5.	47 10	5 11¾	64 6	38 4	51 8	2 7	1 3½	0 7¾	0 3¾
6.	49 10	6 2¾	66 6	40 0	53 4	2 8	1 4	0 8	0 4
7.	52 0	6 6	68 8	41 8	55 0	2 9	1 4½	0 8¼	0 4¼
8.	54 2	6 9¼	70 10	43 4	56 8	2 10	1 5	0 8½	0 4¼
9.	56 2	7 0¼	72 10	45 0	58 4	2 11	1 5½	0 8¾	0 4½
10.	58 4	7 3½	75 0	46 8	60 0	3 0	1 6	0 9	0 4½
11.	60 4	7 6½	77 0	48 4	61 8	3 1	1 6½	0 9¼	0 4¾
12.	62 6	7 9¾	79 2	50 0	63 4	3 2	1 7	0 9½	0 4¾
13.	64 6	8 0¾	81 2	51 8	65 0	3 3	1 7½	0 9¾	0 4¾
14.	66 8	8 4	83 4	53 4	66 8	3 4	1 8	0 10	0 5
15.	68 8	8 7	85 4	55 0	68 4	3 5	1 8½	0 10¼	0 5¼
16.	70 10	8 10¼	87 6	56 8	70 0	3 6	1 9	0 10½	0 5¼
17.	72 10	9 1¼	89 6	58 4	71 8	3 7	1 9½	0 10¾	0 5¼
18.	75 0	9 4½	91 8	60 0	73 4	3 8	1 10	0 11	0 4½
19.	77 0	9 7½	93 8	61 8	75 0	3 9	1 10½	0 11¼	0 5¾
20.	79 2	9 10¾	95 10	63 4	76 8	3 10	1 11	0 11½	0 5¾
21.	81 2	10 1¾	97 10	65 0	78 4	3 11	1 11½	0 11¾	0 5¾
22.	83 4	10 5	100 0	66 8	80 0	4 0	2 0	1 0	0 6
23.	85 4	10 8	102 0	68 4	81 8	4 1	2 0½	1 0¼	0 6¼
24.	87 6	10 11¼	104 2	70 0	83 4	4 2	2 1	1 0½	0 6¼
25.	89 6	11 2¼	106 2	71 8	85 0	4 3	2 1½	1 0¾	0 6¼
26.	91 8	11 5½	108 4	73 4	86 8	4 4	2 2	1 1	0 6½
27.	93 8	11 8½	110 4	75 0	88 4	4 5	2 2½	1 1¼	0 6¾
28.	95 10	11 11¾	112 6	76 8	90 0	4 6	2 3	1 1½	0 6¾
29.	97 10	12 2¾	114 6	78 4	91 8	4 7	2 3½	1 1¾	0 6¾
30.	100 0	12 6	116 8	80 0	93 4	4 8	2 4	1 2	0 7
31.	102 0	12 9	118 8	81 8	95 0	4 9	2 4½	1 2¼	0 7¼
32.	104 2	13 0¼	120 10	83 4	96 8	4 10	2 5	1 2½	0 7¼
33.	106 2	13 3¼	122 10	85 0	98 4	4 11	2 5½	1 2¾	0 7¼
34.	108 4	13 6½	125 0	86 8	100 0	5 0	2 6	1 3	0 7½
35.	110 4	13 9½	127 0	88 4	101 8	5 1	2 6½	1 3¼	0 7¾

(a) But see stat. 5 Geo. IV.

WHEATEN BREAD, from the PRICE of WHEAT, and from the PRICE of FLOUR.

THE ASSIZE TABLE.

No. of Assize and Price.	The Penny Loaf, To weigh	The Two-penny Loaf, To weigh	The Three-penny Loaf, To weigh	The Six-penny Loaf, To weigh	The Twelve-penny Loaf, To weigh	The Eighteen-penny Loaf, To weigh	No.
	oz. dr.	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	
1.	10 7	1 4 14	1 15 5	3 14 10	7 13 4	11 11 14	1.
2.	9 14	1 3 13	1 13 12	3 11 9	7 7 2	11 2 11	2.
3.	9 9	1 3 2	1 12 12	3 9 8	7 3 0	10 12 8	3.
4.	9 4	1 2 8	1 11 12	3 7 9	6 15 3	10 6 12	4.
5.	8 15	1 1 14	1 10 14	3 5 12	6 11 9	10 1 6	5.
6.	8 11	1 1 6	1 10 1	3 4 2	6 8 4	9 12 6	6.
7.	8 6	1 0 13	1 9 4	3 2 8	6 5 1	9 7 10	7.
8.	8 2	1 0 5	1 8 8	3 1 0	6 2 1	9 3 2	8.
9.	7 15	0 15 14	1 7 13	2 15 10	5 15 5	8 14 15	9.
10.	7 11	0 15 7	1 7 2	2 14 5	5 12 10	8 11 0	10.
11.	7 8	0 15 0	1 6 8	2 13 1	5 10 2	8 7 3	11.
12.	7 5	0 14 10	1 5 15	2 11 14	5 7 12	8 3 10	12.
13.	7 2	0 14 4	1 5 6	2 10 12	5 5 8	8 0 4	13.
14.	6 15	0 13 14	1 4 13	2 9 11	5 3 6	7 13 1	14.
15.	6 12	0 13 8	1 4 5	2 8 10	5 1 5	7 10 0	15.
16.	6 9	0 13 3	1 3 13	2 7 11	4 15 6	7 7 2	16.
17.	6 7	0 12 14	1 3 6	2 6 12	4 13 9	7 4 5	17.
18.	6 5	0 12 10	1 2 15	2 5 14	4 11 13	7 1 11	18.
19.	6 2	0 12 5	1 2 8	2 5 1	4 10 2	6 15 3	19.
20.	6 0	0 12 1	1 2 2	2 4 4	4 8 8	6 12 12	20.
21.	5 14	0 11 13	1 1 11	2 3 7	4 6 15	6 10 7	21.
22.	5 12	0 11 9	1 1 6	2 2 12	4 5 8	6 8 4	22.
23.	5 10	0 11 5	1 1 0	2 2 0	4 4 1	6 6 1	23.
24.	5 8	0 11 1	1 0 10	2 1 5	4 2 11	6 4 1	24.
25.	5 7	0 10 14	1 0 5	2 0 11	4 1 6	6 2 1	25.
26.	5 5	0 10 11	1 0 0	2 0 1	4 0 2	6 0 3	26.
27.	5 3	0 10 7	0 15 11	1 15 7	3 14 15	5 14 6	27.
28.	5 2	0 10 4	0 15 7	1 14 14	3 13 12	5 12 10	28.
29.	5 0	0 10 1	0 15 2	1 14 5	3 12 10	5 10 15	29.
30.	4 15	0 9 14	0 14 14	1 13 13	3 11 11	5 9 8	30.
31.	4 14	0 9 12	0 14 10	1 13 4	3 10 8	5 7 12	31.
32.	4 12	0 9 9	0 14 6	1 12 12	3 9 8	5 6 4	32.
33.	4 11	0 9 6	0 14 2	1 12 4	3 8 8	5 4 3	33.
34.	4 10	0 9 4	0 13 14	1 11 12	3 7 9	5 3 6	34.
35	4 8	0 9 1	0 13 10	1 11 5	3 6 11	5 2 0	35.

c. 50, s. 1, *ante*, p. 432, note. *(continued.)*

Schedule, No. 7.—TABLE of the PRICE and ASSIZE of STANDARD WHEATEN

THE PRICE TABLE.

When the Average Price of WHEAT						When the Average Price of FLOUR		BREAD.			
Is returned at				Add for Grinding, Baking, &c. 16s. 8d. per Quarter, or 8d. per Peck Loaf. (a)	OR	Is returned at	Add Baking, &c. 13s. 4d. per Sack. (a)				
No.	per Quarter.		per Bushel.	Total Price, and Baking, per Quarter.		per Sack.	Total Price, and Baking, per Sack.	Price of Peck Loaf. To weigh 17lb. 6oz.	Price of Half Peck Loaf. To weigh 8lb. 11oz.	Price of Quartern Loaf. To weigh 4lb. 5oz. 8dr.	Price of Half Quartern Loaf. To weigh 2lb. 2oz. 12dr.
	s.	d.	s. d.	s.	d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
36.	112	6	14 0¾	129	2	90 0	103 4	5 2	2 7	1 3½	0 7¾
37.	114	6	14 3¾	131	2	91 8	105 0	5 3	2 7½	1 3¾	0 7¾
38.	116	8	14 7	133	4	93 4	106 8	5 4	2 8	1 4	0 8
39.	118	8	14 10	135	4	95 0	108 4	5 5	2 8½	1 4½	0 8¼
40.	120	10	15 1¼	137	6	96 8	110 0	5 6	2 9	1 4½	0 8¼
41.	122	10	15 4¼	139	6	98 4	111 8	5 7	2 9½	1 4¾	0 8½
42.	125	0	15 7½	141	8	100 0	113 4	5 8	2 10	1 5	0 8½
43.	127	0	15 10½	143	8	101 8	115 0	5 9	2 10½	1 5¼	0 8¾
34.	129	2	16 1¾	145	10	103 4	116 8	5 10	2 11	1 5½	0 8¾
45.	131	2	16 4¾	147	10	105 0	118 4	5 11	2 11½	1 5¾	0 8¾
46.	133	4	16 8	150	0	106 8	120 0	6 0	3 0	1 6	0 9
47.	135	4	16 11	152	0	108 4	121 8	6 1	3 0½	1 6¼	0 9¼
48.	137	6	17 2¼	154	2	110 0	123 4	6 2	3 1	1 6½	0 9¼
49.	139	6	17 5¼	156	2	111 8	125 0	6 3	3 1½	1 6¾	0 9¼
50.	141	8	17 8½	158	4	113 4	126 8	6 4	3 2	1 7	0 9½
51.	143	8	17 11½	160	4	115 0	128 4	6 5	3 2½	1 7¼	0 9¾
52.	145	10	18 2¾	162	6	116 8	130 0	6 6	3 3	1 7½	0 9¾
53.	147	10	18 5¾	164	6	118 4	131 8	6 7	3 3½	1 7¾	0 9¾
54.	150	0	18 9	166	8	120 0	133 4	6 8	3 4	1 8	0 10
55.	152	0	19 0	168	8	121 8	135 0	6 9	3 4½	1 8¼	0 10¼
56.	154	2	19 3¼	170	10	123 4	136 8	6 10	3 5	1 8½	0 10¼
57.	156	2	19 6¼	172	10	125 0	138 4	6 11	3 5½	1 8¾	0 10½
58.	158	4	19 9½	175	0	126 8	140 0	7 0	3 6	1 9	0 10½
59.	160	4	20 0½	177	0	128 4	141 8	7 1	3 6½	1 9¼	0 10¾
60.	162	6	20 3¾	179	2	130 0	143 4	7 2	3 7	1 9½	0 10¾
61.	164	6	20 6¾	181	2	131 8	145 0	7 3	3 7½	1 9¾	0 10¾
62.	166	8	20 10	183	4	133 4	146 8	7 4	3 8	1 10	3 11
63.	168	8	21 1	185	4	135 0	148 4	7 5	3 8½	1 10½	0 11¼
64.	170	10	21 4¼	187	6	136 8	150 0	7 6	3 9	1 10½	0 11¼
65.	172	10	21 7¼	189	6	138 4	151 8	7 7	3 9½	1 10¾	0 11¼
66.	175	0	21 10½	191	8	140 0	153 4	7 8	3 10	1 11	0 11½
67.	177	0	22 1½	193	8	141 8	155 0	7 9	3 10½	1 11¼	0 11⅝
68.	179	2	22 4¾	195	10	143 4	156 8	7 10	3 11	1 11½	0 11⅝
69.	181	2	22 7¾	197	10	145 0	158 4	7 11	3 11½	1 11¾	0 11⅞
70.	183	4	22 11	200	0	146 8	160 0	8 0	4 0	2 0	1 0

(a) But see stat. 5 Geo. IV.

N. B.—By this Table, the Number of Pounds of Bread to be sold as the Price of a Quarter of Wheat,

BREAD, from the Price of WHEAT, and from the PRICE of FLOUR—*continued.*

THE ASSIZE TABLE.

No. of Assize and Price.	The Penny Loaf, To weigh	The Two-penny Loaf, To weigh.	The Three-penny Loaf, To weigh	The Six-penny Loaf, To weigh	The Twelve-penny Loaf, To weigh	The Eighteen-penny Loaf, To weigh	No.
	oz. dr.	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	*lb. oz. dr.*	
36.	4 7	0 8 15	0 13 7	1 10 14	3 5 12	5 0 11	36.
37.	4 6	0 8 13	0 13 3	1 10 7	3 4 15	4 15 6	37.
38.	4 5	0 8 11	0 13 0	1 10 1	3 4 2	4 14 3	38.
39.	4 4	0 8 8	0 12 13	1 9 10	3 3 5	4 12 15	39.
40.	4 3	0 8 6	0 12 10	1 9 4	3 2 8	4 11 13	40.
41.	4 2	0 8 4	0 12 7	1 8 14	3 1 12	4 10 10	41.
42.	4 1	0 8 2	0 12 4	1 8 8	3 1 0	4 9 9	42.
43.	4 0	0 8 0	0 12 1	1 8 2	3 0 5	4 8 8	43.
44.	3 15	0 7 15	0 11 14	1 7 13	2 15 10	4 7 7	44.
45.	3 14	0 7 13	0 11 11	1 7 7	2 14 15	4 6 7	45.
46.	3 13	0 7 11	0 11 9	1 7 2	2 14 5	4 5 8	46.
47.	3 12	0 7 9	0 11 6	1 6 13	2 13 11	4 4 8	47.
48.	3 12	0 7 8	0 11 4	1 6 8	2 13 1	4 3 9	48.
49.	3 11	0 7 6	0 11 1	8 6 3	2 12 7	4 2 11	49.
50.	3 10	0 7 5	0 10 15	1 5 15	2 11 14	4 1 13	50.
51.	3 9	0 7 3	0 10 13	1 5 10	2 11 5	4 0 15	51.
52.	3 9	0 7 2	0 10 11	1 5 6	2 10 12	4 0 2	52.
53.	3 8	0 7 0	0 10 8	1 5 1	2 10 3	3 15 15	53.
54.	3 7	0 6 15	0 10 6	1 4 13	2 9 11	3 14 9	54.
55.	3 6	0 6 13	0 10 4	1 4 9	2 9 2	3 13 12	55.
56.	3 6	0 6 12	0 10 2	1 4 5	2 8 10	3 13 0	56.
57.	3 5	0 6 11	0 10 0	1 4 1	2 8 3	3 12 4	57.
58.	3 4	0 6 9	0 9 14	1 3 13	2 7 11	3 11 9	58.
59.	3 4	0 6 8	0 9 12	1 3 9	2 7 3	3 10 13	59.
60.	3 3	0 6 7	0 9 11	1 3 6	2 6 12	3 10 2	60.
61.	3 3	0 6 6	0 9 9	1 3 2	2 6 5	3 9 8	61.
62.	3 2	0 6 5	0 9 7	1 2 15	2 5 14	3 8 13	62.
63.	3 1	0 6 3	0 9 5	1 2 11	2 5 7	3 8 3	63.
64.	3 1	0 6 2	0 9 4	1 2 8	2 5 1	3 7 9	64.
65.	3 0	0 6 1	0 9 2	1 2 5	2 4 10	3 6 15	65.
66.	3 0	0 6 0	0 9 1	1 2 2	2 4 4	3 6 6	66.
67.	2 15	0 5 15	0 8 14	1 1 13	2 3 10	3 5 7	67.
68.	2 15	0 5 14	0 8 13	1 1 11	2 3 7	3 5 3	68.
69.	2 14	0 5 13	0 8 12	1 1 8	2 3 1	3 4 10	69.
70.	2 14	0 5 12	0 8 11	1 1 6	2 2 12	3 4 2	70.

c. 50, s. 1, *ante*, p. 432, note.

including the Allowance as above, is 434 Pounds Avoirdupois, and for the Sack of Flour 364 Pounds 8 Ounces.

THE PRICE TABLE.

When the Average Price of WHEAT					When the Average Price of FLOUR		BREAD.			
Is returned at			Add for Grinding, Baking, &c. 18s. per Quarter, or 8d. per Peck Loaf. (a)	OR	Is returned at	Add Baking, &c. 13s. 4d. per sack. (a)				
No.	per Quarter.	per Bushel.	Total Price, and Baking, per Quarter.		per Sack.	Total Price, and Baking, per Sack.	Price of Peck Loaf. To weigh 17lb. 6oz	Price of Half Peck Loaf. To weigh 8lb. 11oz.	Price of Quartern Loaf. To weigh 4lb. 5oz. 8dr.	Price of Half Quartern Loaf. To weigh 2lb. 2oz. 12dr.
	s. d.	s. d.	s. d.		s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
1.	38 2	4 9½	56 2		28 4	41 8	2 1	1 0½	0 6½	0 3½
2.	40 6	5 0¾	58 4		30 0	43 4	2 2	1 1	0 6¾	0 3¾
3.	42 8	5 4	60 8		31 8	45 0	2 3	1 1½	0 6¾	0 3¾
4.	44 10	5 7½	62 10		33 4	46 8	2 4	1 2	0 7	0 3½
5.	47 0	5 10½	65 0		35 0	48 4	2 5	1 2½	0 7¼	0 3¾
6.	49 4	6 2	67 4		36 8	50 0	2 6	1 3	0 7½	0 3¾
7.	51 6	6 5¼	69 6		38 4	51 8	2 7	1 3½	0 7¾	0 3¾
8.	53 8	6 8½	71 8		40 0	53 4	2 8	1 4	0 8	0 4
9.	56 0	7 0	74 0		41 8	55 0	2 9	1 4½	0 8¼	0 4¼
10.	58 2	7 3¼	76 2		43 4	56 8	2 10	1 5	0 8½	0 4¼
11.	60 6	7 6¾	78 6		45 0	58 4	2 11	1 5½	0 8¾	0 4½
12.	62 8	7 10	80 8		46 8	60 0	3 0	1 6	0 9	0 4½
13.	65 0	8 1½	83 0		48 4	61 8	3 1	1 6½	0 9¼	0 4¾
14.	67 2	8 4¾	85 2		50 0	63 4	3 2	1 7	0 9½	0 4¾
15.	69 6	8 8¼	87 6		51 8	65 0	3 3	1 7½	0 9¾	0 4¾
16.	71 8	8 11½	89 8		53 4	66 8	3 4	1 8	0 10	0 5
17.	74 0	9 3	92 0		55 0	68 4	3 5	1 8½	0 10¼	0 5¼
18.	76 2	9 6¼	94 2		56 8	70 0	3 6	1 9	0 10½	0 5¼
19.	78 6	9 9¾	96 6		58 4	71 8	3 7	1 9½	0 10¾	0 5¼
20.	80 8	10 1	98 8		60 0	73 4	3 8	1 10	0 11	0 5½
21.	83 0	10 4½	101 0		61 8	75 0	3 9	1 10½	0 11¼	0 5¾
22.	85 4	10 8	103 4		63 4	76 8	3 10	1 11	0 11½	0 5¾
23.	87 6	10 11¼	105 6		65 0	78 4	3 11	1 11½	0 11¾	0 5¾
24.	89 8	11 2½	107 8		66 8	80 0	4 0	2 0	1 0	0 6
25.	92 0	11 6	110 0		68 4	81 8	4 1	2 0½	1 0¼	0 6¼
26.	94 2	11 9¼	112 2		70 0	83 4	4 2	2 1	1 0½	0 6¼
27.	96 6	12 0¾	114 6		71 8	85 0	4 3	2 1½	1 0¾	0 6¼
28.	98 8	12 4	116 8		73 4	86 8	4 4	2 2	1 1	0 6½
29.	101 0	12 7½	119 0		75 0	88 4	4 5	2 2½	1 1¼	0 6¾
30.	103 2	12 10¾	121 2		76 8	90 0	4 6	2 3	1 1½	0 6¾
31.	105 6	13 2¼	123 6		78 4	91 8	4 7	2 3½	1 1¾	0 6¾
32.	107 8	13 5½	125 8		80 0	93 4	4 8	2 4	1 2	0 7
33.	110 0	13 9	128 0		81 8	95 0	4 9	2 4½	1 2¼	0 7¼
		4 0¼	130 2		83 4	96 8	4 10	2 5	1 2½	0 7¼
		3¾	132 6		85 0	98 4	4 11	2 5½	1 2¾	0 7¼

(a) But see stat. 5 Geo. IV. c. 50, s. 1, *ante*, 432, note.

BREAD, from the PRICE of WHEAT, and from the PRICE of FLOUR.

THE ASSIZE TABLE.

No. of Assize and Price.	The Penny Loaf, To weigh	The Two-penny Loaf, To weigh	The Three-penny Loaf, To weigh	The Six-penny Loaf, To weigh	The Twelve-penny Loaf, To weigh	The Eighteen-penny Loaf, To weigh	No.
	oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	
1.	11 1	1 6 3	2 1 5	4 2 11	8 5 7	12 8 2	1.
2.	10 11	1 5 6	2 0 7	4 0 2	8 0 4	12 0 7	2.
3.	10 4	1 4 9	1 15 5	3 13 12	7 11 8	11 9 5	3.
4.	9 14	1 3 13	1 13 12	3 11 9	7 7 2	11 2 11	4.
5.	9 9	1 3 2	1 12 12	3 9 8	7 3 0	10 12 8	5.
6.	9 4	1 2 8	1 11 12	3 7 9	6 15 3	10 6 12	6.
7.	8 15	1 1 14	1 10 14	3 5 12	6 11 9	10 1 6	7.
8.	8 11	1 1 6	1 10 1	3 4 2	6 8 4	9 12 6	8.
9.	8 6	1 0 13	1 9 4	3 2 8	6 5 1	9 7 10	9.
10.	8 2	1 0 5	1 8 8	3 1 0	6 2 1	9 3 2	10.
11.	7 15	0 15 14	1 7 13	2 15 10	5 13 5	8 14 15	11.
12.	7 11	0 15 7	1 7 2	2 14 5	5 12 10	8 11 0	12.
13.	7 8	0 15 0	1 6 8	2 13 1	5 10 2	8 7 3	13.
14.	7 5	0 14 10	1 5 15	2 11 14	5 7 12	8 3 10	14.
15.	7 2	0 14 4	1 5 6	2 10 12	5 5 8	8 0 4	15.
16.	6 15	0 13 14	1 4 13	2 9 11	5 3 6	7 13 1	16.
17.	6 12	0 13 8	1 4 5	2 8 10	5 1 5	7 10 0	17.
18.	6 9	0 13 3	1 3 13	2 7 11	4 15 6	7 7 2	18.
19.	6 7	0 12 14	1 3 6	2 6 12	4 13 9	7 4 5	19.
20.	6 5	0 12 10	1 2 13	2 5 14	4 11 13	7 1 11	20.
21.	6 2	0 12 5	1 2 8	2 5 1	4 10 2	6 15 3	21.
22.	6 0	0 12 1	1 2 2	2 4 4	4 8 8	6 12 12	22.
23.	5 14	0 11 13	1 1 11	2 3 7	4 6 15	6 10 7	23.
24.	5 12	0 11 9	1 1 6	2 2 12	4 5 8	6 8 4	24.
25.	5 10	0 11 5	1 1 0	2 2 0	4 4 1	6 6 1	25.
26.	5 8	0 11 1	1 0 10	2 1 5	4 2 11	6 4 1	26.
27.	5 7	0 10 14	1 0 5	2 0 11	4 1 6	6 2 1	27.
28.	5 5	0 10 11	1 0 0	2 0 1	4 0 2	6 0 3	28.
29.	5 3	0 10 7	9 15 11	1 15 7	3 14 15	5 14 6	29.
30.	5 2	0 10 4	9 15 7	1 14 14	3 13 12	5 12 10	30.
31.	5 0	0 10 1	0 15 2	1 14 5	3 12 10	5 10 15	31.
32.	4 15	0 9 14	0 14 14	1 13 13	3 11 11	5 9 8	32.
33.	4 14	0 9 12	0 14 10	1 13 4	3 10 8	5 7 12	33.
34.	4 12	0 9 9	0 14 6	1 12 12	3 9 8	5 6 4	34.
35.	4 11	0 9 6	0 14 2	1 12 4	3 8 8	5 4 3	35.

(continued.)

53 Geo. III. c. 116. Schedule, No. 8.—TABLE of the PRICE and ASSIZE of HOUSEHOLD

THE PRICE TABLE.

When the Average Price of WHEAT					When the Average Price of FLOUR		BREAD.			
Is returned at				OR Add for Grinding, Baking, &c. 18s. per Quarter, or 8d. per Peck Loaf. (a)	Is returned at	Add Baking, &c. 13s. 4d. per sack. (a)				
No.	per Quarter.	per Bushel.	Total Price, and Baking, per Quarter.		per Sack.	Total Price, and Baking, per Sack.	Price of Peck Loaf. To weigh 17lb. 6oz.	Price of Half Peck Loaf. To weigh 8lb. 11oz.	Price of Quartern Loaf. To weigh 4lb. 5oz. 8dr.	Price of Half Quartern Loaf. To weigh 2lb. 2oz. 12dr.
	s. d.	s. d.	s. d.		s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
36.	116 8	14 7	134 8		86 8	100 0	5 0	2 6	1 3	0 7½
37.	119 0	14 10½	137 0		88 4	101 8	5 1	2 6½	1 3½	0 7¾
38.	121 2	15 1½	139 2		90 0	103 4	5 2	2 7	1 3½	0 7¾
39.	123 6	15 5½	141 6		91 8	105 0	5 3	2 7½	1 3¾	0 7¾
40.	125 8	15 8½	143 8		93 4	106 8	5 4	2 8	1 4	0 8
41.	128 0	16 0	146 0		95 0	108 4	5 5	2 8½	1 4¼	0 8¼
42.	130 2	16 3½	148 2		96 8	110 0	5 6	2 9	1 4½	0 8¼
43.	132 4	16 6½	150 4		98 4	111 8	5 7	2 9½	1 4¾	0 8¼
44.	134 8	16 10	152 8		100 0	113 4	5 8	2 10	1 5	0 8½
45.	136 8	17 1	154 8		101 8	115 0	5 9	2 10½	1 5¼	0 8¾
46.	139 0	17 4½	157 0		103 4	116 8	5 10	2 11	1 5½	0 8¾
47.	141 2	17 7¾	159 2		105 0	118 4	5 11	2 11½	1 5¾	0 8¾
48.	143 6	17 11¼	161 6		106 8	120 0	6 0	3 0	1 6	0 9
49.	145 8	18 2½	163 8		108 4	121 8	6 1	3 0½	1 6¼	0 9¼
50.	148 0	18 6	166 0		110 0	123 4	6 2	3 1	1 6½	0 9¼
51.	150 4	18 9½	168 4		111 8	125 0	6 3	3 1½	1 6¾	0 9¼
52.	152 8	19 1	170 8		113 4	126 8	6 4	3 2	1 7	0 9½
53.	154 8	19 4	172 8		115 0	128 4	6 5	3 2½	1 7¼	0 9¾
54.	157 0	19 7½	175 0		116 8	130 0	6 6	3 3	1 7½	0 9¾
55.	159 2	19 10¾	177 2		118 4	131 8	6 7	3 3½	1 7¾	0 9¾
56.	161 6	20 2¼	179 6		120 0	133 4	6 8	3 4	1 8	0 10
57.	163 8	20 5½	181 8		121 8	135 0	6 9	3 4½	1 8¼	0 10¼
58.	166 0	20 9	184 0		123 4	136 8	6 10	3 5	1 8½	0 10¼
59.	168 4	21 0½	186 4		125 0	138 4	6 11	3 5½	1 8¾	0 10¼
60.	170 8	21 4	188 8		126 8	140 0	7 0	3 6	1 9	0 10½
61.	173 0	21 7¼	191 0		128 4	141 8	7 1	3 6½	1 9¼	0 10¼*
€2.	175 2	21 10¾	193 2		130 0	143 4	7 2	3 7	1 9½	0 10¼
63.	177 6	22 2¼	195 6		131 8	145 0	7 3	3 7½	1 9¾	0 10¼
64.	179 8	22 5½	197 8		133 4	146 8	7 4	3 8	1 10	0 10½
65.	182 0	22 9	200 0		135 0	148 4	7 5	3 8½	1 10¼	0 10¾

(a) But see stat. 5 Geo. IV.

N.B.—By this Table the Number of Pounds of Bread to be sold as the Price of a Quarter of

* This agrees with the *printed* copy of the act, but it has been questioned whether it ought not to be as follows.

0 10¼
0 10½
0 10¾
0 11
0 11¼—See 1 Burn J. 24 ed. p. 424.

BREAD, from the PRICE of WHEAT, and from the PRICE of FLOUR—*continued.*

THE ASSIZE TABLE.

No. of Assize and Price.	The Penny Loaf, To weigh	The Two-penny Loaf, To weigh	The Three-penny Loaf, To weigh	The Six-penny Loaf, To weigh	The Twelve-penny Loaf, To weigh	The Eighteen-penny Loaf, To weigh	No.
	oz. dr.	*lb. dr. oz.*	*lb. dr. oz.*	*lb. dr. oz.*	*lb. dr. oz.*	*lb. dr. oz.*	
36.	4 10	0 9 4	0 13 14	1 11 12	3 7 9	5 3 6	36.
37.	4 8	0 9 1	0 13 10	1 11 5	3 6 11	5 2 0	37.
38.	4 7	0 8 15	0 13 7	1 10 14	3 5 12	5 0 11	38.
39.	4 6	0 8 13	0 13 3	1 10 7	3 4 15	4 15 6	39.
40.	4 5	0 8 11	0 13 0	1 10 1	3 4 2	4 14 3	40.
41.	4 4	0 8 8	0 12 13	1 9 10	3 3 5	4 12 15	41.
42.	4 3	0 8 6	0 12 10	1 9 4	3 2 8	4 11 13	42.
43.	4 2	0 8 4	0 12 7	1 8 14	3 1 12	4 10 10	43.
44.	4 1	0 8 2	0 12 4	1 8 8	3 1 0	4 9 9	44.
45.	4 0	0 8 0	0 12 1	1 8 2	3 0 5	4 8 8	45.
46.	3 15	0 7 15	0 11 14	1 7 13	2 15 10	4 7 7	46.
47.	3 14	0 7 13	0 11 11	1 7 7	2 14 15	4 6 7	47.
48.	3 13	0 7 11	0 11 9	1 7 2	2 14 5	4 5 8	48.
49.	3 12	0 7 9	0 11 6	1 6 13	2 13 11	4 4 8	49.
50.	3 12	0 7 8	0 11 4	1 6 8	2 13 1	4 3 9	50.
51.	3 11	0 7 6	0 11 1	1 6 3	2 12 7	4 2 11	51.
52.	3 10	0 7 5	0 10 15	1 5 15	2 11 14	4 1 13	52.
53.	3 9	0 7 3	0 10 13	1 5 10	2 11 5	4 0 15	53.
54.	3 9	0 7 2	0 10 11	1 5 6	2 10 12	4 0 2	54.
55.	3 8	0 7 0	0 10 8	1 5 1	2 10 3	3 15 15	55.
56.	3 7	0 6 15	0 10 6	1 4 13	2 9 11	3 14 9	56.
57.	3 6	0 6 13	0 10 4	1 4 9	2 9 2	3 13 12	57.
58.	3 6	0 6 12	0 10 2	1 4 5	2 8 10	3 13 0	58.
59.	3 5	0 6 11	0 10 0	1 4 1	2 8 3	3 12 4	59.
60.	3 4	0 6 9	0 9 14	1 3 13	2 7 11	3 11 9	60.
61.	3 4	0 6 8	0 9 12	1 3 9	2 7 3	3 10 13	61.
62.	3 3	0 6 7	0 9 11	1 3 6	2 6 12	3 10 2	62.
63.	3 3	0 6 6	0 9 9	1 3 2	2 6 5	3 9 8	63.
64.	3 2	0 6 5	0 9 7	1 2 15	2 5 14	3 8 13	64.
65.	3 1	0 6 3	0 9 5	1 2 11	2 5 7	3 8 3	65.

c. 50, s. 1, *ante*, 432, note.

Wheat, including the allowance as above, is 468lbs. Avoirdupois, and for the Sack of Flour 347lbs. 8oz.

WHERE ASSIZE IS SET.

31 Geo. 2, c. 29.

By Stat. 31 Geo. II. c. 29, s. 14, it is enacted, "that the form of the return or the certificate of the price of grain, meal, or flour, shall from time to time be to the purport or effect as followeth, that is to say,

Form of the returns to be made of the price of grain, meal, or flour.

The price of grain, meal, and flour, as sold in the corn market in in the of the day of 18 .

The best wheat	at	by the bushel.
The second	at	by ditto.
The third	at	by ditto.
The best wheaten flour	at	by the sack.
Household flour	at	by ditto.
Rye	at	by the bushel.
Rye meal, or flour	at	by ditto.
Barley	at	by ditto.
Barley meal	at	by ditto.
Oats	at	by ditto.
Oatmeal	at	by
White peas	at	by the bushel.
White pea flour, or meal	at	by
Beans	at	by the bushel.
Bean meal, or flour	at	by

To every of which returns the person or persons who shall be appointed to make the same shall from time to time sign their respective names or marks.

Form of publication of the assize.

Sect. 12 enacts, "that when an assize of bread shall at any time be set in pursuance of this act, the same shall be made public in the form or to the effect following; that is to say,

—— *to wit.* { *The assize of bread set the day of for to take place on the day of now next ensuing, and to be in force for the said of*

And in places where penny, two-penny, six-penny, twelve-penny, and eighteen-penny loaves shall be made, as followeth:—

	lb.	*oz.*	*dr.*
The 1*d.* loaf wheaten is to weigh			
Ditto household is to weigh			
The 2*d.* loaf wheaten is to weigh			
Ditto household is to weigh			
The 6*d.* loaf wheaten is to weigh			
Ditto household is to weigh			
The 12*d.* loaf wheaten is to weigh			
Ditto household is to weigh			
The 1*s.* 6*d.* loaf wheaten is to weigh			
Ditto household is to weigh			

And in places where quartern, half-peck, and peck loaves shall be made, then as follows.—

	lb.	*oz.*	*dr.*		*s.*	*d.*
The peck loaf wheaten is to weigh				and is to be sold for		
Dittto household is to weigh				and is to be sold for		

And the half-peck and quarter of a peck loaves of wheaten and household bread are to weigh from time to time in proportion to the weight a peck loaf of wheaten or household bread ought to weigh, and are to be sold according to the price a peck loaf of wheaten or household bread respectively is to be sold; and whenever any bread shall be ordered to be made by any such magistrate or magistrates, or justices, within the limits of their jurisdiction, with the meal or flour of rye, barley, oats, peas, or beans, either alone or mixed with the meal or flour of any other grain or grains, the assize of

WHERE ASSIZE IS SET.

such bread shall be made public in such manner as the said magistrate or magistrates or justices who shall set such assize shall from time to time direct."

31 Geo. 2, c. 29. Bread of different denominations not to be allowed at the same time.

Sect. 13 enacts, "that in places where any 6*d*., 12*d*., and 1*s*. 6*d*. loaves shall at any time be ordered or allowed to be made or sold, no peck, half-peck, or quarter of a peck loaves shall be permitted or allowed at the same time to be there made or sold; to the intent that one of those sorts of loaves of bread may not be sold designedly or otherwise for the other sort thereof, to the injury of unwary people; upon pain that every one who shall offend in the premises, and shall be thereof convicted in manner hereinafter prescribed, shall for every such offence forfeit a sum not exceeding 40*s*. nor less than 20*s*. as the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, shall from time to time think fit."

Justices in sessions may divide hundreds for setting the assize.

Sect. 14 enacts, "that if for the better carrying into execution this act, the justices of the peace of any county, riding, or division, shall at any general or general quarter sessions of the peace to be held by them for any such county, riding, or division, think fit to ascertain or fix that any hundred or hundreds or other place or places in any such county, riding, or division, ought to be estimated or considered as of or in any one particular hundred, riding or division, of any such county, riding, or division, in order that the assize of bread which shall be set for such particular hundred, place or places, may extend to or comprise such other hundred, place or places, then and in any such case it shall be lawful for them so to do; but by so doing thereof no justice of the peace of any such county, riding, or division, shall be excluded or debarred from acting as a justice of the peace in any hundred, riding, or division of any such county in which any such particular towns, districts, or places shall lie, or the assize for them shall be set."

Clerk of the market to keep books.

Sect. 15 enacts, "that an entry shall from time to time be made by every clerk of the market, or other person or persons who in pursuance of this act shall be appointed to make such return and certificate as hereby is directed respectively, in some book or books to be provided and kept by them respectively for that purpose, of every return which shall be made in pursuance of this act by them respectively; and also of the rates at which the price, assize, and weight of bread shall from time to time be set or fixed within the jurisdiction of every such clerk of the market, or other person who shall in pursuance of this act be appointed to make such return or certificate as aforesaid; which book or books any inhabitant of every such city, town corporate, borough, franchise, hundred, riding, division, liberty, lathe, rape, or wapentake, shall at all seasonable times in the day-time have liberty to see and inspect without any fee or reward being to be paid for the same."

Assize not to be altered till the price of corn alters 3*d*. a bushel.

Sect. 16 enacts, "that after an assize of bread shall at any time after the said 29th day of September be set, no alteration shall be made therein in any subsequent week either to rise the same higher or to sink the same lower, unless and except when the price of wheat or other grain shall be returned as having rose three-pence each bushel more than the last return made, or having fallen three pence each bushel lower than the said last return; no provision being made by the said assize tables for altering any assize when the variation in the price of wheat or other grain shall not in any week have amounted to and have been returned three-pence a bushel."

Punishment of officers for default.

Sect. 17 enacts, "that if any meal weigher, clerk of any market, or other person or persons who shall be appointed to certify or return as hereby is directed the price of grain, meal, and flour shall in any wise neglect, omit, or refuse to do any matters or things by this act required or directed to be done by him or them respectively, or shall designedly or knowingly make any false certificate or return; or if any constable, headborough, or other peace officer, shall refuse or neglect to observe or obey any warrant in writing which shall be delivered to him under the hand and seal of any magistrate or justice of the peace, or to do any other act requisite to be done by him or them for the carrying this act or any of the powers or authorities hereby given into execution; then every person so offending in any of the premises, on being convicted of any such offence, shall forfeit and pay for every such offence any sum not exceeding 5*l*. nor less than 20*s*. as the ma-

WHERE ASSIZE IS SET.

gistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order every time he or they shall so offend and be convicted as hereby is directed."

31 Geo. 2, c. 29.

Buyer or seller to declare the price of corn.

Sect. 18 enacts, "that in case any buyers or sellers of or dealers in corn, grain, meal, or flour, at any time after the said 29th day of September, on reasonable request to him, her, or them made by the meal weighers of the city of London in London, or by the respective clerks of the markets or other persons who in pursuance of this act shall be appointed to give in and certify as hereby is directed the prices of grain, meal, and flour, from the respective markets or places within their respective jurisdictions, shall refuse to disclose and make known to such meal weighers, clerks of the markets, or other persons who shall be appointed to make such returns and certificates as hereby are directed respectively, and also shall request the same within their respective jurisdictions, the true real prices the several sorts of grain, meal, and flour shall be *bonâ fide* bought at or sold by or for him, her, or them respectively, at any corn market or corn markets, or other places where corn, grain, meal, or flour, is or shall be usually, openly, or publicly sold within the jurisdiction of any such person or persons as aforesaid, who shall request any such account to be given to him or them; or shall knowingly give in to any such meal weigher, clerk of the market, or other person who shall be appointed in pursuance of this act to give in and certify the price of grain, meal, and flour, any false or untrue price or prices of any grain, meal, or flour bought or sold or agreed so to be, or any price which hath been made by any deceitful means, then and in every such case he, she, or they so offending, on being convicted of any such offence by the oath of one or more credible witness or witnesses, or solemn affirmation of any credible witness or witnesses being a Quaker, or on the confession of the party accused, shall forfeit any sum not exceeding 10*l.* nor less than 40*s.* as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order every time he, she, or they shall so offend and be convicted of any such offence."

Magistrates may send for them. (*a*)

Sect. 19 enacts, "that if any such court, magistrate or magistrates, justice or justices as aforesaid, who shall have thought proper to have ordered any return to be made of the price of grain, meal, or flour, within their respective jurisdictions, shall, at any time within the space of three days after any such returns shall have been made, suspect that the same was not truly and *bonâ fide* made, then and in any such case it shall be lawful for any such court, magistrate or magistrates, justice or justices, within their respective jurisdictions, to summon before them respectively any person or persons who shall have bought or sold, or shall be suspected to have bought or sold, or agreed to buy or sell, any grain, meal, or flour within their respective jurisdictions, or who shall be thought to be likely to give any information concerning the premises, and to examine them respectively upon their several oaths touching the rates and prices the several sorts of grain, meal, and flour, or any of them, were there really and *bonâ fide* bought at or sold for, or agreed so to be by him, her, or them respectively at any time or times within the space of seven days preceding the summoning of him, her, or them respectively; and if any person or persons who shall be so summoned as aforesaid shall neglect or refuse to appear on such summons, (and proof shall be made on oath of such summons having been duly served upon him, her, or them for that purpose,) or if any person or persons so summoned shall appear and neglect or refuse to answer such lawful questions touching the premises as shall be proposed to him, her, or them by any such court, magistrate or magistrates, justice or justices as aforesaid within their respective jurisdictions, without some just or reasonable excuse to be allowed of by any such court, magistrate or magistrates, justice or justices as aforesaid, he, she, or they so offending, on being convicted of any such offence, either by the oath of one or more credible witness or witnesses, or his, her, or their own confession, before any such court, magistrate or magistrates, justice or justices, shall on every such conviction forfeit and pay any sum not exceeding 10*l.* and not less than 40*s.*

(*a*) See 53 Geo. III. c. 116, s. 10, 11.

as any such court, magistrate or magistrates, justice or justices shall think fit and order; and if any person who shall be so examined on oath shall wilfully forswear him or herself, every such person shall be subject and liable to be prosecuted as for perjury by indictment or information by due course of law; and if convicted shall be liable to the penalties persons convicted of wilful and corrupt perjury are subject and liable to; provided that the party or parties so summoned be not obliged to travel above five miles from the place or places of his, her, or their abode."

WHERE ASSIZE IS SET.

31 Geo. 2, c. 29.

Sect. 20 enacts, "that whenever any court as aforesaid, magistrate or magistrates, or justices of the peace, shall order any bread to be made within their respective jurisdictions, of or with the flour or meal of any other grain or grains than wheat, or to be mixed with the flour of wheat, or to be made with the flour or meal of any other sort or sorts of grain or grains, either separate or mixed together, all persons who shall make any bread for sale in any place where any such order or orders shall at any time be made, shall from time to time make bread with such mixed meal or flour in every such place and places in such manner as they shall be required and ordered by any such court, magistrate or magistrates, or justices as aforesaid within their respective jurisdictions, and shall from time to time make the same of such weight and goodness, and shall sell the same at such prices as any such court, magistrate or magistrates, or justices within their respective jurisdictions, shall from time to time order or direct; upon pain that every person who shall at any time offend in the premises, and shall be convicted of any such offence in the manner hereinafter prescribed by this act, shall forfeit any sum not exceeding 5*l.* nor less than 40*s.* as the magistrate or magistrates before whom any such offender or offenders shall be convicted shall think fit and order every time he, she, or they shall so offend and be convicted."

Baker of bread made of other grain than wheat shall conform to the assize.

By stat. 36 Geo. III. c. 22, s. 1, 2, 5, certain regulations were imposed upon the making and marking of bread, which are partly amended and partly repealed by stat. 41 Geo. III. U. K. c. 12, which recognizes the expediency of extending the rule imposed by stat. 36 Geo. III. c. 22, upon the proportion of wheaten flour to be used in the making of bread, and enacts, "that from and after the passing of this act, it shall be lawful for any person or persons whatever, in any place whatever, and whether any assize or price of bread shall be set in such place or not, to make, bake, sell, and expose to sale, peck loaves, half-peck loaves, quartern loaves, and half-quartern loaves, made of wheaten meal or flour of the whole produce of the wheat, or with the bran only, or the bran and pollards, or any proportion of the bran and pollards, or any other part of the produce of such wheat taken therefrom, at any price at which any person may be willing to purchase the same: provided always, that the price at which any bread allowed to be sold by the said act, or by this act, shall in all cases be less than the price of the wheaten bread upon which an assize or price shall be set, in pursuance of any act or acts of parliament, in the place where such other wheaten bread shall be made or sold, or exposed to sale, any act or acts, or law, custom, or usage, to the contrary notwithstanding."

41 Geo. 3, c. 12. U. K.

Any person may sell loaves of the whole produce of wheat, or with the bran, &c. taken therefrom, at a price less than the assize.

Sect. 2 enacts, "that from and after the passing of this act, so much of the said recited act as relates to the marking of any wheaten bread, or any mixed bread, or to the affixing, in a conspicuous part of any shop or window, any specification of the proportion of any mixtures composing any bread, shall be, and the same is hereby repealed."

Bread not to be marked in manner directed by former acts.

Sect. 3 enacts, "that from and after the passing of this act, every person who shall make or bake for sale any wheaten bread, made of any meal or flour of an inferior quality to the flour used for the bread on which an assize or price shall be set pursuant to any act or acts of parliament, or any mixed bread, shall imprint or distinctly mark upon every loaf of such wheaten bread a large Roman H, and upon every loaf of such mixed bread a large Roman X."

How to be marked.

Sect. 4 enacts, "that if any person or persons shall omit to imprint or

Not marking, or not well making, or adulterating bread (*a*)

(*a*) As to the offence of selling bad bread, *ante*, 406, 407, n.

WHERE ASSIZE IS SET.

distinctly mark any such wheaten or mixed bread pursuant to the directions of this act, or shall not well make any such wheaten or mixed bread, or shall adulterate the same with any mixture or ingredient, not allowed to be used in the making of bread; or shall make or bake for sale, or sell or expose to sale, any such peck loaves, half-peck loaves, quartern loaves, or half-quartern loaves, or any other loaves deficient in weight, according to the assize of loaves of such denominations respectively contained in any act or acts in force relating to the assize and price of bread, or according to any assize that shall be set in pursuance of any such act or acts, all and every person and persons offending therein shall be liable to the same or the like pains, penalties, forfeitures, and punishments, as any bakers or makers of bread for sale are liable to for any the like or similar misdemeanors, offences, or neglects, in making, selling, or exposing to or for sale any bread."

41 Geo. 3, c. 12, U. K.

Provisions of acts relating to weighing or adulterating bread extended to this act.

Sect. 5 enacts, "that all and every the powers, authorities, provisions, regulations, clauses, matters, and things, pains, penalties, and forfeitures, in any act or acts now in force contained, relating to the weighing any bread made for sale, or exposed to sale, or searching for any ingredient wherewith any meal, flour, or bread may be adulterated, shall be and are hereby extended and made applicable to, and shall be applied in the enforcing of the provisions of this act, in as full and ample a manner as if the same had been severally and separately re-enacted in this act."

Half-quartern loaves may be made.

Sect. 6 enacts, "that from and after the passing of this act, it shall and may be lawful to and for every baker and maker of bread for sale, and every seller of bread, to make, bake, and sell loaves, called half-quarter of a peck loaves, which shall weigh two pounds two ounces twelve drachms, and on which an assize and price shall be set as near as can be in proportion to other bread, according to the rules and regulations now in force by any act or acts for setting and regulating the price and assize of bread; and all and every the clauses, matters, and things in the said acts, or any other acts contained relating to setting and ascertaining any assize or price of bread, and also to the weighing any bread made for sale or exposed to sale, or adulterating any bread, or selling any bread before it has been baked a certain time, shall be, and are hereby extended and made applicable to the setting and ascertaining of such assize and price, and to the bakers, makers, and sellers of such loaves, called half-quarter of a peck loaves, in as full and ample a manner as if the same were repeated and severally re-enacted in this act."

Sect. 7 enacts, "that nothing in this act contained shall in anyways affect or infringe upon the rights and privileges of the city of London, or of the worshipful company of bakers of the said city."

36 Geo. 3, c. 22. Penalty if bread deficient in weight according to the assize. (a)

Only the genuine meal or flour.

And in case such loaves (viz. peck, half-peck, quartern, and half-quartern) be deficient in weight according to the assize prescribed by stat. 31 Geo. II. c. 29, or shall have any mixture in lieu of flour which is not genuine flour or article as it imports to be; or shall have any alum or preparation or mixture in which alum is an ingredient, or any mixture whatsoever, except only the genuine meal or flour of which the same purports to be made, and common salt, pure water, eggs, milk, yeast, and barm, or such other leaven as shall be allowed to be used in the making of bread; every person so offending shall be liable to the like penalties, to be recovered and applied in the same manner as is provided in stats. 31 Geo. II. c. 29, and 36 Geo. III. c. 22, s. 3.

Sect. 5 provides, "that this act shall not affect the rights of the bakers' company in London."

31 Geo. 2, c. 29. True making of bread.

Sect. 21 enacts, "that from and after the 24th day of June, 1758, the several sorts of bread which shall be made for sale, or sold, or exposed to or for sale, in any place or places, shall always be well made, and in their several and respective degrees, according to the goodness of the several sorts of meal or flour whereof the same ought to be made; and that no alum, or preparation or mixture in which alum shall be an ingredient, or any other mixture or ingredient whatsoever (except only the genuine meal or flour

(a) Vide *ante*, 405, 406. *R.* v. *Dixon*, 3 *M.* & *S.* 11.

which ought to be put therein, and common salt, pure water, eggs, milk, yeast, and barm, or such leaven as shall at any time be allowed to be put therein by the court, or person or persons who shall, by virtue of this act, have set an assize of bread for the place or places where any such leaven shall be used, and where no such assize shall have been set, then such leaven as any magistrate or magistrates, justice or justices of the peace, within his or their jurisdiction, shall allow to be used in making of bread) shall be put into, or in anywise used in making dough, or any bread to be sold, or as or for leaven to ferment any dough, or on any other account, in the trade or mystery of making bread, under any colour or pretence whatsoever, upon pain that every person (other than a servant or journeyman) who shall knowingly offend in the premises, and shall be convicted (*a*) of any such offence, either by his, her, or their own confession, or by the oath of one or more credible witness or witnesses, before any such magistrate or magistrates, justice or justices of the peace, within the limits of his or their jurisdiction, shall, on every such conviction, forfeit and pay any sum of money not exceeding 10*l.* and not less than 40*s.*; or shall, by warrant under the hand and seal, or hands and seals, of any such magistrate or magistrates, justice or justices, within his or their respective jurisdiction, be apprehended and committed to the house of correction, or some prison of the county, city, town corporate, borough, riding, division, or place, where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain and be kept to hard labour for any time not exceeding one calendar month, nor less than ten days, from the time of such commitment, as any such magistrate or magistrates, justice or justices, shall think fit and order; and if any servant or journeyman baker shall knowingly offend in the premises, and shall be convicted of any such offence, either by his, her, or their own confession, or by the oath of one or more credible witness or witnesses, before any such magistrate or magistrates, justice or justices of the peace, within the limits of his or their jurisdiction, he, she, or they who shall so offend, shall, on every such conviction, forfeit and pay any sum of money not exceeding 5*l.* and not less than 20*s.*; or shall, by warrant under the hand and seal, or hands and seals, of any such magistrate or magistrates, justice or justices, within his or their respective jurisdiction, be apprehended and committed to the house of correction, or some prison of the county, city, town corporate, borough, riding, division, liberty, or place, where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain and be kept to hard labour for any time not exceeding one calendar month, nor less than ten days, from the time of every such commitment, as any such magistrate or magistrates, justice or justices, shall think fit and order; and it shall and may be lawful for the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, out of the money forfeited, when recovered, to cause the offender's name, place of abode, and offence, to be published in some newspaper, which shall be printed or published in or near the county, city, or place, where any such offence shall have been committed."

WHERE ASSIZE IS SET.

31 Geo. 2, c. 29.

Sect. 22 enacts, "that from and after the said 29th day of September, no person shall knowingly put into any corn, meal, or flour, which shall be ground, dressed, bolted, or manufactured for sale, either at the time of grinding, dressing, bolting, or in anywise manufacturing the same, or at any other time or times, any ingredient, mixture, or thing whatsoever; or shall knowingly sell, offer, or expose to or for sale, any meal or flour of one sort of grain as or for the meal or flour of any other sort of grain, or any thing as or for, or mixed with, the meal or flour of any grain, which shall not be the real and genuine meal or flour of the grain the same shall import to be and ought to be, upon pain that every person who shall offend in the premises, and shall be thereof convicted in manner hereinafter prescribed, shall forfeit and pay for every such offence any sum not exceeding 5*l.* nor less than 40*s.*, as the

Adulterating meal. (*b*)

(*a*) See form, (No. 3), *post.*

(*b*) As to the offence of, at common law, see *ante*, 406, 407, note.

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magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit or order."

31 Geo. 2, c. 29. Undue mixtures of meal.

Sect. 23 enacts, "that from and after the said 29th day of September, no person shall knowingly put into any bread which shall be made for sale, any mixture of meal or flour of any other sort of grain than of the grain the same shall import to be, and shall be allowed to be made of, in pursuance of this act; or shall put into any bread which shall be made for sale, any larger or other proportion of any other or different sort or sorts of grain, or the meal or flour thereof, than what shall be appointed or allowed to be put therein by this act; or any mixture or thing as for or in lieu of flour, which shall not really be the genuine flour the same shall import to be, and ought to be; upon pain that every person who shall offend in the premises, and shall be convicted of any such offence in manner hereinafter prescribed, shall forfeit and pay any sum not exceeding 5*l.* nor less than 20*s.*, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order, every time he, she, or they, shall so offend and be convicted."

Penalty for deficiency in weight where there is an assize set.

Sect. 24 enacts, "that if any person or persons who shall make any bread for sale, or who send out, or sell, or expose to or for sale, any bread, shall at any time from and after the said 29th day of September, make, send out, sell, or expose to or for sale, any bread which shall be deficient in weight, according to the assize which shall be set for any such bread from time to time to be sold at, in pursuance of this act, he, she, or they, so offending in the premises, and being thereof convicted in manner hereinafter prescribed of any such offence, shall forfeit (*a*) and pay a sum not exceeding 5*s.* nor less than 1*s.* for every ounce of bread which shall at any time be wanting or deficient in the weight every such loaf ought to be of; and for every loaf of bread which shall be found wanting less than an ounce of the weight the same ought to be of, a sum not exceeding 2*s.* 6*d.* nor less than 6*d.*; as any such magistrate or magistrates, justice or justices, before whom any such bread which shall not be of the due weight the same ought to be, shall be brought, shall think fit or order, so as such bread which shall be complained of as wanting at any time in the weight the same ought to be of, in any city, town corporate, borough, liberty, or franchise, or the jurisdiction thereof, or within the weekly bills of mortality, shall from time to time be brought before some magistrate or magistrates, justice or justices, having jurisdiction in the premises, and shall be weighed before such magistrate or magistrates, justice or justices, within twenty-four hours after the same shall have been baked, sold, or exposed to or for sale; and so as such bread which shall be complained of as wanting at any time in the weight the same ought to be of, in any hundred, riding, division, liberty, rape, wapentake, or place, shall from time to time be brought before some justice or justices of the peace of such hundred, riding, division, liberty, rape, or wapentake, or other place, and shall be weighed before such justice or justices within three days after the same shall have been baked, sold, or exposed to or for sale; unless it shall be made out to the satisfaction of any such magistrate or magistrates, justice or justices, by or on the behalf of the party or parties against whom any such complaint or information shall be made, that such deficiency in weight wholly arose from some unavoidable accident in baking, or otherwise, or was occasioned by or through some contrivance or confederacy."

[But the time allowed for weighing bread after it is baked is by stat. 39 & 40 Geo. III. c. 74, s. 4, extended from twenty-four to forty-eight hours after the baking thereof.]

Penalty for selling for a greater price than is set by the assize.

Sect. 26 enacts, "that from and after the said 29th day of September, no baker, or other person or persons, shall ask, demand, or take, for any bread which he, she, or they, shall sell, or expose to or for sale, any greater or higher price than such bread shall be ascertained to be sold for or at by the court, magistrate or magistrates, or justices, hereby authorised to set the

(*a*) See form, (No. 7), *post*.

price and assize of bread within their respective jurisdictions; and that no baker, or other person who shall make any bread for sale, shall refuse or decline to sell any loaf or loaves of any of the sorts of bread which, in pursuance of this act, shall be allowed or ordered to be made, to any person or persons who shall tender ready money in payment for the same, at or for the price such bread, by the assize which shall have been set in respect thereof, shall be fixed at or ascertained to be sold for, when any such baker, or other person who shall make bread for sale, shall have any loaf of any such bread in his or their house, bakehouse, shop, or possession, to be sold, more than shall be requisite for the immediate necessary use of his, her, or their own family or customers; and which it shall be incumbent on such baker, or other person, who shall be complained of for refusing or declining to sell any such bread, to prove before the magistrate or magistrates, justice or justices, to whom any such complaint shall be made, if thereunto required by the party or parties who shall make any such complaint; upon pain that every person who shall be convicted of any such offence, in manner hereinafter prescribed, shall forfeit and pay a sum not exceeding forty shillings nor less than ten shillings, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order, every time he, she, or they, shall so offend and be convicted."

WHERE ASSIZE IS SET.

31 Geo. 2, c. 29.

And by stat 2 & 3 Edw. VI. c. 15, if any baker shall conspire not to sell bread but at certain prices, every such person shall forfeit ten pounds for the first offence; and if not paid in six days he shall be imprisoned twenty days, and have only bread and water for his sustenance; for the second offence twenty pounds, or the pillory (*b*); and for the third offence forty pounds or the pillory (*b*), and the loss of an ear, and to become infamous; and the sessions or leet may hear and determine the same.

Conspiring to raise the price. (*a*)

Sect. 27 enacts, "that from and after the said 29th day of September, no person shall sell, or offer to sale, any bread of an inferior quality to wheaten bread at a higher price than household bread shall be set at by the assize; and if any person shall offend in the premises, he shall forfeit and pay for every such offence, on being convicted thereof, either by his, her, or their confession, or by the oath of one or more credible witness or witnesses, before any magistrate or magistrates, justice or justices, within whose jurisdiction any such offence shall have been committed, the sum of twenty shillings."

Bread inferior to wheaten shall not be sold for a higher price than household.

Sect. 28 enacts, "that from and after the said 29th day of September, it shall be lawful for any magistrate or magistrates, justice or justices of the peace, within the limits of their respective jurisdictions, and also for any peace officer or officers, authorised by warrant under the hand and seal, or hands and seals, of any such magistrate or magistrates, justice or justices, and which warrant any such magistrate or magistrates, justice or justices, is and are hereby impowered to grant, at seasonable times in the day time, to enter into any house, shop, stall, bakehouse, warehouse, or outhouse, of or belonging to any baker or seller of bread, to search for, view, weigh, and try, all or any the bread which shall be there found: and if any bread, on any such search, shall be found to be wanting either in the goodness of the stuff whereof the same shall be made, or to be deficient in the due baking or working thereof, or shall be wanting in the due weight, or shall not be truly marked according to the directions of this act (*c*), or shall be of any other sort of bread than shall be allowed to be made by virtue of this act; any such magistrate or magistrates, justice or justices, peace officer or peace officers, within the limits of their respective jurisdictions, may seize the same; and any such magistrate or magistrates, justice or justices, may dispose thereof as he or they in his or their discretion shall think fit."

Houses may be entered to search for bread.

(*a*) This is a common law offence. See *post*, **Conspiracy**, Vol. I.

(*b*) The punishment of pillory is abolished, except in cases of perjury, by 56 Geo. III. c. 138. See **Pillory**, Vol. V.

(*c*) But as to marking, see stat. 41 Geo. III. U. K. c. 12, s. 3, *ante*, 449.

WHERE ASSIZE IS SET.

Sect. 29 enacts, "that if at any time after the said 29th of September information shall be given, on oath, to any magistrate or magistrates, justice or justices of the peace, that there is reasonable cause to suspect that any miller who grinds any grain for toll or reward, or any person or persons who doth or do dress, bolt, or in any wise manufacture any meal or flour for sale, or any maker of bread for sale, within the limits or jurisdiction of any such magistrate or magistrates, justice or justices, doth or do mix up with, or put into, any meal or flour ground or manufactured for sale, any mixture, ingredient, or thing whatsoever, not the genuine produce of the grain such meal or flour shall import and ought to be, or whereby the purity of any meal or flour, in the possession of any such miller, mealman, or baker, is or shall be in any wise adulterated; then, and in every such case, it shall be lawful for any such magistrate or magistrates, justice or justices, and also for any peace officer or officers, authorised by warrant or warrants to him or them directed, under the hand and seal, or hands and seals, of any magistrate or magistrates, justice or justices, within the limits of their respective jurisdictions, and which warrant or warrants every such magistrate and magistrates, justice and justices, is and are hereby impowered to grant, at all seasonable times in the day time, to enter into any house, mill, shop, bakehouse, stall, bolting-house, pastry warehouse or outhouse, of or belonging to any such miller, mealman, or baker, and to search and examine whether any mixture, ingredient, or thing, not the genuine produce of the grain such meal or flour shall import and ought to be, shall have been mixed up with, or put into, any meal or flour in the possession of any such miller, mealman, or baker, either in the grinding of any grain at the mill, or in the dressing, bolting, or manufacturing thereof, or whereby the purity of any meal or flour is or shall be in anywise adulterated; and if on any such search it shall appear that any offence hath been committed in any mill, bolting-house or other place allowed to be searched, contrary to the true intent of this act, then, and in every such case, it shall and may be lawful to and for any magistrate or magistrates, justice or justices of the peace, officer or officers, authorised as aforesaid respectively, within the limits of their respective jurisdiction, to seize and take any meal or flour which shall be deemed, on any such search, to have been adulterated, and all mixtures and ingredients which shall be found and deemed to have been used, or intended to be used, in or for any such adulteration; and such thereof as shall be seized by any peace officer or officers authorised as aforesaid, shall, with all convenient speed, after seizure thereof, be carried to some magistrate or magistrates, justice or justices of the peace, within the limits of whose jurisdiction the same shall have been so seized; and if any magistrate or magistrates, justice or justices of the peace, who shall make any seizure in pursuance of this act, or to whom any thing seized under the authority of this act shall be brought, shall adjudge that any mixture or ingredients, not the genuine produce of the grain any such meal or flour which shall have been so seized shall import and ought to be, shall have been put into any such meal or flour, or that the purity of any such meal or flour so seized was adulterated by any mixture or ingredient put therein; then, and in any such case, every such magistrate or magistrates, justice or justices, is and are hereby required, within the limits of their respective jurisdictions, to dispose of the same as he or they in his or their discretion shall, from time to time, think proper."

31 Geo. 2, c. 29. Mills and other places may be entered to search for adulterated meal.

Offence at common law.

As to the offence at common law of selling unwholesome bread, &c. see, *ante*, 406, 407, notes.

Penalty of having in possession unlawful ingredients.

Sect. 30 enacts, "that every miller, mealman, baker, or seller of bread as aforesaid, in whose house, mill, shop, bakehouse, stall, bolting-house, pastry, warehouse, out-house, or possession, any mixture or ingredient shall be found which shall be adjudged by any magistrate or magistrates, justice or justices, to have been lodged there with an intent to have adulterated the purity of meal, flour, or bread, shall, on being convicted of any such offence, either by his, her or their own confession, or by the oath of one or more credible witness or witnesses, before any such magistrate or magistrates, justice or justices of the peace, within whose jurisdiction any such offence shall have been committed, forfeit and pay for every such offence, a sum not exceeding ten

Not exceeding 10*l.* nor less than 40*s.*

pounds nor less than forty shillings, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order; unless the party or parties charged with any such offence shall make it appear to the satisfaction of the magistrate or magistrates, justice or justices, who shall find or seize any such mixture or ingredients, or before whom the same shall be brought, that such mixture or ingredients was or were not brought or lodged where the same was or were found or seized, with any design or intent to have been put into any meal or flour, or to have adulterated therewith the purity of any meal or flour, but that the same was in the place or places in which the same shall have been so found or seized as aforesaid for some other lawful purpose; and it shall and may be lawful for the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, out of the money forfeited, when recovered, to cause the offender's name, place of abode, and offence, to be published in some newspaper which shall be printed or published in or near the county, city, or place, where any such offence shall have been committed."

WHERE ASSIZE IS SET.

31 Geo. 2, c. 29.

Sect. 31 enacts, "that if any person or persons shall wilfully obstruct or hinder any search as hereinbefore is authorised to be made, or the seizure of any bread, or of any ingredients which shall be found on any such search, and deemed to have been lodged with an intent to adulterate the purity or wholesomeness of meal, flour, or bread, or shall wilfully oppose or resist any such search being made, or the carrying away any such ingredients as aforesaid, or any bread which shall be seized as not being made pursuant to this act, he, she, or they, so doing or offending in any of the cases aforesaid, shall, on being convicted thereof in manner herein after prescribed, forfeit and pay for every offence such sum, not exceeding five pounds nor less than twenty shillings, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order."

Penalty of obstructing search.

Sect. 32 enacts, "that no person who shall follow, or be concerned in, the business of a miller, mealman, or baker, shall be capable of acting, or shall be allowed to act, as a magistrate or justice of the peace under this act, or in putting in execution any of the powers in or by this act granted; and if any miller, mealman, or baker, shall presume so to do, he or they so offending in the premises shall, for every such offence, forfeit and pay the sum of fifty pounds to any person or persons who will inform or sue for the same, to be recovered in any of his Majesty's courts of record at Westminster by action of debt, bill, plaint, or information, wherein no essoin, wager of law, or more than one imparlance shall be allowed; or by way of summary complaint before the court of session in that part of Great Britain called Scotland."

Person interested not to act as a magistrate.

Sect. 33 enacts, "that if any person who shall carry on or follow the trade of a baker, shall, at any time after the 29th of September, make complaint to any magistrate or magistrates, justice or justices of the peace, within their jurisdiction, and make appear to them, by the oath of any credible witness, that any offence, which any person who shall so carry on or follow the said trade of a baker shall have been charged with, and shall have incurred and paid any penalty under this act, shall have been occasioned by or through the wilful neglect or default of any journeyman or other servant employed by or under any such person who shall so follow or carry on the said trade of a baker; then, and in any such case, any such magistrate or magistrates, justice or justices, may and are hereby required to issue out his or their warrant, under his or their respective hands and seals, for bringing any such journeyman or servant before any such magistrate or magistrates, justice or justices, or any magistrate or justice of the county, city, riding, division, or place, where the offender can be found; and on any such journeyman or servant being thereupon apprehended and brought before any such magistrate or magistrates, justice or justices, he or they, within their respective jurisdictions, is and are hereby authorised and required to examine into the matter of such complaint, and on proof thereof being upon oath to the satisfaction of any such magistrate or magistrates, justice or justices of the peace, who shall hear such said complaint, then any such magistrate or magistrates, jus-

Journeymen or servants offending.

WHERE ASSIZE IS SET.

31 Geo. 2, c. 29.

tice or justices, is and are hereby directed and authorised, by any order under his or their respective hand or hands, to adjudge and order what reasonable sum of money shall be paid by any such journeyman or servant to his master or mistress, as or by way of recompence to him or her for the money he or she shall have paid by reason of the wilful neglect or default of any such journeyman or servant; and if any such journeyman or servant shall neglect or refuse, on his conviction, to make immediate payment of the sum of money which any such magistrate or magistrates, justice or justices, shall order him to pay by reason of such his said wilful neglect or default, then any such magistrate or magistrates, justice or justices, within their respective jurisdictions, is and are hereby authorised and required, by warrant under his or their hands and seals, to cause every such journeyman or servant to be apprehended and committed to the house of correction, or some other prison of the county, riding, division, city, town corporate, borough, or place, in which any such journeyman or servant shall be apprehended or convicted, to be there kept to hard labour for any time not exceeding one calendar month from the time of such commitment, as to such magistrate or magistrates, justice or justices, shall seem reasonable, unless payment shall be made of the money ordered after such commitment, and before the expiration of the said term of one calendar month."

Manner of convicting offenders.

Sect. 34 enacts, "that it shall and may be lawful to and for the mayor of the said city of London for the time being, or any alderman of the said city, within the said city or liberties thereof; and to and for any other of his Majesty's justices of the peace, or any one of them, within their respective counties, ridings, divisions, cities, towns corporate, boroughs, liberties, or jurisdictions, to hear (*a*) and determine, in a summary way, all offences committed against the true intent and meaning of this act; and for that purpose to summon (*b*) before them, or any of them, within their respective jurisdictions, any party or parties accused of being an offender or offenders against the true intent and meaning of this act; and in case the party accused shall not appear on such summons, or offer some reasonable excuse for his default, then, upon oath by any credible witness of any offence committed contrary to the true intent and meaning of this act, any such magistrate or magistrates, justice or justices, shall issue his or their warrant or warrants for apprehending the offender or offenders within the jurisdiction of any such magistrate or magistrates, justice or justices; and upon the appearance of the party or parties accused, or in case he or they shall not appear on notice being given to or left for him or them at his or their usual place of abode, or if he or they cannot be apprehended on a warrant granted against him or them as herein-before is directed, then, and in any such case, any such magistrate or magistrates, justice or justices, is and are hereby authorised and required to proceed to make inquiry touching the matters complained of, and to examine any witness or witnesses who shall be offered on either side, on oath as aforesaid, and which every such magistrate or magistrates, justice or justices, is and are hereby authorised, impowered, and required to administer, and after hearing of the parties who shall appear, and the witnesses who shall be offered on either side, such magistrate or magistrates, justice or justices, shall convict (*c*) or acquit the party or parties accused; and if the penalty or money forfeited on any such conviction shall not be paid within the space of twenty-four hours after any such conviction, every such magistrate or magistrates, justice or justices, shall thereupon issue a warrant or warrants under his hand and seal, or their hands and seals respectively, directed to any peace officer or officers within their respective jurisdictions, impowering him or them to make distress (*d*) of the goods or chattels of the offender or offenders; and if any offender shall convey away his goods out of the jurisdiction of any such magistrate or magistrates, justice or justices, before whom he was convicted, or so much thereof that the penalty cannot be levied, then some

(*a*) See form, (No. 1), *post*.
(*b*) See form, (No. 2), *post*.
(*c*) See form, (No. 3), *post*.
(*d*) See form, (No. 4), *post*.

magistrate or justice within whose jurisdiction the offender shall have removed his goods, shall back the warrant granted by any such magistrate or justice, magistrates or justices, and thereupon the penalty forfeited shall be levied on the offender's goods and chattels by distress and sale thereof; and if within five days from the distress being taken, the money forfeited shall not be paid, the goods seized shall be appraised and sold, rendering the overplus (if any) after deducting the penalty or forfeiture, and the costs and charges of the prosecution, distress, and sale, to the owner; which charges shall be ascertained by the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall have been so convicted, or by the magistrate or justice who backed the warrant, if either of them shall continue alive, and if not, by some other magistrate or justice of the county, riding, division, city, or place in which the offender shall have been convicted; and for want of such distress, then every such magistrate or justice within whose respective jurisdiction any such offender or offenders shall reside or be, shall, on the application of any prosecutor or prosecutors, and proof made of the conviction and non-payment of the penalty and charges, by warrant under his hand and seal, commit (*a*) every such offender or offenders to the common gaol or house of correction of the city or county, riding, division, or place where such offender or offenders shall be found, there to remain for the space of one calendar month from the time of such commitment, unless after such commitment payment shall be made of the said penalty or forfeiture, costs and charges, before the expiration of the said one calendar month; and all such penalties and forfeitures, when recovered, shall be paid to the informer."

WHERE ASSIZE IS SET.

31 Geo. 2, c. 29.

Sect. 35 enacts, "that if it shall be made out by the oath of any credible person or persons to the satisfaction of any magistrate or magistrates, justice or justices, that any one within the jurisdiction of any such magistrate or magistrates, justice or justices, is likely to give or offer material evidence on behalf of the prosecutor of any offender or offenders against the true intent and meaning of this act, or on behalf of the person or persons accused, and will not voluntarily appear before such magistrate or magistrates, justice or justices, to be examined, and give his, her, or their evidence concerning the premises, every such magistrate or magistrates, justice or justices, is and are hereby authorised and required to issue his or their summons to convene every such witness and witnesses before any such magistrate or magistrates, justice or justices, at such seasonable time as in such summons shall be fixed; and if any person so summoned shall neglect or refuse to appear at the time by such summons appointed, and no just excuse shall be offered for such neglect or refusal, then (after proof by oath of such summons having been duly served upon the party or parties so summoned,) every such magistrate and magistrates, justice and justices, is and are hereby authorised and required to issue his or their warrant under his hand and seal, or their hands and seals, to bring every such witness or witnesses before any such magistrate or magistrates, justice or justices, and on the appearance of any such witness before any such magistrate or magistrates, justice or justices, every such magistrate or magistrates, justice or justices, is and are hereby authorised and impowered to examine upon oath every such witness; and if any such witness on his or her appearance, or on being brought before any such magistrate or magistrates, justice or justices, shall refuse to be examined on oath concerning the premises, without offering any just excuse for such refusal, any such magistrate or magistrates, justice or justices, within the limits of his or their jurisdiction, may by warrant under his hand and seal, or their hands and seals, commit any person or persons so refusing to be examined to the public prison of the county, riding, division, city, liberty, or place in which the person or persons so refusing to be examined shall be, there to remain for any time, not exceeding fourteen days nor less than three days, as any such magistrate or magistrates, justice or justices, shall direct.

Witnesses.

Sect. 36 enacts, "that the magistrate or magistrates, justice or justices, before whom any person shall be convicted in manner prescribed by this

(*a*) See form, (No. 6), *post*.

WHERE ASSIZE IS SET.

act, shall cause such respective conviction to be drawn up in the form or to the effect following; that is to say,

31 Geo. 2, c. 29.

Form of the conviction.

"} BE it remembered, that on this day of in the year of
to wit. § the reign of A. B. is convicted before Majesty's justices of
the peace for the said county of or for the riding or division of the
said county of or for the city, liberty, or town of [as the case shall
happen to be,] for and do adjudge him, [or her or them,] to pay and
forfeit for the same the sum of . Given under the day and year
aforesaid."

But by stat. 32 Geo. II. c. 18, s. 2, such of the penalties by the aforesaid act as thereby are not *particularly* disposed of, shall be distributed as follows: one moiety thereof, where any offender shall be convicted by confession, or oath of one witness, to him who shall inform and prosecute, and the other moiety thereof, and also all penalties and forfeitures incurred on the weighing, trying, or seizure of any bread by any magistrate or justice, shall be applied for the better carrying the said act into execution, as such magistrates or justices shall think fit.

Certiorari.

Sect. 37 enacts, "that no *certiorari*, letters of advocation, or of suspension shall be granted to remove any conviction or other proceedings had thereon in pursuance of this act." (a)

Appeal.

Sect. 38 enacts, "that if any person convicted of any offence punishable by this act, shall think him, her, or themselves aggrieved by the judgment of the magistrate or magistrates, justice or justices, before whom he, she, or they shall have been convicted, such person shall have liberty, from time to time, to appeal to the justices at the next general or quarter sessions of the peace, which shall be held for the county, riding, division, city, liberty, town, or place, where such judgment shall have been given, and that the execution of the said judgment shall in such case be suspended; the person so convicted entering into a recognizance at the time of such conviction, with two sufficient sureties in double the sum which such person shall have been adjudged to pay or forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the justices at their said next general or general quarter sessions; which recognizance the magistrate or magistrates, justice or justices, before whom such conviction shall be had, is and are hereby impowered and required to take; and the justices in the said general or general quarter sessions are hereby authorised and required to hear and finally determine the matter of every such appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party; and if, upon hearing the said appeal, the judgment of the magistrate or magistrates, justice or justices, before whom the appellant or appellants shall have been convicted, shall be affirmed, such appellant or appellants shall immediately pay down the sum, he, she, or they shall have been adjudged to forfeit, together with such costs as the justices in their said general or general quarter sessions shall award to be be paid to the prosecutor or informer, for defraying the expenses sustained by reason of any such appeal; and in default of the appellant's paying the same, any two such justices, or any one magistrate or justice of the peace, having jurisdiction in the place into which any such appellant or appellants shall escape, or where he, she, or they shall reside, shall and may by warrant under their hands and seals, or his hand and seal, commit every such appellant and appellants to the common gaol of the county, city, riding, division, or place where he, she, or they shall be apprehended, until he, she or they shall make payment of such penalty, and of the costs and charges which shall be adjudged on the conviction, to the informer; but if the appellant or appellants in any such appeal shall make good his, her, or their appeal, and be discharged of the said conviction, reasonable costs shall be awarded to the appellant or appellants against such informer or informers, who would, (in case of such conviction) have been entitled to the penalty to have been recovered as aforesaid

(a) See *R.* v. *Liverpool*, 3 *D.* & *R.* 275.

and which costs shall and may be recovered by the appellant or appellants against any such informer or informers, in like manner as costs given at any general or general quarter sessions of the peace are recoverable." WHERE ASSIZE IS SET.

Sect. 39 enacts, "that if any such conviction shall happen to be made within six days before any general or general quarter sessions of the peace which shall be held for the county, riding, division, city, town corporate, borough, or place where such conviction shall have been made, then the party or parties who shall think him, her, or themselves aggrieved by any such conviction, shall and may, on entering into a recognizance in manner and for the purposes before directed, be at liberty to appeal either to the then next or the next following general or general quarter sessions of the peace, which shall be held for any such county, riding, division, city, town corporate, borough, liberty, or place where any such conviction shall have been made." 31 Geo. 2, c. 29.

Sect. 40 enacts, "that every action or suit which shall be brought or commenced against any magistrate or magistrates, justice or justices, or any peace officer or officers, for any matter or thing done or committed by virtue of or under this act, shall be commenced within six months next after the fact committed, and not afterwards; and shall be laid or brought in the county, city, or place where the matter in dispute shall arise, and not elsewhere; and that the statute made in the twenty-fourth year of his present Majesty's reign, intituled 'An Act for rendering the justices of the peace more safe in the execution of their office, and for indemnifying constables and others acting in obedience to their warrants;' so far as the said act relates to the rendering the justices more safe in the execution of their office, shall extend and be construed to extend to the magistrate and magistrates, justice and justices of the peace, acting under the authority or in pursuance of this act; and that no action or suit shall be had or commenced against, nor shall any writ be sued out, or copy of any writ be served upon, any peace officer or officers, for any thing done in the execution of this act, until seven days after a notice in writing shall have been given to or left for him or them at his or their usual place of abode, by the attorney for the party intending to commence such action; which notice in writing shall contain the name and place of abode of the person intending to bring such action, and also of his attorney, and likewise the cause of action or complaint: and any peace officer or officers shall be at liberty, and may by virtue of this act, at any time within seven days after any such notice shall have been given to, or left for him, tender, or cause to be tendered, any sum or sums of money, as amends for the injury complained of, to the party complaining, or to the attorney named in any such notice; and if the same is not accepted of, the defendant or defendants in any such action or actions may plead such tender in bar of such action or actions, together with the general issue, or any other plea, with leave of the court in which the action shall be commenced; and if upon issue joined on such tender, the jury shall find the amends tendered to have been sufficient, they shall find a verdict for the defendant or defendants: and in every such case, or if the plaintiff shall become nonsuit, or discontinue his action; or if judgment shall be given for the defendant or defendants upon demurrer; or if any action or suit shall be brought after the time limited by this act for bringing the same, or shall be brought in any other county or place than as aforesaid, then, and in any such case, the jury shall find for the defendant or defendants; and the defendant or defendants shall be entitled to his or their costs; but if the jury shall find that no such tender was made, or that the amends tendered were not sufficient, or shall find against the defendant or defendants, on any plea or pleas by him or them pleaded, they shall then give a verdict for the plaintiff, and such damages as they shall think proper; and the plaintiff shall thereupon recover his costs against every such defendant and defendants." Indemnity of persons prosecuted for any thing done on this act.

Sect. 41 enacts, "that if any action or suit shall be commenced against any person or persons for any thing done in pursuance of this act, the defendant or defendants in any such action or suit may plead the general issue, and give this act, and the special matter, in evidence at any trial to be General issue.

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had thereupon, and that the same was done in pursuance and by the authority of this act; and if it shall appear so to have* done, or if a verdict shall be recorded for the defendant or defendants, or if the plaintiff shall be non-suited, or discontinue his action after the defendant or defendants shall have appeared, or if judgment shall be given upon a verdict of demurrer against the plaintiff or plaintiffs, the defendant or defendants in every such action shall and may recover treble costs, and have the like remedy for the same as any defendant or defendants hath or have in other cases by law for recovery of his, her, or their costs."

31 Geo. 2, c. 29.

* *Sic.*

Limitation of prosecution.

Sect. 42 enacts, "that no person shall be convicted in manner aforesaid for any of the before-mentioned offences, unless the prosecution, in order to such conviction, be commenced within three days next after the offence committed."

Saving of the rights of others.

Sect. 43 enacts, "that this act, or any thing herein contained, shall not extend to prejudice any right or custom of the city of London, or the practice there used, or any right or custom of any lord or lords of any leet, to set, inquire, and punish the breach of assize of bread, within their respective leets or views of frank-pledge, or the right of any clerk or clerks of the market in any place."

Sect. 44 enacts, "that neither this act, or any thing herein contained, shall extend, or be construed to extend, to prejudice the ancient right or custom of the dean of the collegiate church of St. Peter, Westminster, or the high steward of the city of Westminster, and the liberties thereof, or his deputy, or any of them, to set, ascertain, and appoint the assize and weight of all sorts of bread to be sold or exposed to sale within the said city of Westminster, and the liberties thereof; but they, and every of them, shall and may severally and respectively, from time to time, as there shall be occasion, set, ascertain, and appoint within the said city of Westminster and the liberties thereof, according to the true intent and meaning of this act, the assize and weight of all sorts of bread which shall be made, sold, or exposed to sale by any person or persons within the limits of the said city of Westminster, and the liberties thereof; and shall and may inquire and punish the breach of every such assize and weight of bread, as fully and freely in all respects as they, or any of them, have heretofore been accustomed to do, and as if this act had never been made; any thing herein contained to the contrary thereof notwithstanding."

Sect. 45 enacts, "that neither this act, nor any thing herein contained, shall extend, or be construed to extend, to prejudice the ancient right or custom of the two Universities of Oxford or Cambridge, or either of them, or of their or either of their clerks of the market, or the practice within the several jurisdictions of the said Universities, or either of them, used to set, ascertain, and appoint the assize and weight of all sorts of bread to be sold or exposed to sale within their several jurisdictions; but that they, and every of them, shall and may severally and respectively, from time to time, as there shall be occasion, set, ascertain, and appoint, within their several and respective jurisdictions, the assize and weight of all sorts of bread to be sold or exposed to sale by any baker or other person whatsoever within the limits of their several jurisdictions; and shall and may inquire and punish the breach thereof, as fully and freely in all respects as they used to do, and as if this act had never been made; any thing herein contained to the contrary thereof notwithstanding."

Observations respecting indemnifying clause.

Note.—The reason why the indemnifying statute, 24 Geo. II. c. 44, is hereby particularly mentioned, seems to be upon the account of such magistrates or chief officers who are empowered to act in setting the assize and otherwise carrying this act into execution, that are not justices of the peace; as for instance, the court of mayor and aldermen, in most of the boroughs and towns corporate, consisteth of persons some of whom are not justices; and in others, especially the more ancient, not one of them is a justice of the peace (the corporation having been established before there were any justices of the peace in the kingdom): but yet they are enabled specially to proceed in this and in many other instances by act of parliament. Which observa-

tion is applicable also to the power herein given to them to issue precepts, to examine upon oath, and the like; which power is implied in the general office of a justice of the peace, but is not applicable to those others without special words granting the same. So also it was necessary for the act to be particular with regard to the indemnification of constables and others acting under such warrants; as also of the meal-weighers, clerks of the market, and others appointed to make returns of the price of grain, flour, and the like, who are not under the general protection of the law for their proceedings in these matters, and therefore require an express declaration in the act itself of their authority and privilege in this respect.

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III. Baking Bread where no Assize is set.

The stat. 59 Geo. III. c. 36, recites that "whereas an act was passed in the third year of the reign of his present Majesty, intituled, 'An Act for explaining and amending an act made in the thirty-first year of the reign of his late Majesty King George the Second,' intituled, 'An Act for the due making of bread, and to regulate the price and assize thereof, and to punish persons who shall adulterate meal, flour, or bread:' and whereas another act was passed in the thirty-third year of the reign of his present Majesty, intituled, 'An Act to amend an act made in the thirty-first year of his late Majesty King George the Second, intituled 'An Act for the due making of bread, and to regulate the price and assize thereof, and to punish persons who shall adulterate meal, flour, or bread,' with respect to the time within which certain prosecutions directed by the said act are to be brought:" and whereas another act was passed in the forty-first year of the reign of his present Majesty, intituled, 'An Act to amend an act made in the thirty-sixth year of the reign of his present Majesty, intituled, 'An Act to permit bakers to make and sell certain sorts of bread:' and whereas it is expedient that the said recited acts, and all other acts which relate to bread to be sold out of the city of London, and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the Royal Exchange, where no assize is set, should be repealed, and that other and more effectual provisions should be established for punishing persons who shall adulterate meal, flour, or bread, or who shall sell bread deficient in its due weight, and for better regulating the making and sale of bread within the limits aforesaid:' and by section 1 enacts, "that the said several recited acts of the third, thirty-third, and forty-first years of the reign of his present Majesty, and all and every other act and acts of parliament which relate to the making and selling of bread where no assize is set; or the punishment of persons who shall adulterate meal, flour, or bread, or who sell bread deficient in its due weight, so far as respects the bread, meal, and flour to be made and sold out of the city of London and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the Royal Exchange, where no assize is set, shall be and the same are hereby repealed."

59 Geo. 3, c. 36.
3 Geo. 3, c. 11.
33 Geo. 3, c. 37.
41 Geo. 3, c. 12.
Recited acts repealed.

Sect. 2. "That it shall be lawful for any person or persons whomsoever, out of the city of London and the liberties thereof, and beyond the weekly bills of mortality, and ten miles of the Royal Exchange, to make, bake, sell, and expose for sale, any bread made of flour or meal, of wheat, barley, rye, oats, buckwheat, Indian corn, peas, beans, rice, and every other kind of grain whatsoever, and potatoes, or any of them, and with any common salt, pure water, eggs, milk, yeast, barm, leaven, and potato yeast, and mixed in such proportions as the makers or sellers of bread shall think fit; any law, usage, or custom to the contrary thereof in anywise notwithstanding." (See also 1 & 2 Geo. IV. c. 50, s. 2, *post*, 470.)

Materials with which bread may be made and sold.

Sect. 3. "That although no assize of bread shall be set in pursuance of an act passed in the fifty-third year of the reign of his present Majesty, intituled, 'An Act to alter and amend two acts of the thirty-first year of King George the Second, and the thirteenth year of his present Majesty, so far as relates to the price and assize of bread to be sold out of the city of London and the liberties thereof, and beyond the weekly bills of mortality, and ten miles of

No assize and priced bread to be made at the same time in the same place.
53 Geo. 3, c. 116.

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the Royal Exchange,' no loaf or loaves of bread called or deemed assize loaf or loaves, in the tables of the assize and price of bread annexed to the said last-mentioned act enacted and referred to, and the weight of which varies according to the variation in the price of grain, shall be made for sale, sold, or carried out for sale, or be offered or exposed to or for sale, or be allowed to be sold, where any loaf or loaves of the bread called or deemed priced loaf or loaves, in the tables of the assize and price of bread, in and by the said act of the fifty-third year of the reign of his present Majesty enacted and referred to, and the price of which varies according to the variation in the price of grain, shall at the same time be made for sale, or be allowed to be sold (that is to say) no assize loaves of the price of three-pence, and priced loaves called half-quartern loaves, nor assize loaves of the price of sixpence, and priced loaves called quartern loaves, nor assize loaves of the price of twelve-pence, and priced loaves called half-peck loaves, nor assize loaves of the price of eighteen-pence, and priced loaves called peck loaves, shall at the same time be made for sale, sold or carried out for sale, or be offered or exposed to or for sale, or allowed to be sold by any baker or other seller of bread, in his, her, or their shop, dwelling-house, or premises, that unwary persons may not be imposed upon and injured by buying assize loaves referred to in the said tables as or for priced loaves so referred to in the said tables, or by buying such priced loaves as or for such assize loaves; and every person who shall offend therein, and be convicted of any such offence in manner hereinafter mentioned, shall for every such offence forfeit and pay a sum not exceeding forty shillings nor less than ten shillings, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall from time to adjudge and determine." (See also 1 & 2 Geo. IV. c. 50, s. 3, *post*, 470.)

59 Geo. 3, c. 36.

Penalty upon offenders.

Bakers not to use alum, &c. in making bread for sale. (a)

Sect. 4. "That no person or persons making or who shall make bread for sale, out of the city of London and the liberties thereof, and beyond the weekly bills of mortality, and ten miles of the Royal Exchange, nor any journeyman or other servant of any such person or persons as last mentioned, shall at any time or times, in the making of bread for sale, put any alum or preparation, or mixture in which alum shall be an ingredient, or any other preparation or mixture in lieu of alum, into the dough of such bread, or in anywise use or cause to be used any alum or any other unwholesome mixture, ingredient, or thing whatsoever in the making of such bread, on any account or under any colour or pretence whatsoever, upon pain that every such person, whether master or journeyman or other person, who shall knowingly offend in the premises, and shall be convicted of any such offence, either by his, her, or their own confession, or upon the oath (or being of the people called Quakers, affirmation) of one or more witness or witnesses, shall on every such conviction forfeit and pay any sum of money not exceeding 5*l.*, or in default of payment thereof, shall, by warrant under the hand and seal or hands and seals of the magistrate or magistrates, justice or justices, before whom such offender shall be convicted, be committed to the house of correction, or some prison of the city, county, borough, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain for any time not exceeding six calendar months from the time of such commitment, unless such penalty shall be sooner paid, as any such magistrate or magistrates, justice or justices shall think fit to order and direct; and it shall be lawful for the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, to cause the offender's name, place of abode, and offence to be published in some newspaper which shall be printed, published, or circulated in or near the county, division, riding, or district where the offence shall be committed, and to defray the expense of publishing the same out of the money to be forfeited as last mentioned, if any shall be paid or recovered." (See also 1 & 2 Geo. IV. c. 50, s. 4, *post*, 471.)

Penalty for adulterating corn,

Sect. 5. "That no person shall knowingly put into corn, meal, or flour which

(a) As to the offence of selling bad bread, see *ante*, 406, 407.

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shall be ground, dressed, bolted, or manufactured for sale, out of the said city of London and the liberties thereof, and beyond the weekly bills of mortality, and ten miles of the Royal Exchange, either at the time of grinding, dressing, bolting, or in anywise manufacturing the same, or at any other time or times, any ingredient, mixture, or thing whatsoever, or shall knowingly sell, offer, or expose to or for sale any meal or flour of one sort of grain as for the meal or flour of any other sort of grain, or any thing as or for or mixed with the meal or flour of any grain, which shall not be the real and genuine meal or flour of the grain the same shall import to be and ought to be, upon pain that every person who shall offend in the premises, and shall be thereof convicted in manner hereinafter mentioned, shall forfeit and pay for every such offence any sum not exceeding *5l.*, as the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted shall think fit or order and direct." (See also 1 & 2 Geo. IV. c. 50, s. 5, *post*, 471.)

50 Geo. 3, c. 36. meal, or flour, whether at the time of grinding, dressing, or bolting, &c. or of selling the meal or flour of one sort of grain for another sort.

Sect. 6. "That every loaf of every sort of bread made of the meal or flour of any other grain than wheat, which shall be made for sale, or be sold, carried out, offered, or exposed in anywise to or for sale, out of the city of London and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the Royal Exchange, shall be marked with a large Roman (M.); and that every person who shall make for sale, sell, offer, or expose to or for sale, any loaf of any such sort of bread which shall be made of the meal or flour of any other grain than wheat, which shall not be marked as hereinbefore directed, shall, for every time he, she, or they shall so offend in the premises, and be thereof convicted in manner hereinafter directed, forfeit and pay a sum not exceeding 40*s.* for every loaf of such bread which shall not be so marked, as the magistrate or magistrates, justice or justices, before whom any such person shall be convicted, shall from time to time adjudge and determine." (See also 1 & 2 Geo. IV. c. 50, s. 6, *post*, 471.)

Loaves made of the meal of any other grain than wheat, to be marked with the letter (M), under a penalty for neglect.

Sect. 7. "That it shall be lawful for any magistrate or magistrates, justice or justices of the peace, within the limits of their respective jurisdictions, and also for any peace officer or officers of any parish or place where any miller, mealman, or baker, or other person who shall grind grain, or dress or bolt meal or flour, or make bread for reward or sale, out of the city of London and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the Royal Exchange, authorised by warrant under the hand and seal or hands and seals of any such magistrate or magistrates, justice or justices, and which warrant any such magistrate or magistrates, justice or justices is and are hereby empowered to grant, at seasonable times in the day to enter into any house, mill, shop, stall, bakehouse, boltinghouse, pastry warehouse, outhouse, or ground, of or belonging to any miller, mealman, or baker, or other person who shall grind grain or dress or bolt meal or flour, or make bread for reward or sale as aforesaid, and to take with him or them, to his or their assistance, one or more master miller, mealman, or baker, millers, mealmen, or bakers, and to search or examine whether any mixture, ingredient, or thing, not the genuine produce of the grain such meal or flour shall import or ought to be, shall have been mixed up with or put into any meal or flour in the possession of such miller, mealman, or baker, either in the grinding of any grain at the mill, or in the dressing, bolting, or manufacturing thereof, whereby the purity of any meal or flour is or shall be in anywise adulterated, or whether any alum or other ingredient shall have been mixed up with or put into any dough or bread in the possession of any such baker or other person, whereby any such dough or bread is or shall be in anywise adulterated; and also to search for alum or any other ingredient which may be intended to be used in or for any such adulteration or mixture; and if on any such search it shall appear that any such meal, flour, dough, or bread so found, shall have been so adulterated by the person in whose possession it shall then be, or any alum or other ingredient shall be found, which shall seem to have been deposited there in order to be used in the adulteration of meal, flour, or bread, then and in every such case it shall be lawful for such magistrate or magistrates, justice or justices of the peace, or officer or officers authorised as aforesaid respectively, within the limits of their respective jurisdictions, to

Magistrates, or peace officers by their warrants, may search bakers' premises, and if any adulterated flour, bread, &c. be found, it may be seized and disposed of.

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59 Geo. 3, c. 36.

seize and take any meal, flour, dough, or bread which shall be found in any such search, and deemed to have been adulterated; and all alum and other ingredients and mixtures which shall be found and deemed to have been used or intended to be used in or for any such adulteration as aforesaid, and such part thereof as shall be seized by any peace officers, authorised as aforesaid, shall, with all convenient speed after seizure, be carried to some magistrate or magistrates, justice or justices of the peace, within the limits of whose jurisdiction the same shall have been so seized; and if any magistrate or magistrates, justice or justices, who shall authorise any such seizure to be made in pursuance of this act, or to whom any thing so seized under the authority of this act shall be brought, shall adjudge that any such meal, flour, dough, or bread so seized has been adulterated by any unwholesome or improper mixture or ingredient put therein, or shall adjudge that any alum or other ingredient or mixture, so found as aforesaid, have been deposited or kept where so found, for the purpose of adulterating meal, flour, or bread, then and in any such case every magistrate or magistrates, justice or justices of the peace, is and are hereby required, within the limits of their respective jurisdictions, to dispose of the same as he or they in his or their discretion shall from time to time think proper." (See also 1 & 2 Geo. IV. c. 50, s. 7, *post*, 472.)

Penalty on bakers in whose premises shall be found any ingredients for adulterating flour, &c.

Sect. 8. "That every miller, mealman, or baker, out of the city of London and the liberties thereof, and beyond the weekly bills of mortality, and ten miles of the Royal Exchange, in whose house, mill, shop, stall, bakehouse, boltinghouse, pastry warehouse, outhouse, ground or possession, any alum, or other ingredient or mixture shall be found, which shall, after due examination, be adjudged by any magistrate or magistrates, justice or justices of the peace, to have been deposited there for the purpose of being used in adulterating meal, flour, or bread, shall, on being convicted of any such offence, either by his, her, or their own confession, or by the oath or affirmation as aforesaid of one or more credible witness or witnesses, forfeit and pay on every such conviction any sum of money not exceeding 5*l*., or in default of payment thereof, shall, by warrant under the hand and seal, or hands and seals of the magistrate or magistrates, justice or justices, before whom such offender shall be convicted, be committed to the house of correction, or some other prison of the city, county, or place, where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain for any time not exceeding six calendar months from the time of such commitment, unless such penalty shall be sooner paid, as any such magistrate or magistrates, justice or justices, shall think fit and order, unless the party or parties charged with any such offence shall make it appear to the satisfaction of the magistrate or magistrates, justice or justices, before whom any such alum or other ingredient or mixture shall be brought, that such alum or other ingredient or mixture was not nor were brought or lodged, where the same was or were found or seized, with any design or intent to have been put into any meal, flour, or bread, or to have adulterated therewith the purity of any meal, flour, or bread, but that the same was or were in the place or places in which the same shall have been so found or seized as aforesaid for some other lawful purpose; and that it shall be lawful for the magistrate or magistrates, justice or justices before whom any such offender shall be convicted, to cause the offender's name, place of abode, and offence to be published in some newspaper which shall be printed, published, or circulated in or near the county, division, riding, or district where the said offence shall be committed, and to defray the expense of publishing the same out of the money to be forfeited as last-mentioned, if any shall be paid or recovered." (See also 1 & 2 Geo. IV. c. 50, s. 8, *post*, 472.)

Penalty for obstructing any search, or the seizure of any flour, &c. or ingredients to adulterate it.

Sect. 9. "That if any person or persons shall wilfully obstruct or hinder any such search as hereinbefore is authorised to be made, or the seizure of any meal, flour, dough, or bread, or of any alum or other ingredient or mixture which shall be found on any such search, and deemed to have been lodged with an intent to adulterate the purity or wholesomeness of any

meal, flour, dough, or bread, or shall wilfully oppose or resist any such search being made, or the carrying away any such alum or other ingredient or mixture as aforesaid, or any meal, flour, dough, or bread which shall be seized as being adulterated, or as not being made pursuant to this act, he, she, or they, so doing or offending in any of the cases last aforesaid, shall for every such offence, on being convicted thereof, forfeit and pay such sum, not exceeding 40*s.*, nor less than 20*s.*, as the magistrate or magistrates, justice or justices before whom such offender or offenders shall be convicted, shall think fit and order and direct." (See also 1 & 2 Geo. IV. c. 50, s. 8, p. 472.)

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59 Geo. 3, c. 38.

Sect. 10, as to *weight* of bread, is repealed by stat. 1 & 2 Geo. IV. c. 50, s. 1, p. 570.

Sect. 12. "That no master, mistress, journeyman, or other person respectively, exercising or employed in the trade or calling of a baker out of the city of London and the liberties thereof, and beyond the weekly bills of mortality, and ten miles of the Royal Exchange, shall, on the Lord's Day, commonly called Sunday, or any part thereof, make or bake any household or other bread, rolls or cakes of any sort or kind, or shall on any part of the said day sell or expose to sale, or permit or suffer to be sold or exposed to sale, any bread, rolls, or cakes of any sort or kind, except to travellers, or in cases of urgent necessity; or bake or deliver, or permit or suffer to be baked or delivered, any meat, pudding, pie, tart, or victuals, at any time after half-past one of the clock in the afternoon of that day, or in any other manner exercise the trade or calling of a baker, or be engaged or employed in the business or occupation thereof, save and except as aforesaid, and also save and except so far as may be necessary to setting and superintending the sponge to prepare the bread or dough for the following day's baking; and that no meat, pudding, pie, tart, or victuals shall be brought to or taken from any bakehouse during the time of divine service in the church, parish, hamlet, or place, where the same is situate, nor within one quarter of an hour of the time of commencement thereof; and every person offending against the foregoing regulations, or any one or more of them, and being thereof convicted before any magistrate or magistrates, justice or justices of the peace of the city, county, or place where the offence shall be committed, within two days from the commission thereof, either upon the view of such magistrate or magistrates, justice or justices of the peace, or on confession by the party, or proof by one or more witness upon oath or affirmation as aforesaid, shall for every such offence forfeit and pay, and undergo the forfeiture, penalty, and punishment hereinafter mentioned; (that is to say), for the first offence the penalty of 5*s.*, for the second offence the penalty of 10*s.*, and for the third and subsequent offence respectively, the penalty of 20*s.*; and shall moreover on every such conviction bear and pay the costs and expenses of the prosecution, such costs and expenses to be assessed, settled, and ascertained by the magistrate or magistrates, justice or justices of the peace convicting; and the amount thereof, together with such part of the penalty as such magistrate or magistrates, justice or justices of the peace shall think proper, to the prosecutor or prosecutors for loss of time in instituting and following up the prosecution, at a rate not exceeding 3*s. per diem*, and be paid to the prosecutor or prosecutors for his and their own use and benefit; and the residue of such penalty to be paid to such magistrate or magistrates, justice or justices of the peace, and within seven days after his or their receipt thereof, to be transmitted by him or them to the churchwardens or overseers of the parish or parishes where the offence shall be committed, to be applied for the benefit of the poor thereof; and in case the whole amount of the penalty and of the costs and expenses as aforesaid be not paid within three days after the conviction of the offender or offenders, such magistrate or magistrates, justice or justices of the peace shall and may, by warrant under their respective hands and seals or hand and seal, direct the same to be levied and raised by distress and sale of the goods and chattels of the offender or offenders; or in default or insufficiency of such distress, to commit the offender or offenders to the house of correction, on a first offence for any time not exceeding fourteen days, and on the second or any subsequent offence,

Baking on Sundays.

Exception for setting and superintending sponge.

Penalty.

Recovery and application thereof.

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for any time not exceeding twenty-one days, unless the whole of the penalty, costs, and expenses be sooner paid and discharged." (See also 1 & 2 Geo. IV. c. 50, s. 11, p. 473.)

50 Geo. 3, c. 26.

No miller, mealman, or baker, may act as a justice of peace in the execution of this act, on penalty of 50*l*.

Sect. 13. "That no person who shall follow or be concerned in the business of a miller, mealman, or baker, shall be capable of acting or shall be allowed to act as a magistrate or justice of the peace under this act, or in putting in execution any of the powers in or by this act granted; and if any miller, mealman, or baker shall presume so to do, he or they so offending in the premises shall for every such offence forfeit and pay the sum of 50*l*. to any person or persons who shall inform or sue for the same, to be recovered in any of his Majesty's courts of record at Westminster, by action of debt, bill, plaint, or information, wherein no essoin, wager of law, or more than one imparlance shall be allowed." (See also 1 & 2 Geo. IV. c. 50, s. 12, p. 473.)

All offenders against this act may be heard in a summary way by magistrates within their respective jurisdictions.

Sect. 14. "That it shall be lawful for the mayor or any alderman of any city, and to and for any other of his Majesty's justices of the peace or any of them, within their respective counties, divisions, cities, towns corporate, liberties, or jurisdictions, beyond the city of London and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the Royal Exchange, to hear and determine in a summary way all offences committed against the true intent and meaning of this act, and for that purpose to summon before them or any of them, within their respective jurisdictions, any party or parties accused of being an offender or offenders against the true intent and meaning of this act; and in case the party accused shall not appear on such summons, or offer some reasonable excuse for his default, then upon oath or affirmation as aforesaid, by any credible witness or witnesses, of any offence committed contrary to the true intent and meaning of this act, any such magistrate or justice shall issue his warrant or warrants for apprehending the offender or offenders within the jurisdiction of any such magistrate or justice; and upon the appearance of the party or parties accused, or in case he, she, or they shall not appear on notice being given to or left for him, her, or them, at his, her, or their usual place of abode, or if he, she, or they cannot be apprehended on a warrant granted against him, her, or them, as is hereinbefore directed, then and in every such case any such magistrate or justice is and hereby authorised and required to proceed to make inquiry touching the matters complained of, and to examine any witness or witnesses who shall be offered on either side, on oath or affirmation as aforesaid, and which oath and affirmation every such magistrate and justice is and are hereby authorised, empowered, and required to administer, and after hearing the parties who shall appear, and the witnesses who shall be offered on either side, such magistrate or justice shall convict or acquit the party or parties accused; and if the penalty or money forfeited on any such conviction shall not be paid within the space of twenty-four hours after any such conviction, every such magistrate or justice shall thereupon issue a warrant or warrants under his hand and seal, directed to any peace officer or officers within their respective jurisdictions, and thereby require him or them to make distress of the goods or chattels of the offender or offenders within such their respective jurisdictions, to satisfy such penalty or money forfeited, and the costs of the prosecution and distress; and if any offender should convey away his goods out of the jurisdiction of any such magistrate or justice before whom he or she was convicted, or so much thereof that the penalty or money forfeited cannot be levied, then some magistrate or justice within whose jurisdiction the offender shall have removed his goods, shall back the warrant granted by any such magistrate or justice as aforesaid, and thereupon the penalty forfeited shall be levied on the offender's goods and chattels by distress and sale; and if within five days from the distress being taken, the penalty or money forfeited and costs shall not be paid, the goods seized shall be appraised and sold, rendering the overplus (if any), after deducting the penalty or forfeitures, and the costs and charges of the prosecution, distress, and sale, to the owner or owners thereof, which charges shall be ascertained by the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall have been so convicted, or by the magistrate or justice who

Penalties may be levied by distress and sale.

backed the warrant, if then alive, and if not, by some other magistrate or justice of the city, county, division, or place, in which the offender shall have been convicted, on application for that purpose to be made to any such magistrate or justice; and for want of such distress, then every such magistrate or justice within whose respective jurisdiction any such offender or offenders shall reside or be, shall, on the application of any prosecutor or prosecutors, and proof on oath or affirmation as aforesaid made of the conviction and nonpayment of the penalty and charges, by warrant under his hand and seal commit every such offender or offenders to the common gaol or house of correction of the city, county, division, or place, where such offender or offenders shall be found, there to remain for the space of one calendar month from the time of such commitment, unless after such commitment payment shall be made of the said penalty or forfeiture, and costs and charges, before the expiration of the said one calendar month; and all such penalties and forfeitures, when recovered, shall be paid, one half to the informer, and the other half shall be paid to the magistrate or magistrates, justice or justices of the peace, and within seven days after his or their receipt thereof to be transmitted by him or them to the churchwardens or overseers of the parish or parishes where the offence shall be committed, to be applied for the benefit of the poor thereof." (See also 1 & 2 Geo. IV. c. 50, s. 13, p. 473.)

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59 Geo. 3, c. 36.

Power to summon and compel the attendance of witnesses.

Sect. 15. "That if it shall be made out by the oath (or affirmation as aforesaid) of any credible person or persons to the satisfaction of any magistrate or magistrates, justice or justices, that any person or persons within the jurisdiction of any such magistrate or magistrates, justice or justices, is or are likely to give or offer material evidence on behalf of the prosecutor of any offender or offenders against the true intent and meaning of this act, or on behalf of the person or persons accused, and will not voluntarily appear before such magistrate or magistrates, justice or justices, to be examined and give his, her, or their evidence upon oath or affirmation as aforesaid concerning the premises, every such magistrate or magistrates, justice or justices, is and are hereby authorised and required to issue his or their summons to convene every such witness and witnesses before any such magistrate or magistrates, justice or justices, at such seasonable time or times as in such summons shall be fixed; and if any person or persons so summoned shall neglect or refuse to appear after having been paid or tendered a reasonable sum for his, her, or their costs, charges, and expenses at the time by such summons appointed, and no just excuse shall be offered for such neglect or refusal then after proof upon oath or affirmation as aforesaid of such summons having been duly served upon the party or parties so summoned, every such magistrate or magistrates, justice or justices, is and are hereby authorised and required to issue his or their warrant or warrants under his hand and seal or their hands and seals to bring every such person or persons before any such magistrate or magistrates, justice or justices; and on the appearance of any such person or persons before such magistrate or magistrates, justice or justices, every such magistrate or justice is and are hereby authorised and empowered to examine on oath (or affirmation) every such witness; and if any such person or persons on his, her, or their appearance, or on being brought before any such magistrate or magistrates, justice or justices, shall refuse to be examined upon oath (or affirmation) concerning the premises without offering any just excuse for such refusal, any such magistrate or magistrates, justice or justices, within the limits of his or their jurisdiction, may by warrant under his hand and seal or their hands and seals commit any person or persons so refusing to be examined to the public prison of the city, county, division, liberty, or place in which the person or persons so refusing to be examined shall be, there to remain for any time not exceeding fourteen days as any such magistrate or magistrates, justice or justices, shall order and direct."

Persons refusing may be committed for any time not exceeding 14 days.

Persons forswearing themselves guilty of perjury.

Sect. 16. "That if any person or persons shall take any oath (or affirmation) by this act directed to be taken, or be examined on oath (or affirmation) by virtue or in the execution of this act, shall wilfully forswear or shall falsely affirm himself, herself, or themselves, every such person or persons

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shall be subject and liable to be prosecuted for perjury by indictment or information according to due course of law; and if convicted thereof shall be subject and liable to the like pains and penalties which persons convicted of wilful and corrupt perjury are subject and liable to." (See also 1 & 2 Geo. IV. c. 50, s. 15, p. 473.)

59 Geo. 3, c. 36.

Sect. 17. "That the magistrate or magistrates, justice or justices, before whom any person or persons shall be convicted in manner prescribed by this act, shall cause every such conviction to be drawn up in the form or to the effect following, (that is to say,)

Form of conviction.

BE it remembered, that on this day of in the year of to wit. the reign of his present Majesty, A. B. is convicted before Majesty's justices of the peace for the said county of or for the division of the said county of or for the city, liberty, or town, [as the case may be] *for and do adjudge him, her, or them* [as the case may be] *to forfeit and pay for the same the sum of . Given under hand and seal the day and year aforesaid.*" (See 1 & 2 Geo. IV. c. 50, s. 16, p. 473.)

Conviction not removable.

Sect. 18. "That no certiorari, letters of advocation or of suspension, shall be granted to remove any conviction or other proceedings had thereon in pursuance of this act." (*a*)

Appeal.

Sect. 19. "That if any person or persons convicted of any offence punishable by this act shall think him, her, or themselves aggrieved by the judgment of the magistrate or magistrates, justice or justices, before whom he, she, or they shall have been convicted, such persons shall have power from time to time to appeal to the justices at the next general or general quarter sessions of the peace which shall be held for the city, county, division, liberty, town, or place where such judgment shall have been given, and that the execution of such judgment shall in such case be suspended, the person so convicted entering into a recognizance at the time of such conviction, or within twenty-four hours after the same shall be made, with two sufficient sureties, in double the sum which such person shall have been adjudged to pay or forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the justices at their said next general or general quarter sessions; which recognizance the magistrate or magistrates, justice or justices, before whom such conviction shall be made, is and are hereby empowered and required to take; and the justices in the said general or general quarter sessions are hereby authorised and required to hear and finally determine the matter of every such appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party; and if upon hearing the said appeal the judgment of the magistrate or magistrates, justice or justices, before whom the appellant or appellants shall have been convicted shall be confirmed, such appellant or appellants shall immediately, or within twenty-fours afterwards, pay down the sum he, she, or they shall have been adjudged to have forfeited, together with such costs as the said justices in their said general or general quarter sessions shall award to be paid to the prosecutor or informer, for defraying the expenses sustained by reason of any such appeal; and in default of the appellants paying the same, any two justices or any one magistrate or justice of the peace having jurisdiction in the place into which any such appellant or appellants shall escape, or where he, she, or they shall reside, shall and may by warrant under their hands and seals or his hand and seal commit any such appellant or appellants to the common gaol of the city, county, division, or place where he, she, or they shall be apprehended, until he, she, or they shall make payment of such penalty, and of the costs and charges which shall be adjudged on the conviction; but if the appellant or appellants in any such appeal shall make good his, her, or their appeal, and be discharged of the said conviction, reasonable costs shall be awarded to the appellant or appellants against such informer or informers, who would (in case of such conviction) have been entitled to a moiety of the penalty to have been reco-

(*a*) See *R.* v. *Liverpool*, 3 *D.* & *R.* 275.

vered as aforesaid, and which costs shall and may be recovered by the appellant or appellants against any such informer or informers, in like manner as costs given at any general or general quarter sessions are recoverable; provided always, that no person shall be detained in prison for any such offence for a greater length of time than six calendar months." (See also 1 & 2 Geo. IV. c. 50, s. 18, p. 473.)

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59 Geo. 3, c. 36.

Sect. 20. "That if any such conviction shall happen to be made within six days before any general or general quarter sessions of the peace shall be held for the city, county, division, town corporate, borough, or place where such conviction shall have been made, then the party or parties who shall think him, her, or themselves aggrieved by any such conviction, shall and may on entering into recognizance in manner and for the purposes before directed be at liberty to appeal either to the then next or next following general or general quarter sessions of the peace which shall be held for any such county, division, city, town corporate, borough, liberty, or place where any such conviction shall have been made." (See also 1 & 2 Geo. IV. c. 50, s. 19, p. 474.)

If conviction happen to be within six days of the sessions, appeal may then be made to the sessions following.

Sect. 21. "That every action or suit which shall be brought or commenced against any magistrate or magistrates, justice or justices, or any peace officer or officers for any matter or thing done or committed by virtue of or under this act, shall be commenced within six calendar months after the fact committed and not afterwards, and shall be laid or brought in the city, county, or place where the matter in dispute shall arise and not elsewhere; and that the statute made in the twenty-fourth year of the reign of King George the second, (*a*) intituled 'An Act for rendering justices of the peace more safe in the execution of their office, and for indemnifying constables and others acting in obedience to their warrants,' so far as the said act relates to the rendering the justices more safe in the execution of their office, shall extend and be construed to extend to the magistrate and magistrates, justice and justices of the peace acting under the authority or in pursuance of this act; and that no action or suit shall be had or commenced against, nor shall any writ be issued out or copy of any writ be served upon any peace officer or officers for any thing done in the execution of this act, until seven days after notice in writing shall have been given to or left for him or them at his or their usual place of abode, by the attorney for the party intending to commence such action, which notice in writing shall contain the name and place of abode of the person intending to bring such action, and also of his attorney, and likewise the cause of action or complaint; and any peace officer or officers shall be at liberty and may by virtue of this act at any time within seven days after any such notice shall have been given to or left for him, tender or cause to be tendered any sum or sums of money as amends for the injury complained of to the party complaining, or to the attorney named in such notice; and if the same is not accepted of, the defendant or defendants in any such action or actions may plead such tender in bar of such action or actions, together with the general issue or any other plea, with leave of the court in which the action shall be commenced; and if upon issue joined on such tender the jury shall find amends tendered to have been sufficient, they shall find a verdict for the defendant or defendants; and in every such case, or if the plaintiff shall become nonsuit or discontinue his action, or if judgment shall be given for the defendant or defendants upon demurrer, or if any action or suit shall be brought after the time limited by this act for bringing the same, or shall be brought in any other county or place than as aforesaid, then and in every such case the jury shall find a verdict for the defendant or defendants, and the defendant or defendants shall be entitled to his or their costs: but if the jury shall find that no such tender was made, or that the amends tendered were not sufficient, or shall find against the defendant or defendants on any plea or pleas by him or them pleaded, they shall then give a verdict for the plaintiff and such damages as they shall think proper, and the plaintiff shall

Limitation of actions against justices or peace officers.

Certain provisions of 24 Geo. 2, c. 44, extended to magistrates acting under the authority of this act.

Notices.

(*a*) See title **Justices**, Vol. III.

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thereupon recover his costs against every such defendant or defendants." (See also 1 & 2 Geo. IV. c. 50, s. 20, p. 474.)

59 Geo. 3, c. 36.

Limitation of other actions.

General issue.

Sect. 22. "That if any action or suit shall be commenced against any other person or persons than a justice or other peace officer for any thing done in pursuance of this act, the defendant or defendants in every such action or suit may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if it shall appear to have been so done, or if a verdict shall be recorded for the defendant or defendants, or if the plaintiff or plaintiffs shall be nonsuited or discontinue his, her, or their action after the defendant or defendants shall have appeared, or if a judgment shall be given upon a verdict or demurrer against the plaintiff or plaintiffs, the defendant or defendants in every such action shall and may recover treble costs, and have the like remedy for the same as any defendant or defendants hath or have in other cases by law for the recovery of his, her, or their costs." (See also 1 & 2 Geo. IV. c. 50, s. 21, p. 474.)

Treble costs.

Persons convicted under this act not liable to other prosecution.

Sect. 23. "That no person shall be convicted of any offence under this act, unless the information, in order for such conviction, shall be exhibited within fourteen days after the offence committed (except in cases of perjury); and that no person who shall be prosecuted to conviction for any offence done or committed against this act shall be liable to be prosecuted for the same offence under any other law." (See also 1 & 2 Geo. IV. c. 50, s. 22, p. 474.)

Application of penalties.

Sect. 24. "That all penalties and forfeitures by this act inflicted, the application of which is not hereinbefore directed, shall, when recovered or paid, go and be disposed of in manner following; (that is to say), one moiety thereof, where any offender or offenders shall be convicted either by his, her, or their confession, or by the oath (or affirmation) of one or more credible witness or witnesses, shall go and be paid to the person or persons who shall inform against and prosecute to conviction any such offender or offenders; and the other moiety thereof, or in case there be no such person informing then the whole thereof, shall go and be paid to the churchwardens and overseers of the poor of the parish or parishes, for the use of the poor of the parish wherein such offence shall be committed, in such manner as the said churchwardens and overseers of the poor shall in his or their discretion think fit." (See also 1 & 2 Geo. IV. c. 50, s. 23, p. 474.)

Saving the rights of the Universities.

Sect. 25. "That neither this act or any thing contained shall extend or be construed to extend to prejudice the ancient right or custom of the two Universties of Oxford or Cambridge or either of them, or their or either of their clerks of the market, or the practice within the several jurisdictions of the said Universities, or either of them, used to set, ascertain, and appoint the assize and weight of all sorts of bread to be sold or exposed to sale within their several jurisdictions; but that they and every of them shall and may severally and respectively from time to time, as there shall be occasion, set, ascertain, and appoint, within their several and respective jurisdictions, the assize and weight of all sorts of bread to be sold or exposed to sale by any baker or other person whatsoever within the limits of their several jurisdictions, and shall and may inquire into and punish any breach thereof fully and freely in all respects as they used to do, and as if this act had never been made; any thing herein contained to the contrary thereof notwithstanding."

Public act.

Sect. 27. "That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded."

1 & 2 Geo. 4, c. 50.

Stat. 1 & 2 Geo. IV. c. 50, s. 1, after reciting stat. 59 Geo. III. c. 36, and that "it is deemed expedient that the said act, so far as the same relates to the *weight* of bread, and to the punishment of bakers or sellers of bread, who shall sell the same *deficient in its due weight*, should be repealed, and that more effectual provisions should be established for punishing persons who shall adulterate meal, flour, or bread," enacts, "that the said recited act, so far as the same relates to the *weight* of bread, (*e. g.* s. 10,) and *to the punish-*

Certain parts of 59 Geo. 3, c. 36, repealed.

ment of bakers or sellers of bread who shall sell the same deficient in its due weight, shall be repealed." (Sections 2, 3, of stat. 1 & 2 Geo. IV. c. 50, are similar to sect. 2, 3, of stat 59 Geo. III. c. 36, *ante*, p. 461.)

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1 & 2 Geo. 4, c. 50.

Sect. 4. "That no person or persons making or who shall make bread for sale out of the city of London and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the Royal Exchange, nor any journeyman or other servant of any such person or persons as last mentioned, shall at any time or times, in the making of bread for sale, put any alum, or preparation or mixture in which alum shall be an ingredient, or any other preparation or mixture in lieu of alum, into the dough of such bread, or in anywise use or cause to be used any alum, or any other unwholesome mixture, ingredient, or thing whatsoever, in the making of such bread, or on any account, or under any colour or pretence whatsoever, upon pain that every such person, whether master or journeyman, or other person, who shall knowingly offend in the premises, and shall be convicted of any such offence, either by his, her, or their own confession, or upon the oath (or being of the people called Quakers, affirmation) of one or more witness or witnesses, shall on every such conviction forfeit and pay any sum of money not exceeding twenty pounds, nor less than five pounds, or in default of payment thereof, shall, by warrant under the hand and seal or hands and seals of the magistrate or magistrates, justice or justices before whom such offender shall be convicted, be committed to the house of correction or some prison of the city, county, borough, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain for any time not exceeding twelve nor less than three calendar months from the time of such commitment, unless such penalty shall be sooner paid, as any such magistrate or magistrates, justice or justices, shall think fit to order and direct; and it shall be lawful for the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, to cause the offender's name, place of abode, and offence to be published in some newspaper which shall be printed, published, or circulated in or near the county, division, riding, or district where the offence shall be committed, and to defray the expense of publishing the same out of the money to be forfeited as last mentioned, if any shall be paid or recovered."

Bakers not to use alum, &c. in making of bread for sale.

Penalty.

Sect. 5. "That no person shall knowingly put into corn, meal, or flour, which shall be ground, dressed, bolted, or manufactured for sale out of the said city of London and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the Royal Exchange, either at the time of grinding, dressing, bolting, or in anywise manufacturing the same, or at any other time or times, any ingredient, mixture, or thing whatsoever, or shall knowingly sell, offer or expose to or for sale, any meal or flour of one sort of grain, as or for the meal or flour of any other sort of grain, or any thing as or for or mixed with the meal or flour of any grain which shall not be the real and genuine meal or flour of the grain the same shall import to be and ought to be, upon pain that every person who shall offend in the premises, and shall be thereof convicted in manner hereinafter mentioned, shall forfeit and pay for every such offence any sum not exceeding 20*l.* nor less than 5*l.*, as the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, shall think fit, or order and direct."

Adulterating corn, meal, or flour, &c. (a)

Penalty.

Sect. 6. "That every loaf of every sort of bread, made of the meal or flour of any other grain than wheat, which shall be made for sale, or be sold, carried out, offered, or exposed in anywise to or for sale, out of the city of London and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the Royal Exchange, shall be marked with a large Roman (M); and that every person who shall make for sale, sell, offer, or expose to or for sale, any loaf of any such sort of bread, which shall be made of the meal or flour of any other grain than wheat, which shall not be marked as hereinbefore directed, shall for every time he, she, or they shall so offend in the premises, and be thereof convicted in manner hereinafter directed, forfeit

Loaves made of the meal of any other grain than wheat, to be marked with the letter (M).

Penalty.

(a) As to the offence at common law of selling unwholesome bread, see *ante*, 406, 407.

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1 & 2 Geo. 4, c. 50.

and pay a sum not exceeding 40*s.* nor less than 10*s.* for every loaf of such bread which shall not be so marked, as the magistrate or magistrates, justice or justices, before whom any such person shall be convicted, shall from time to time adjudge and determine."

Sect. 7 of stat. 1 & 2 Geo. IV. c. 50, is similar to sect. 7 of 59 Geo. III. c. 36, *ante*, 464.

Penalty on bakers with whom ingredients for adulteration shall be found.

Sect. 8. "That every miller, mealman, or baker out of the city of London and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the Royal Exchange, in whose house, mill, shop, stall, bakehouse, bolting-house, pastry warehouse, outhouse, ground, or possession, any alum or other ingredient or mixture shall be found, which shall, after due examination, be adjudged by any magistrate or magistates, justice or justices of the peace, to have been deposited there for the purpose of being used in adulterating meal, flour, or bread, shall, on being convicted of any such offence, either by his, her, or their own confession, or by the oath or affirmation as aforesaid of one or more credible witness or witnesses, forfeit and pay on every such conviction any sum of money not exeeeding 20*l.* nor less than 5*l.*, or in default of payment thereof shall, by warrant under the hand and seal or hands and seals of the magistrate or magistrates, justice or justices, before whom such offender shall be convicted, be committed to the house of correction, or some other prison of the city, county, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain for any time not exceeding twelve nor less than three calendar months from the time of such commitment, unless such penalty shall be sooner paid, as any such magistrate or magistrates, justice or justices, shall think fit and order; unless the party or parties charged with any such offence shall make it appear to the satisfaction of the magistrate or magistrates, justice or justices, before whom any such alum or other ingredient or mixture shall be brought, that such alum or other ingredient or mixture was not nor were brought or lodged where the same was or were found or seized with any design or intent to have been put into any meal, flour, or bread, but that the same was or were in the place or places in which the same shall have been so found or seized as aforesaid, for some other lawful purpose; and that it shall be lawful for the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, to cause the offender's name, place of abode, and offence to be published in some newspaper which shall be printed, published, or circulated in or near the county, division, riding, or district where the said offence shall be committed, and to defray the expense of publishing the same out of the money to be forfeited as last mentioned, if any shall be paid or recovered."

Obstructing search for adulterated meal, &c.

Sect. 9. "That if any person or persons shall wilfully obstruct or hinder any such search as hereinbefore is authorised to be made, or the seizure of any meal, flour, dough, or bread, or of any alum or other ingredient or mixture, which shall be found on any such search, and deemed to have been lodged with an intent to adulterate the purity or wholesomeness of any meal, flour, dough, or bread, or shall wilfully oppose or resist any such search being made, or the carrying away any such alum or other ingredient or mixture as aforesaid, or any meal, flour, dough, or bread which shall be seized as being adulterated, or as not being made pursuant to this act, he, she, or they so doing or offending in any of the cases last aforesaid, shall for every such offence, on being convicted thereof, forfeit and pay such sum not exceeding 5*l.*, nor less than 50*s.*, as the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted, shall think fit and order and direct."

Penalty.

Bakers shall keep proper weights.

Sect. 10. "That every baker and seller of bread shall cause to be fixed in some convenient part of his or her shop a beam and scales, with proper weights, in order that every person or persons who may purchase any bread of any such baker or seller of bread, may, if he, she, or they shall think proper, require the same to be weighed in his, her, or their presence; and that if any baker or seller of bread, out of the city of London and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the Royal

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1 & 2 Geo. 4, c. 50.

Exchange, shall neglect to fix such beam and scales in some convenient part of his or her shop, or to provide and keep for use proper weights, or whose weights shall be deficient in their due weight, or who shall refuse to weigh any bread purchased in his or her shop, in the presence of the party or parties requiring the same, he, she, or they shall for every such offence forfeit and pay a sum not exceeding 5*l.* nor less than 20*s.*, as the magistrate or magistrates, justice or justices, before whom such offender shall be convicted, shall order and direct."

Sect. 11 contains regulations as to baking on *Sunday* similar to those in stat. 59 Geo. III. c. 36, s. 12, *ante*, 465.

No miller or baker may act as justice in the execution of this act.

Sect. 12. "That no person who shall be concerned in the business of a miller, mealman, or baker, corn merchant, or dealer in corn, or flour, shall be capable of acting, or shall be allowed to act, as a magistrate or justice of the peace under this act, or in putting in execution any of the powers in or by this act granted; and if any miller, mealman, or baker shall presume so to do, he or they so offending in the premises, shall for every such offence forfeit and pay the sum of fifty pounds to any person or persons who shall inform or sue for the same, to be recovered in any of his Majesty's courts of record at Westminster, by action of debt, bill, plaint, or information, wherein no essoin, wager of law, or more than one imparlance shall be allowed."

Sect. 13 enacts that all offences against this act may be heard in a summary way, and is similar to stat. 59 Geo. III. c. 36, s. 14, *ante*, 466.

Sect. 14 contains an enactment as to power to compel attendance of witnesses, and is similar to the enactment in stat. 59 Geo. III. c. 36, s. 14, *ante*, 466.

Sect. 15 contains an enactment similar to stat. 59 Geo. III. c. 36, s. 16, *ante*, 467.

Form of conviction.

Sect. 16. "That the magistrate or magistrates, justice or justices, before whom any person or persons shall be convicted in manner prescribed by this act, shall cause every such conviction to be drawn up in the form or to the effect following; (that is to say,)

} BE it remembered, that on this day of in the year of
to wit. } the reign of his present Majesty, A. B. is convicted before Majesty's
justices of the peace for the said county of or for the division of the
said county of or for the city, liberty, or town, [as the case may be,] *for*
and do adjudge him, her, or *them,* [as the case may be,] *to forfeit and pay*
for the same the sum of . Given under hand and seal, the day and
year aforesaid." (See stat. 59 Geo. III. c. 36, s. 16, *ante*, p. 467.)

Conviction not removable.

Sect. 17. "That no certiorari, letters of advocation, or of suspensation, (*a*) shall be granted, to remove any conviction or other proceedings had thereon in pursuance of this act." (See also stat. 59 Geo. III. c. 36, s. 18, *ante*, 468.)

Appeal to quarter sessions.

Sect. 18. "That if any person or persons convicted of any offence punishable by this act, shall think him, her, or themselves aggrieved by the judgment of the magistrate or magistrates, justice or justices, before whom he, she, or they shall have been convicted, such persons shall have power from time to time to appeal to the justices at the next general or general quarter sessions of the peace which shall be held for the city, county, division, liberty, town, or place where such judgment shall have been given, and that the execution of such judgment shall in such case be suspended, the person so convicted entering into a recognizance at the time of such conviction, or within twenty-four hours after the same shall be made, with two sufficient sureties, in double the sum which such person shall have been adjudged to pay or forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the justices at their said next general or quarter sessions; which recognizance the magistrate or magistrates, justice or justices, before whom such conviction shall be made, is and are hereby empowered and required to take; and the justices in the said general or general quarter sessions are hereby authorised and required to hear and finally determine the matter of every such appeal, and to award

Costs.

(*a*) Sic.

WHERE ASSIZE IS NOT SET.

1 & 2 Geo. 4, c. 30.

such costs as to them shall appear just and reasonable to be paid by either party; and if upon hearing the said appeal the judgment of the magistrate or magistrates, justice or justices, before whom the appellant or appellants shall have been convicted, shall be confirmed, such appellant or appellants shall immediately, or within twenty-four hours afterwards, pay down the sum he, she, or they shall have been adjudged to have forfeited, together with such costs as the said justices in their said general or general quarter sessions shall award to be paid to the prosecutor or informer, for defraying the expenses sustained by reason of any such appeal; and in default of the appellant's paying the same, any two justices, or any magistrate or justice of the peace having jurisdiction in the place into which any such appellant or appellants shall escape, or where he, she, or they shall reside, shall and may, by warrant under their hands and seals, or his hand and seal, commit any such appellant or appellants to the common gaol of the city, county, division, or place where he, she, or they shall be apprehended, until, he, she, or they shall make payment of such penalty, and of the costs and charges which shall be adjudged on the conviction; but if the appellant or appellants in any such appeal shall make good his, her, or their appeal, and be discharged of the said conviction, reasonable costs shall be awarded to the appellant or appellants against such informer or informers, who would (in case of such conviction) have been entitled to a moiety of the penalty to have been recovered as aforesaid; and which costs shall and may be recovered by the appellant or appellants against any such informer or informers, in like manner as costs given at any general or general quarter sessions are recoverable: provided always, that no person shall be detained in prison for any such offence for a greater length of time than two calendar months."

Sect. 19 contains an enactment as to appeal to the session following the *next* sessions, similar to stat. 59 Geo. III. c. 36, s. 20, *ante*, 469.

Limitation of actions.

Sect. 20 enacts, that every action or suit which shall be brought or commenced against any magistrate or justice, or any peace officer or officers, for any matter or thing done or committed by virtue of or under this act, shall be commenced within *six months* after the fact committed and not afterwards. And the rest of this section is like that of stat. 59 Geo. III. c. 36, s. 21, *ante*, 469.

The sects. 21, 22, 23, and 24 are similar to those in sects. 22, 23, 24, 25 of 59 Geo. III. c. 36, *ante*, 469, 470.

Commencement of act.

Sect. 25. The act shall take effect after one calendar month from the passing thereof, (8th June, 1821.)

Public act.

Sect. 26. The act is to be deemed a public act.

IV. Standard Wheaten Bread.

13 Geo. 3, c. 62. Concerning standard wheaten bread.

By stat. 13 Geo. III. c. 62, s. 1, reciting that "whereas, according to the ancient order and custom of the realm, there hath been from time immemorial a standard wheaten bread, made of flour, being the whole produce of the wheat whereof it was made: and whereas by an act passed in the thirty-first year of the reign of George the Second, intituled 'An Act for the due making of bread, and to regulate the price and assize thereof, and to punish persons who shall adulterate meal, flour, or bread;' and by an act passed in the third year of the reign of his present Majesty, for explaining and amending the said recited act, two sorts of bread, made of wheat only, are allowed to be made for sale, that is to say, wheaten and household, whereby the flour, being the whole produce of the wheat, is so divided in the making of bread for sale, as that this standard wheaten bread, made according to the ancient order and custom of the realm, could be no longer made for sale: and whereas household bread, such as is intended by the said act of George the Second to be made for sale, is not generally made for sale, whereby, and for want of the said standard wheaten bread being continued many inconveniences have arisen, and many of the inferior classes of the people more especially have been under a necessity of buying bread at a higher price

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than they could afford, to their great hurt and detriment; enacts, that from and after the twenty-ninth day of September, 1773, a bread made of wheat as followeth; that is to say, of the flour of wheat, which flour, without any mixture or division, shall be the whole produce of the grain, the bran or hull thereof only excepted, and which shall weigh three-fourth parts of the weight of the wheat whereof it shall be made, may be at all times, and is hereby allowed to be made, baked, exposed to or for sale, and shall be called and understood to be a standard wheaten bread."

13 Geo. 3, c. 62.

Weight.

Sect. 2. "That the makers of the said bread for sale do and shall mark every loaf thereof with the capital letters S. W. and that the makers and sellers of the same do make and sell the same, although no assize of bread be set, of the weight and in the proportions following; that is to say, that every standard wheaten peck loaf shall always weigh 17lb. 6oz. avoirdupois, every half-peck loaf 8lb. 11oz. and every quartern loaf 4lb. 5½oz. avoirdupois; and that every peck loaf, half peck loaf, and quartern loaf shall always be sold as to price in proportion to each other respectively; and that where wheaten and household bread, made as the law now directs, shall be sold at the same, together with this standard wheaten bread, they be sold in respect of and in proportion to each other as followeth; that is to say, that the same weight of wheaten bread as costs 8*d.* the same weight of this standard wheaten bread shall cost 7*d.* and the same weight of household bread shall cost 6*d.* or seven standard wheaten assized loaves shall weigh equal to eight wheaten assized loaves, or to six household assized loaves of the same price, as near as may be."

Proportion of the different kinds of bread as to weight.

Sect. 3. "That the said standard wheaten bread be not, nor shall be made into, or exposed to or for sale, or sold as priced loaves, at one and the same time, together with assized loaves of the same standard wheaten bread."

Sect. 4. "That all and every magistrate, magistrates, or others, who is and are by the laws now in being authorised and empowered to set the assize and fix the price of bread, is and are hereby authorised and required, whenever and wherever he or they shall think proper, to set the assize, or to fix the price of bread, in like manner and at the same time to set the assize on, or fix the price of, the standard wheaten bread aforesaid, the baker's allowance for baking being included, according to the rates and proportions severally and respectively set down in the following table:

TABLE I.

Or the Assize Table of Standard Wheaten Bread.

Note.—This table is framed for bread to be made of the whole produce of the wheat, except the bran or hull thereof only; the said produce to weigh three-fourths of the wheat whereof it is made.

The first column contains the price of the bushel of wheat, Winchester measure, from 2*s.* 9*d.* to 14*s.* 6*d.* the bushel, the allowance of the magistrates to the baker included: the other columns contain the *weight* of the several loaves.

Price of the bushel of wheat and baking.	Small Bread.		Large Assize Bread.		
	Penny.	Twopence.	Sixpence.	Twelvepence.	Eighteenpence.
s. *d.*	*oz.* *dr.*	*lb.* *oz.* *dr.*	*lb.* *oz.* *dr.*	*lb.* *oz.* *dr.*	*lb.* *oz.* *dr.*
2 9	25 4	3 2 9	9 7 11	18 15 5	28 7 0
3 0	23 3	2 14 5	8 11 0	17 6 1	26 1 1
3 3	21 6	2 10 12	8 0 5	16 0 11	24 1 0

(*continued.*)

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13 Geo. 3, c. 62.

Price of the bushel of wheat and baking.	Small Bread.						Large Assize Bread.								
	Penny.			Twopence.			Sixpence.			Twelvepence.			Eighteenpence.		
s. *d.*	*oz.*	*dr.*		*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*	*lb.*	*oz.*	*dr.*
3 6	19	14		2	7	12	7	7	3	14	14	5	22	5	8
3 9	18	9		2	5	1	6	15	4	13	14	7	20	13	11
4 0	17	6		2	2	12	6	8	4	13	0	9	19	8	13
4 3	16	6		2	0	11	6	2	2	12	4	4	18	6	7
4 6	15	7		1	14	4	5	12	11	11	9	6	17	6	1
4 9	14	10		1	13	4	5	7	13	10	15	10	16	7	7
5 0	13	14		1	11	13	5	3	7	10	6	13	15	10	4
5 3	13	4		1	10	8	4	15	7	9	14	14	14	14	5
5 6	12	10		1	9	4	4	11	13	9	7	11	14	3	8
5 9	12	1		1	8	3	4	8	9	9	1	1	13	9	0
6 0	11	9		1	7	3	4	5	8	8	11	1	13	0	9
6 3	11	2		1	6	4	4	2	12	8	5	8	12	8	3
6 6	10	11		1	5	6	4	0	3	8	0	5	12	0	8
6 9	10	5		1	4	10	3	13	13	7	11	9	11	9	6
7 0	9	15		1	3	14	3	11	9	7	7	3	11	2	12
7 3	9	9		1	3	3	3	9	8	7	3	1	10	12	9
7 6	9	4		1	2	9	3	7	10	6	15	4	10	6	13
7 9	9	0		1	1	15	3	5	13	6	11	10	10	1	7
8 0	8	11		1	1	6	3	4	2	6	8	4	9	12	7
8 3	8	7		1	0	14	3	2	9	6	5	2	9	7	11
8 6	8	3		1	0	6	3	1	1	6	2	2	9	3	3
8 9	7	15		0	15	14	2	15	11	5	15	5	8	15	0
9 0	7	12		0	15	7	2	14	5	5	12	11	8	11	0
9 3	7	8		0	15	0	2	13	1	5	10	3	8	7	4
9 6	7	5		0	14	10	2	11	14	5	7	13	8	3	11
9 9	7	2		0	14	4	2	10	12	5	5	9	8	0	5
10 0	6	15		0	13	14	2	9	11	5	3	7	7	13	2
10 3	6	13		0	13	9	2	8	11	5	1	6	7	10	1
10 6	6	10		0	13	4	2	7	12	4	15	7	7	7	3
10 9	6	7		0	12	15	2	6	13	4	13	10	7	4	6
11 0	6	5		0	12	10	2	5	15	4	11	13	7	1	12
11 3	6	3		0	12	6	2	5	1	4	10	2	6	15	4
11 6	6	1		0	12	1	2	4	4	4	8	9	6	12	13
11 9	5	15		0	11	13	2	3	8	4	7	0	6	10	8
12 0	5	13		0	11	9	2	2	12	4	5	8	6	8	4
12 3	5	11		0	11	6	2	2	1	4	4	2	6	6	2
12 6	5	9		0	11	2	2	1	6	4	2	12	6	4	2
12 9	5	7		0	10	14	2	0	11	4	1	7	6	2	2
13 0	5	6		0	10	11	2	0	1	4	0	3	6	0	4
13 3	5	4		0	10	8	1	15	8	3	14	15	5	14	7
13 6	5	2		0	10	5	1	14	14	3	13	13	5	12	11
13 9	5	1		0	10	2	1	14	5	3	12	11	5	11	0
14 0	4	15		0	9	15	1	13	13	3	11	9	5	9	6
14 3	4	14		0	9	12	1	13	4	3	10	9	5	7	13
14 6	4	13		0	9	9	1	12	12	3	9	8	5	6	5

Note. That the same weight of standard wheaten assized bread as costs 7*d.*, of wheaten assized bread will cost 8*d.*, and of household assized bread 6*d.*: or, seven standard assized loaves will weigh eight wheaten assized loaves, or six household assized loaves of the same price, as near as may be.

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13 Geo. 3, c. 62.

TABLE II.

Or the Price Table of Standard Wheaten Bread.

The first column contains the price of the bushel of wheat, allowance to the baker included: the other columns contain the *prices* of the several loaves.

Price of the bushel of wheat and baking.	Quartern loaf.	Half-peck loaf.	Peck loaf.	Price of the bushel of wheat and baking.	Quartern loaf.	Half-peck loaf.	Peck loaf.
s. d.	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*
2 9	0 2¼	0 5½	0 11	8 9	0 8¼	1 5½	2 11
3 0	0 3	0 6	1 0	9 0	0 9	1 6	3 0
3 3	0 3¼	0 6½	1 1	9 3	0 9¼	1 6½	3 1
3 6	0 3½	0 7	1 2	9 6	0 9½	1 7	3 2
3 9	0 3¾	0 7½	1 3	9 9	0 9¾	1 7½	3 3
4 0	0 4	0 8	1 4	10 0	0 10	1 8	3 4
4 3	0 4¼	0 8½	1 5	10 3	0 10¼	1 8½	3 5
4 6	0 4½	0 9	1 6	10 6	0 10½	1 9	3 6
4 9	0 4¾	0 9½	1 7	10 9	0 10¾	1 9½	3 7
5 0	0 5	0 10	1 8	11 0	0 11	1 10	3 8
5 3	0 5¼	0 10½	1 9	11 3	0 11¼	1 10½	3 9
5 6	0 5½	0 11	1 10	11 6	0 11½	1 11	3 10
5 9	0 5¾	0 11½	1 11	11 9	0 11¾	1 11½	3 11
6 0	0 6	1 0	2 0	12 0	1 0	2 0	4 0
6 3	0 6¼	1 0½	2 1	12 3	1 0¼	2 0½	4 1
6 6	0 6½	1 1	2 2	12 6	1 0½	2 1	4 2
6 9	0 6¾	1 1½	2 3	12 9	1 0¾	2 1½	4 3
7 0	0 7	1 2	2 4	13 0	1 1	2 2	4 4
7 3	0 7¼	1 2½	2 5	13 3	1 1¼	2 2½	4 5
7 6	0 7½	1 3	2 6	13 6	1 1½	2 3	4 6
7 9	0 7¾	1 3½	2 7	13 9	1 1¾	2 3½	4 7
8 0	0 8	1 4	2 8	14 0	1 2	2 4	4 8
8 3	0 8¼	1 4½	2 9	14 3	1 2¼	2 4½	4 9
8 6	0 8½	1 5	2 10	14 6	1 2½	2 5	4 10

Note. That the standard wheaten peck loaf is always to weigh 17 lb. 6 oz. avoirdupois, and the half-peck and quartern loaves in proportion; and when the said peck loaf is sold for 14*d.* the wheaten peck loaf is to be sold for 16*d.* and the household peck loaf is to be sold for 12*d.* and always as near as may be in the same proportion. No half-quarten loaves are to be made.

Sect. 5. "That all makers of bread for sale, and all persons who shall, after the said 29th day of September, one thousand seven hundred and seventy-three, make and bake for sale, and shall sell, or expose to or for sale, the said standard wheaten bread, shall make, sell, and expose to or for sale the said bread as directed by this act; and all such makers of the said bread for sale, and persons selling, or exposing to or for sale, the said bread, shall be liable to the same or the like pains, penalties, forfeitures, and punishments, in all respects whatsoever, for any misdemeanor or neglect in the making,

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marking, selling, or exposing to or for sale, the said standard wheaten bread, as they are liable to by the laws now in being for any misdemeanor or neglect in respect to making, marking, selling, or exposing to or for sale, wheaten or household bread."

13 Geo. 3, c. 62. Miller selling adulterated flour. (a)

Sect. 6. "That if any information shall be laid against any baker for making, marking, baking, or exposing to or for sale, any bread, purporting to be the standard wheaten bread aforesaid, made of flour not being the whole produce of the wheat, the bran or hull thereof only excepted, and weighing three-fourth parts of the weight of the wheat whereof it was made, and such baker shall prove that he bought the said flour whereof his bread was made as and for such flour as aforesaid, of the miller or mealman, naming his name and place of abode; then, and in such case, the baker shall stand clear and acquitted, and the miller or mealman so offending, and being legally convicted thereof, shall forfeit and pay the penalties enacted and directed to be paid in the case of adulterating corn, meal, or flour, by an act, passed in the thirty-first year of the reign of King George the Second, intituled, An Act for the due making of bread, and to regulate the price and assize thereof, and to punish persons who shall adulterate meal, flour, or bread."

Sect. 7. "That when and where any magistrate, magistrates, or others, authorised as aforesaid, shall have set an assize on, or fixed the price of the said standard wheaten bread, as directed by this act, all and every such person or persons so authorised are hereby authorised and empowered to omit, if they think proper, the setting the assize upon or fixing the price of any other sort of bread."

Justices in sessions may prohibit for three months selling, &c. other than standard wheaten bread.

Sect. 8. "That from and after the 29th day of September, one thousand seven hundred and seventy-three, the justices of the peace of every county, riding, division, city, town, liberty, and place, at any general or quarter session of the peace which shall be held within their respective counties, riding, division, cities, towns, liberties, or jurisdictions, may, if they shall think proper, prohibit, and are hereby authorised and empowered to prohibit, for three months, unless they shall see cause sooner to revoke the order for such prohibition, which they are hereby empowered to do at any adjourned quarter sessions, or any special sessions within their respective jurisdictions, or within any part thereof, the makers of bread for sale from making for sale, baking, selling, or exposing to or for sale, any other one or more sorts of bread, being, or purporting to be, of a superior quality, and sold at a higher price than the standard wheaten bread aforesaid: provided, that no such order for such prohibition do take place, or be in force, until one calendar month at least after the date of the making thereof; and every order, which shall be so from time to time made, in or touching the premises, by any such justices, shall be entered in a book, to be provided and kept for that purpose by such justices, and which book shall and may be inspected by the makers of bread for sale within the respective jurisdiction of any such justices, at all seasonable times in the day-time, and without paying any fee or reward in respect thereof: and after the making every such order by any such justices, the justices who shall make the same shall, with all convenient speed, cause a copy of every such order to be affixed or put up in some market or other public town, within the division or part of the county, riding, liberty, rape, wapentake, city, town, or place, in which such order is to be observed and take place, or else such justices, within their respective jurisdictions, shall cause a copy of every such order to be, with all convenient speed, after the making thereof respectively, inserted in some public newspaper, which shall be published in the county, riding, division, rape, wapentake, city, town, or place, or some part thereof, in which every such order respectively is to be observed and take place."

Baker may object.

Sect. 9. "That within the city of London, and the liberties thereof, the company of bakers of the said city, and in any other city, county, division, district, town, or place, any baker or maker of bread for sale, bakers or makers of bread for sale, may, within the respective jurisdictions to which he or they do belong, or wherein he or they do exercise their trade or mystery,

(a) As to this offence at common law, see *ante*, 406, 407.

have an oppportunity of offering to such justices as aforesaid all such objections as such company of bakers, or such bakers or makers of bread for sale, may have and think fit to offer against such prohibition aforesaid, at the time when such justices as aforesaid shall have under consideration the ordering such prohibition as aforesaid."

Wheaten loaves of 1*d.* or 2*d.* may be sold.

Sect. 10. "That nothing herein contained shall extend, or be construed to extend, to prevent the magistrates and others, who, by the laws now in being, are authorised to set an assize on bread, from allowing at all times, and even during the time of such prohibition as aforesaid, if they shall think fit, any white loaves or wheaten loaves of the price of one penny, or two pence, to be made and sold, so that the said loaves be made, marked, baked, exposed to and for sale, and sold according to the regulations of the the table of assize and price of bread contained in and enacted by an act passed in the thirty-first year of the reign of his late Majesty George the Second, intituled 'An Act for the due making of bread, and to regulate the price and assize thereof, and to punish persons who shall adulterate meal, flour, or bread.'"

No assize to be set on coarser bread if sold at a lower price.

Sect. 11. "And whereas there may be many places in this kingdom where the inferior classes of the people are used to, and may be desirous of being supplied with bread, made of wheat of a coarse and cheaper sort than the standard wheaten bread aforesaid;" it is enacted, "that it shall and may be lawful for any baker or maker of bread for sale to make, bake, expose to sale, and sell, such inferior and coarser bread, provided he or she sells such bread at a price under that of the household bread, as directed to be made and sold by an act passed in the thirty-first year of the reign of George the Second, intituled, 'An Act for the due making of bread, and to regulate the price and assize thereof, and to punish persons who shall adulterate meal, flour, or bread,' although nothing in this act contained doth extend, or shall be construed to extend, to the setting any assize thereon."

Penalties.

Sect. 12. "That when and where any baker or maker of bread for sale shall sell or expose to sale, any such inferior or coarser bread by weights and prices whereat the household bread aforesaid is at that time assized or priced or sold, he shall for every such offence, being duly convicted, be liable to the same or like pains, penalties, forfeitures, and punishments, as bakers and makers of bread for sale are now by law liable to for any the like misdemeanor or neglect in making, selling, or exposing to or for sale, any other sort of bread allowed by law to be made or exposed to or for sale and sold."

Powers of former acts.

Sect. 13. "That all and every magistrate, magistrates, and others as aforesaid, following the directions hereinbefore and hereinafter given, shall have, and they are hereby declared to have, all the same powers and authority to apply them, to all intents and purposes whatsoever, relative to assizing, pricing, and regulating the making, selling, or exposing to or for sale, the said standard wheaten bread, and punishing the makers, sellers, and exposers thereof to or for sale, for any the like misdemeanor or neglect in the making, marking, and selling or exposing the same to or for sale, as they have by any law now in being relative to assizing, pricing, making for sale, selling, or exposing to or for sale, any bread whatsoever, and in as full and ample a manner as if the said powers were recited and enacted therein."

Saving rights, &c.

Sect. 14. "That all magistrates, and all other persons whatsoever, shall be entitled to and have all the privileges, protections, and indemnifications, in all respects whatsoever, for what they shall lawfully do in putting this act in execution, as they are entitled to and have by the laws now in being relative to the making of bread, and selling, or exposing the same to or for sale, for putting the said laws in execution."

Sect. 15. "That this act, or any thing herein contained, shall not extend to prejudice any right or custom of the city of London, or the practice there used, or any right or custom of any lord or lords of any leet, to set, inquire, and punish the breach of assize of bread within their respective leets or views of frank-pledge, or the right of any clerk or clerks of the market, in any place."

Sect. 16. "That neither this act, or any thing herein contained, shall extend, or be construed to extend, to prejudice the ancient right or custom of

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13 Geo. 3, c. 62.

the dean of the collegiate church of Saint Peter, Westminster, or the high steward of the city of Westminster and the liberties thereof, or his deputy, or any of them, to set, ascertain, and appoint the assize and weight of all sorts of bread to be sold or exposed to sale within the said city of Westminster and the liberties thereof; but they, and every of them, shall and may, severally and respectively, from time to time, as there shall be occasion, set, ascertain, and appoint, within the said city of Westminster and the liberties thereof, according to the true intent and meaning of this act, the assize and weight of all sorts of bread, which shall be made, sold, or exposed to sale, by any person or persons within the limits of the said city of Westminster and the liberties thereof, and shall and may inquire and punish the breach of every such assize and weight of bread as fully and freely, in all respects, as they, or any of them, have heretofore been accustomed to do, and as if this act had never been made, any thing herein contained to the contrary hereof notwithstanding."

Sect. 17. "That neither this act, nor any thing herein contained, shall extend, or be construed to extend, to prejudice the ancient right or custom of the two Universities of Oxford and Cambridge, or either of them, or of their or either of their clerks of the market, or the practice within the several jurisdictions of the said Universities, or either of them, used to set, ascertain, and appoint the assize and weight of all sorts of bread to be sold, or exposed to sale, within their several jurisdictions; but that they, and every of them, shall and may, severally and respectively, from time to time, as there shall be occasion, set, ascertain, and appoint, within their several and respective jurisdictions, the assize and weight of all sorts of bread to be sold, or exposed to sale, by any baker, or other person whatsoever, within the limits of their several jurisdictions, according to the true intent and meaning of this act, and shall and may inquire and punish the breach thereof as fully and freely, in all respects, as they used to do, and as if this act had never been made, any thing herein contained to the contrary thereof notwithstanding."

Sect. 18. "That all the laws now in being for the due making of bread, or to regulate the price and assize thereof, or to punish persons who shall adulterate meal, flour, or bread, do and shall stand and remain in full force in the whole and every part thereof not altered by this present act."

Sect. 19, "And whereas doubts have arisen, whether by the said act, passed in the thirty-first year of the reign of his late Majesty King George the Second, where the chief magistracy of any borough or corporation lies and is vested in two bailiffs, one of the said bailiffs, in the absence of the other, is, by the said act, authorised and empowered to set an assize on bread;" it is enacted, "that in such boroughs and corporations, one of the said bailiffs, in the absence of the other, shall be authorised and empowered to set an assize on bread under the said act or this act, and to do all other matters and things therein and hereby directed for setting the same."

V. Forms, *List of.*

INFORMATION of an undue mixture used in making of Bread, on 31 Geo. II. c. 29, s. 21, (No. 1.)—SUMMONS thereon, (No. 2.)—CONVICTION thereon, (No. 3.)—WARRANT of Distress for Nonpayment of Penalty, (No. 4.)—RETURN of want of Distress, (No. 5.)—COMMITMENT for want of Distress, (No. 6.)

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CONVICTION of Baker for Baking on Sunday, on 1 & 2 Geo. IV. c. 50, s. 11, (No. 16.)

(No. 1.)

Information of an undue mixture used in making of bread; on 31 Geo. 2, c. 20, s. 21. (*a*)

County of } *BE it remembered, that on this day of in the year of the reign of at in the said county, A. I. [yeoman,] in his proper person, exhibiteth to me, J. P. Esquire, one of his Majesty's justices of the peace for the said county, a complaint and information, and thereby informeth me, that A. O. late of in the county aforesaid, baker, on the day of* [Here state the time of the offence, that the prosecution may appear to be commenced within three days after the offence committed, according to s. 42 of the statute] *did put into and use in the making of bread to be sold a preparation or mixture in which* [*alum*] *was an ingredient, contrary to the form of the statute in such case made and provided; whereby the said A. O. hath forfeited a sum of money not exceeding 10l. nor less than 40s.; and thereupon the said A. I. prayeth the judgment of me the said justice in that behalf, and that he the said A. I. may have one moiety of the said forfeiture, according to the form of the statute in such case made and provided; and that the said A. O. may be summoned to answer the premises before me the said justice.*

(No. 2.)

Summons thereon.

County of } *To the Constable of*

WHEREAS complaint and information hath been exhibited before me J. P. Esquire, one of his Majesty's justices of the peace for the said county, by A. I. [yeoman,] that A. O. late of in the county aforesaid, baker, on the day of in the year of the reign of did put into and use in the making of bread to be sold a preparation or mixture in which [*alum*] *was an ingredient, contrary to the form of the statute in such case made and provided: these are therefore to require you forthwith to summon the said A. O. to appear before me at on the day of at the hour of in the forenoon of the same day, then and there to answer to the said information: and be you then there, to certify what you shall have done in the premises. Herein fail you not. Given under my hand and seal the day of in the year aforesaid.*

If the party shall not appear on such summons, or offer some reasonable excuse for his default, then on oath made of the offence by one witness, such justice shall issue his *warrant* (mutatis mutandis) *to apprehend the offender and bring him before the said justice* to answer the said information.

Warrant.

On the party's appearance, or if he do not appear, then on proof on oath of the summons being given to him or left at his usual place of abode, or if he cannot be apprehended by warrant as aforesaid, the justice may proceed to hear and determine the offence.

(No. 3.)

Conviction thereon. (*b*)

County of } *BE it remembered, that on this day of in the year of the reign of A. O. is convicted before me J. P. Esquire, one of his Majesty's justices of the peace for the said county, for putting into and using, in the making of bread to be sold, a preparation or mixture in which* [*alum*] *was an ingredient: and I do adjudge him to pay and forfeit for the same the sum of 5l. Given under my hand and seal the day and year aforesaid.*

(No. 4.)

Warrant of distress, on non-payment of the penalty within 24 hours after his conviction.

County of } *To the Constable of*

FORASMUCH as A. O. late of in the county aforesaid, baker, was on the day of duly convicted before me J. P. Esquire, one of his Majesty's

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(*a*) See the act, *ante*, 450, also several forms given by the act relating to London, *ante*, 411, 412, 413.

(*b*) The form is given by the act, which see, *ante*, 450.

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justices of the peace for the said county, by the oath of A. W. a credible witness, for that the said A. O. on the day of did put into and use in the making of bread to be sold a preparation or mixture in which [alum] was an ingredient, against the form of the statute in such case made and provided; by reason whereof I did adjudge and have adjudged him to pay and forfeit for the said offence the sum of 5l. to be distributed as is hereinafter mentioned. and whereas it appears to me, that the said sum, or any part thereof, is not yet paid, I do therefore hereby authorise and require you forthwith to make distress of the goods and chattels of him the said A. O. and if within the space of five days next after such distress by you taken the said sum of 5l. shall not be paid, that then you do cause the said goods by you seized to be appraised and sold; rendering the overplus to him the said A. O. after deducting the said sum of 5l. and also the costs and charges of the prosecution for the said offence and of the said distress and sale; which costs and charges I do hereby ascertain at the sum of 30s. and out of the said sum of 5l. so forfeited as aforesaid you are to pay one moiety to A. I. [yeoman,] who informed me of the said offence, and prosecuted to conviction him the said A. O. before me for the same, and the other moiety you are to apply for the better carrying the act of parliament for the due making of bread, and for the other purposes therein mentioned, into execution, according as I shall hereafter give you directions: and if sufficient distress cannot be had or found whereupon to levy the said sum of 5l. as aforesaid, you are hereby required to certify the same to me, together with the return of this precept. Herein fail you not. Given under my hand and seal, the day of in the year of the reign of .

(No. 5.)

Return of the want of distress, indorsed upon the warrant.

County of } I A. C. constable of in the said county, do hereby certify J. P. to wit. } Esq. one of his Majesty's justices of the peace for the said county, that by virtue of this warrant I have made diligent search for the goods and chattels of the within-mentioned A. O. and that I can find no sufficient goods and chattels of him the said A. O. whereon to levy the within mentioned sum of 5l. Witness my hand the day of in the year of our Lord, 18 . A. C.

Sworn before me the said justice, the day and year aforesaid, J. P.

(No. 6.)

Commitment for want of distress.

County of } To the Constable of in the said county, and to the Keeper of the to wit. } common gaol at in the said county.

FORASMUCH as A. O. late of in the county aforesaid, baker, was on the day of duly convicted before me J. P. Esquire, one of his Majesty's justices of the peace for the said county, by the oath of A. W. a credible witness, for that he the said A. O. on the day of did put into and use in the making of bread to be sold a preparation or mixture in which [alum] was an ingredient, against the form of the statute in that case made and provided; by reason whereof I did adjudge him to pay and forfeit for the said offence the sum of 5l.: And whereas on the day of in the year aforesaid, I did issue my warrant to the constable of to levy the said sum of 5l. by distress of the goods and chattels of him the said A. O.: And whereas it appears to me, as well upon the oath of the said constable of as otherwise, that he the said constable of hath used his best endeavours to levy the said sum on the goods and chattels of the said A. O. as aforesaid, but that no sufficient distress can be found whereon to levy the same: Therefore I do hereby command you the said constable of him the said A. O. to apprehend and safely convey to the said common gaol, and him to deliver to the keeper thereof aforesaid, together with this precept: And I do hereby command you the said keeper of the gaol aforesaid to receive into your custody in the said gaol him the said A. O. and him there safely to keep for the space of one calendar month from the time of this commitment; unless the said sum of 5l. and the costs and charges of the prosecution, which I have ascertained at the sum of shall be sooner paid. Given under my hand and seal the day of in the year aforesaid.

(No. 7.)

Forms of proceedings for deficient weight.

The like process as above may be for bread deficient in weight; beginning the information (No. 1), which is the ground-work of the whole, thus:—

THAT A. O. late of in the county aforesaid, baker, on the day of in the year of the reign of did expose to sale one loaf of household bread

importing to be a two-penny loaf, deficient in weight one ounce, according to the assize then and there set for the said bread.

[And so in other like cases.]

(No. 8.)

Conviction of a baker for selling bread under the assize. (a)

County of } *BE it remembered, that on this day of in the year of the reign*
to wit. } *of our Sovereign Lord William the Fourth, of the United Kingdom, &c. and A. D. W. L. was convicted before me Esquire, one of his Majesty's justices of the peace for the said county of for that he the said W. L. at the time of the committing of each of the offences hereinafter mentioned, being a person making bread for sale within the parish of in the said county, on the day of unlawfully did make for sale within the limits to which the assize hereinafter mentioned, at the time of the making thereof and at the time of committing of each of the offences hereinafter mentioned, did extend, sixty-two loaves of wheaten bread as and for quartern loaves, which were all the loaves then and there found in the shop of the said W. L. which had been baked within twenty-four hours next preceding the time of weighing the same, deficient in weight according to the assize before then duly and legally set and then in force for loaves of bread, being quartern loaves, to be sold at, in, and throughout the limits aforesaid, in pursuance of the statute in such case made and provided, by which said assize a quartern loaf of wheaten bread was to weigh four pounds five ounces and eight drams avordupois, that is to say, the said loaves being then and there deficient in weight according to the said assize upon the average of all the said loaves which were then and there found, and which had been baked within twenty-four hours ounces avordupois, and every of them having been brought before me within twenty-four hours after the baking thereof, and it not appearing to my satisfaction that any of the deficiency in the weight of any of the said loaves arose from unavoidable accident, or was occasioned by or through any contrivance or confederacy: And I do adjudge him the said W. L. to forfeit and pay for the said offences the sum of 33l. and 5s. being the sum of 5s. for every ounce of bread which was wanting and deficient in the weight each and every of the said loaves ought to have been of according to the said assize. Given under my hand and seal at in the said county of this day of 18 .*

(No. 9.)

The like in another form, on 50 Geo. 3, c. 73, s. 1. (b)

—— to wit. BE it remembered, that on, &c. at, &c. in the said county, A. B. of, &c. peace officer, personally came before me J. P. one of his Majesty's justices of the peace for the said county, and informed me, that on, &c. at, &c. in the county aforesaid, he the said A. B. being then a peace officer, and being authorised by a certain warrant in that behalf under the hand and seal of [me the said J. P.] did at a seasonable time in the day time of the said day enter into the shop and bakehouse [house, shop, stall, bakehouse, warehouse, or outhouse] of and belonging to C. D. a baker and seller of bread, there situate, and being more than ten miles distant from the Royal Exchange in London, to search for, view, weigh, and try all such bread as should be then and there found, and which should have been baked within twenty-four hours next preceding the time of the same having been so weighed; and that he therein found [two hundred] loaves of bread, which were baked within the said twenty-four hours, and weighed the same; and which said [two hundred] loaves should have weighed pounds weight, according to the assize in that behalf there set: And that in the weighing of the said bread, a deficiency of four hundred ounces was then and there found in the due weight thereof according to the assize aforesaid, on the average of the whole weight of all such bread as was then and there found, and which had been baked within twenty-four hours as aforesaid; contrary to the form of the statute in that case made and provided: Whereupon, &c. [as usual, *post*, **Conviction**, Vol. I. to the end. The penalty is 5s. for every ounce the whole of the bread shall, on an average, be deficient in weight according to the assize.]

(No. 10.)

Conviction of a baker for not keeping scales and weights, or not weighing bread on request, on 1 & 2 Geo. 4, c. 50, s. 10. (c)

—— to wit. BE it remembered, that on, &c. C. D. is convicted before me J. P. one of his Majesty's justices of the peace for the said county, for that the said C. D.

(a) See a form in Paley on Convictions, 32, 33.

(b) See *ante*, 416, also 31 Geo. II. c. 29, s. 24, 34, 38, *ante*, 452, 456, 458.

(c) See *ante*, 472, also 50 Geo. III. c. 73, s. 2, *ante*, 417.

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on, &c. at, &c. in the said county, and more than ten miles from the Royal Exchange in London, being then and there a baker and seller of bread, did neglect to fix a beam and scales in some convenient part of his shop there situate; [or *did neglect to provide and keep for use proper weights;* or *had in his shop there situated a certain weight, that is to say, one two pound weight, which was deficient in its due weight;* or *did then and there refuse to weigh one loaf of bread then and there purchased in his shop there situate, by one E. F. in the presence of the said E. F. then and there requiring the same:*] *And I do adjudge the said C. D. to forfeit and pay for the same the sum of* [not more than 5*l.* nor less than 20*s.*] *Given under my hand and seal the day and year first aforesaid.* J. P.

(No. 11.)

Conviction for adulterating flour, &c. on 1 & 2 Geo. 4, c. 50, s. 5. (*a*)

[Commencement as in the form (No. 10.)] *for that he the said C. D. on, &c. at, &c. in the said county, did knowingly put into nine sacks of flour, which was ground, dressed, bolted and manufactured for sale out of the city of London and the liberties thereof, and beyond the weekly bills of mortality, and more than ten miles from the Royal Exchange in London, to wit, at, &c. in the county aforesaid, in the manufacturing of the same, a certain ingredient and thing called* [or *did knowingly offer and expose to and for sale ten sacks of flour of barley as and for ten sacks of flour of wheat;* or *did knowingly offer and expose to and for sale ten sacks of as and for the flour of wheat, which was not the real and genuine flour of wheat, as the same imported and ought to be:*] *and I do adjudge the said C. D. to forfeit and pay for the same the sum of* [not more than 20*l.* nor less than 5*l.*] *Given under my hand and seal the day and year first aforesaid.* J. P.

(No. 12.)

Conviction of a baker for using alum, &c. in making bread, on 1 & 2 Geo. 4, c. 50, s. 4. (*b*)

[Commencement as in form (No. 10.)] *for that he the said C. D. on, &c. at, &c. in the said county, being then a person making bread for sale out of the city of London and the liberties thereof, and beyond the weekly bills of mortality, and more than ten miles from the Royal Exchange, did in the making of certain bread for sale put a certain mixture, in which* [*alum*] *was an ingredient,* [any alum or preparation or mixture in which alum shall be an ingredient, or any other ingredient or mixture in lieu of alum,] *into the dough of such bread: And I do adjudge the said C. D. to forfeit and pay for the same the sum of* [not more than 20*l.* nor less than 5*l.*] *Given under my hand and seal the day and year first aforesaid.* J. P.

(No. 13.)

Conviction of a baker, &c. for having alum, &c. in his possession, on 1 & 2 Geo. 4, c. 50, s. 8. (*c*)

[Commencement as in form (No. 10.)] *for that, on, &c. at, &c. in the county aforesaid, ten pounds weight of alum,* [or other ingredient or mixture,] *were found in the* [*shop*] *of the said C. D. he the said C. D. being then and there a baker,* [miller, mealman, or baker,] *out of the city of London and the liberties thereof, and beyond the weekly bills of mortality, and more than ten miles from the Royal Exchange; which said* [*alum,*] *after due examination, I do hereby adjudge to have been deposited in the said* [*shop,*] *for the purpose of being used in adulterating flour and bread: and I do adjudge the said C. D. to forfeit and pay for the same the sum of* [not more than 20*l.* nor less than 5*l.*] *Given under my hand and seal the day and year first aforesaid.* J. P.

(No. 14.)

Conviction for obstructing the search for, or seizing of, adulterated meal, &c. on 1 & 2 Geo. 4, c. 50, s. 9. (*d*)

[Commencement as in form (No. 10.)] *for that he the said C. D. on, &c. at, &c. in the county aforesaid, did wilfully obstruct and hinder A. B. in searching, by virtue of a warrant under the hand and seal of a justice of the peace in that behalf, for alum and other ingredients, intended to be used for the purpose of adulterating flour and bread;* [or, *did wilfully obstruct and hinder A. B. in seizing certain alum, which was found by the said A. B. in the shop of the said C. D. on a*

(*a*) *Ante*, 471. See 59 Geo. III. c. 36, s. 5, *ante*, 462; 31 Geo. II. c. 29, s. 22, *ante*, 451.

(*b*) *Ante*, 471. See 59 Geo. III. c. 36, s. 4, *ante*, 462.

(*c*) *Ante*, 472. See 59 Geo. III. c. 36, s. 8, *ante*, 464; 31 Geo. II. c. 29, s. 30, *ante*, 454.

(*d*) *Ante*, 472. See 59 Geo. III. c. 36, s. 9, *ante*, 464; 31 Geo. II. c. 29, s. 31, *ante*, 455.

search there by the said A. B. for alum and other ingredients intended to be used for the purpose of adulterating flour and bread, by virtue of a warrant under the hand and seal of a justice of the peace in that behalf, and deemed to have been lodged there, with an intent to adulterate the purity and wholesomeness of flour and bread; or, *did wilfully oppose and resist A. B. in searching, by virtue of a warrant under the hand and seal of a justice of the peace in that behalf, for alum and other ingredients intended to be used for the purpose of adulterating flour and bread*; or, *did wilfully oppose and resist A. B. in carrying away a certain quantity of alum, which was then found by the said A. B. in the shop of the said C. D. on a search by the said A. B. for the same, by virtue of a warrant under the hand and seal of a justice of the peace in that behalf, and seized by him; and divers loaves of bread then and there seized by the said A. B. as being adulterated*] : *and I do adjudge the said C. D. to forfeit and pay for the same the sum of* [not more than 5*l*. nor less than 50*s*.] *Given under my hand and seal the day and year first aforesaid.* *J. P.*

(No. 15.)

Conviction for not marking loaves, which are of other than of wheaten flour, on 1 & 2 Geo. 4, c. 50, s. 6. (*a*)

[Commencement as in form (No. 10.)] *for that he the said C. D. on, &c. at, &c. in the said county, did expose to and for sale,* [made for sale, or sold, carried out, offered or exposed in anywise to or for sale,] *out of the city of London and the liberties thereof, and beyond the weekly bills of mortality, and more than ten miles from the Royal Exchange, to wit, at aforesaid, in the county aforesaid,* [*fifty*] *loaves of bread made of the flour of* [*barley*], *the said loaves not being respectively marked with a large Roman M: and I do adjudge the said C. D. to forfeit and pay for the same the sum of that is to say, the sum of* [not more than 40*s*. nor less than 10*s*.] *for every loaf thereof. Given under my hand and seal the day and year first aforesaid.* *J. P.*

(No. 16.)

Conviction for baking on Sunday, on 1 & 2 Geo. 4, c. 50, s. 11. (*b*)

[Commencement as in form, (No. 10.)] *for that he the said C. D. being a person exercising the trade and calling of a baker, out of the city of London and the liberties thereof, and beyond the weekly bills of mortality, and more than ten miles from the Royal Exchange, to wit, at, &c. aforesaid, in the county aforesaid, did on the Lord's Day, commonly called Sunday, and within two days before the date of this conviction, to wit, on, &c. at, &c. aforesaid, in the county aforesaid, bake 100 loaves of bread*; [or, *after half-past one of the clock in the afternoon of the same day, at aforesaid, in the county aforesaid, did bake* (or *deliver*) *and cause to be baked* (or *delivered*) *two dishes of meat, two puddings, and two pies, for persons unknown*] : *and I do adjudge the said C. D. to forfeit and pay for the same the sum of* [5*s*. for the first offence, 10*s*. for the second offence, and 20*s*. for every subsequent offence], *together with the costs and expenses of this prosecution, which I hereby ascertain and settle at the sum of . Given under my hand and seal the day and year first aforesaid.* *J. P.*

Breaking Gaol. *See* **Escape**, Vol. II.; **Prison Breaking, Rescue**, Vol. V.

Breaking open Doors. *See ante*, **Arrest**, p. 265; *post*, **Hue and Cry**, Vol. III. p. 281; **Warrant**, Vol. V.

Brewers. *See ante*, **Alehouses**, p. 56; *post*, **Excise**, Vol. II.

(*a*) *Ante*, 471. See 59 Geo. III. c. 36, s. 6, *ante*, 463.

(*b*) *Ante*, 473. See 59 Geo. III. c. 36, s. 12, *ante*, 465.

Bribery.

What is.

BRIBERY, in a strict sense, is taken for a great misprision of one in a judicial place taking any thing whatsoever, except meat and drink in small value, of any one who has to do before him any way, for doing his office, or by colour of his office, but of the King only; and is punishable at the common law by fine or imprisonment. 1 *Hawk.* c. 67, s. 1.

But this definition, in confining the offence to *judicial* officers, seems too narrow. See *R.* v. *Beale*, 1 *East*, 183; *R.* v. *Vaughan*, 4 *Burr.* 2494; *Com. Dig. Officer*, (I).

Attempts to bribe.

The *attempt* to bribe is an offence. Thus an attempt to bribe a privy councillor to procure a reversionary patent of an office grantable by the King under the great seal is indictable, though it did not succeed. 4 *Burr.* 2495; 2 *Campb.* 231; *ante*, **Attempts**, p. 292.

An attempt to bribe at an election for *parliament* is indictable. 4 *Burr.* 2500; 2 *Ld. Raym.* 1377; *post*, **Parliament**, Vol. V. p. 25. So is such an attempt at an election for a corporation. *Id.*

As to bribing officers of customs, &c. see **Excise**, Vol. II. and 6 Geo. IV. c. 108, s. 35.

See forms of indictments for bribery, &c. and law, 2 Chit. C. L. 683 to 697.

Bricks and Tiles.

[17 Edw. IV. c. 4; 17 Geo. III. c. 42; 55 Geo. III. c. 176.]

For the Duty on Bricks and Tiles, and other Excise Regulations, see **Excise**, Vol. II.

Quality and size of tiles. 17 Edw. 4, c. 4.

BY the 17 Edw. IV. c. 4, every person using the occupation of making of the tile called plain tile, (otherwise called thak tile,) roof tile or cres tile, corner tile, and gutter tile,(*a*) shall make it good, seasonable, and sufficient, and well whited and annealed.

And the earth, whereof any such tiles shall be made, shall be digged and cast up before Nov. 1st next before they shall be made, and stirred and turned before Feb. 1st next following; and not wrought before March 1st next after; and the same earth before it be put to making of tile shall be truly wrought and tried from stones.

And the veins called malin or marle, and chalk, lying commonly in the ground near to the land convenient to make tile, after the digging of the said earth whereof any such tile shall be made, shall be well severed from the earth of which the tile shall be made.

And every such plain tile so to be made shall be 10½ inches long, 6¼ inches broad, and half an inch and half a quarter thick; roof tile or cres tile, 13 inches long, half an inch and half a quarter thick, with convenient deepness; gutter tile and cover tile 10½ inches long, with convenient thickness, breadth, and deepness.

Penalty.

And if any person shall set to sale any such tile otherwise made, he shall forfeit to the buyer double value of the tile, and make fine and ransom at the king's will; to be recovered by action of debt, with costs. And also the justices of the peace and every of them may hear and determine offences against this act; who shall assess upon the offender no less fine than for every 1000 plain tile 5*s.*, for every 100 roof tile 6*s.* 8*d.*, and for every 100 corner or gutter tile 2*s.*

And the said justices shall have power to call before them or any of them, persons having experience or knowledge in making tile, to search and examine the digging, casting, turning, parting, making, whiting, and annealing aforesaid; and no person shall put any such tile to sale before it be searched, on pain of forfeiture. And if the searcher shall find any persons offending against this act, they shall present the defaulters at the next sessions, which shall be equal to a presentment of twelve men. And the searcher shall have of the tile maker for his labour for every 1000 plain tile searched 1*d.* for every 100 roof tile a halfpenny, and for every 100 corner and gutter tile a farthing. Searcher neglecting his duty shall forfeit 10*s.*; and the justices may hear and determine the faults of the searchers in like manner as of the tile makers.

Searching for tiles, &c.

Tiles for draining land are exempt by several statutes from all duties. 34 Geo. III. c. 15; 42 Geo. III. c. 93; and 46 Geo. III. c 138. And this exemption is, by stat. 55 Geo. III. c. 176, extended to tiles which are necessary for the "foundations and support" of such drains, according to the following description: "flat tiles not exceeding one inch in thickness, each thereof having at one end a semircircular projection, and at the other a semicircular arch or indent, such projection and arch being portions of circles of equal diameters, and each such tile being also not less than nine inches in length, and not exceeding seven inches in breadth, such flat tiles being also perforated with circular holes, each thereof being not less than two inches in diameter, and the sum of the areas of such holes in each such flat tile amounting to not less than a quarter part of the surface or superficial content of such flat tile, and no such flat tile being fit or proper for the purpose of being used in building, or in the roof or covering of any house, shed, or other building whatever."

Exemptions from duties.

55 Geo. 3, c. 176.

By the 17 Geo. III. c. 42, s. 1, 2, "all bricks made for sale shall, when burnt, be not less than eight inches and a half long, two inches and a half thick, and four inches wide; and all pantiles not less than thirteen inches and a half long, nine inches and a half wide, and half an inch thick; on pain that the maker shall forfeit 20*s.* for every 1000 bricks, and 10*s.* for every 1000 pantiles, and so proportionably for a greater or less number."

Quality and size of bricks and pantiles.

17 Geo. 3, c. 42.

The reason why no provision was made concerning *pantiles*, among the other sorts of tiles, by the above-mentioned act of the 17 Edw. IV. is because *pantiles* are a modern invention, long after the date of that act.

Pantiles.

Sect. 3. "And the size of the sieves or screens for sifting or screening sea-coal ashes, to be mixed with brick earth in making of bricks, shall not exceed one quarter of an inch between the mashes."

Sect. 4, "All contracts for enhancing or fixing the price of bricks or tiles shall be void; and every brick-maker or tile-maker, or other person interested in the making for sale, offending therein shall forfeit 20*l.*; and every clerk, agent, or servant, 10*l.*; half to the poor, and half to him who shall sue in six calendar months in one of the courts at Westminster."

Combinations to enhance the price.(*a*)

Sect. 5. "All other penalties and forfeitures, not herein otherwise directed, shall be recovered before one justice, on proof by confession or oath of one witness (the oath to be administered *gratis*); to be levied by distress and distributed half to the informer, and half to the poor of the parish where the offender dwells; and if sufficient distress shall not be found, or such penalties and forfeitures shall not be forthwith paid, the justice shall commit the offender to the common gaol or house of correction for the place where the matter shall arise, for any time not exceeding two calendar months, unless such penalties and forfeitures and all reasonable charges shall be sooner paid."

Penalties.

Sect. 6. "The conviction to be in this form, or to the like effect:—

Conviction.

"*BE it remembered, that on the day of in the year of our Lord A. B. is convicted before me C. D. one of his Majesty's justices of the peace for the of* [specifying the offence, and the time and place when and where the same was committed, as the case shall be]. *Given under my hand and seal the day and year aforesaid.*"

(*a*) This seems an offence at common law, *post*, **Conspiracy**, Vol. I.

BRICKS AND TILES.

Sect. 7. "But no penalty in respect of the dimensions of bricks or tiles shall be recovered, unless the information shall be laid within one calendar month after sale or delivery of the brick or tiles."

17 Geo. 3, c. 42. Limitation of proceedings.

Sect. 8. "Persons aggrieved may, within four calendar months after the cause of complaint shall have arisen, appeal to the general quarter sessions for the county, riding, division, or place, giving twenty-one days' notice at the least, in writing, of his intention to bring such appeal, and of the matter thereof, to the person or persons whose acts are complained against; and within eight days after such notice entering into recognizance before a justice with two sureties, conditioned to try such appeal at, and abide the order of, and pay such costs as shall be awarded at such sessions. And the justices at such sessions, on proof of such notice and recognizance, shall hear and determine the appeal in a summary way, and award such costs to the party appealing or appealed against as they shall think reasonable; and their determination shall be conclusive; and no order or other proceedings in the premises shall be quashed for want of form, or removed by *certiorari* or other process into any of his Majesty's courts of record at Westminster."

Appeal.

Bricks sold of improper size.

It has been decided that a person who had sold a quantity of bricks of less than the statutable dimensions, could not recover the value of such brick so sold. *Law* v. *Hodson*, 11 *East*, 300; and see *Bensley* v. *Bignold*, 5 *B. & Ald.* 335; *post*, Vol. V. p. 223, n.

Bridges, *(Of County.)*

UNDER this title we shall treat only of County Bridges: those which are under the cognizance of the surveyor of the highways, as being repaired by the several parishes or districts, are treated of in **Highways in general**, Vol. III.

I. *What is a Public Bridge, &c.* 489.

II. *Who shall Repair it*, 489 to 494.

(1.) *By Common Law*, 489.
(2.) *By Statute*, 493.

[9 Hen. III. c. 15; 22 Hen. VIII. c. 5, s. 2, 3; 43 Geo. III. c. 59, s. 5—7.]

III. *Concerning the* 300 *feet at the ends of Bridges*, 494.

[22 Hen. VIII. c. 5, s. 9.]

IV. *Manner, &c. of Repairs, &c.* 493 to 500.

[22 Hen. VIII. c. 5, s. 4; 43 Geo. III. c. 59; 54 Geo. III. c. 90, s. 2; 55 Geo. III. c. 143; 3 Geo. IV. c. 126, s. 32.]

V. *Expenses of and Contracts, &c. for Repairs, &c.* 500 to 504.

[12 Geo. II. c. 29; 52 Geo. III. c. 110; 55 Geo. III. c. 143, s. 5.]

VI. *Modes of Prosecution for non-repairs*, 504 to 510.

(1.) *By criminal Information*, 505.
(2.) *By Presentment*, 505.
(3.) *By Indictment*, 506, *and herein of the Plea*, 507; *Certiorari*, 508; *Trial*, 509; *Evidence*, 509; *Judgment, &c.* 510.

[22 Hen. VIII. c. 5, s. 1, 5; 1 Anne, st. 1, c. 18; 12 Geo. II. c. 29, s. 13; 55 Geo. III. c. 143, s. 5.]

VII. *Injuries, to, and Destruction, &c. of Bridges*, 510.

[7 & 8 Geo. IV. c. 30, s. 13.]

VIII. *Forms*, see List of, *post*, 510.

WHAT A PUBLIC BRIDGE.

I. What is a Public Bridge, &c.

What a public bridge.

A public bridge is a highway, and a bridge of common right to be used by the public on all occasions like a highway.

The same rules as to deciding what will be a public highway will for the most part here apply. *Post*, Highway, Vol. III. p. 4 to 8.

To constitute a public bridge the circumstance of its being always open along a highway is *primâ facie* evidence thereof. *R.* v. *Buckinghamshire*, 12 *East*, 192; *R.* v. *Salop*, 13 *East*, 95.

It is not, however, necessary that the bridge should be always open, but if the public use it at particular seasons it will suffice. *R.* v. *Northamptonshire*, 2 *M. & S.* 262.

A bridge used only on occasion of floods and lying out of and alongside the road is a public bridge. *R.* v. *Devon*, *R. & M. C. N. P.* 144.

A useless or mere ornamental bridge is not a public bridge. *R.* v. *West Riding Yorkshire*, 5 *Burr.* 2594; 2 *Black.* 685, S. C.; 2 *East*, 342; *R.* v. *Gloucestershire*, 2 *East*, 356, n.

See further as to what is a public bridge, *infra*, next section.

Freehold, &c. in.

As the freehold of highways in general is vested in the adjoining proprietors, or lord of the manor, and not in the public, so the freehold in bridges is in him that hath the freehold of the soil; but the free passage is for the public. 2 *Inst.* 705.

Where a person built and dedicated a bridge to the public, the property in the materials ceasing to be part of the bridge, was held to revert to the original owner. *Harrison* v. *Parker*, 6 *East*, 154.

II. Who shall Repair.

Who shall repair.

The liability to repair a public bridge depends either on the common law or on statute law.

(1.) Who liable to Repair at Common Law.

By common law.

County.

When County liable to Repair at Common Law]—A bridge being a highway the principles of the common law which relate to highways in general will be here applicable; see Highway, Vol. III. p. 9. By the common law therefore counties are chargeable with the repair of public bridges, unless part thereof be within a franchise, in which case it is said that so much as is within the franchise shall be repaired by those of the franchise. 1 *Hawk.* c. 77, s. 1; 1 *Inst.* 701.

All public bridges are *primâ facie* repairable by the inhabitants of the county without distinction of foot, horse, or carriage bridges, unless they can show that others are bound to repair particular bridges. *R.* v. *Salop*, 13 *East*, 95.

The common law imposes no obligation to *widen* bridges which are too narrow for the convenient use thereof by the public. See *R.* v. *Devonshire*, 4 *B. & Cres.* 670; *Cumberland* v. *Rex*, 3 *B. & P.* 354; 6 *T. R.* 194, *post*, 495.

Individuals.

When Individuals liable to Repair at Common Law]—By the common law also some persons (spiritual or temporal, corporate or not corporate,) are bound to repair bridges by reason of the *tenure* of their lands or tenements, and some by reason of *prescription* only.

By *tenure*, in the case of private individuals; by reason that they and those whose estate they have in the lands or tenements, are bound in respect thereof to repair the same. 2 *Inst.* 700.

By reason of *prescription* only as against corporate bodies. But herein there is a diversity between bodies politic or corporate, spiritual or temporal, and natural persons, for the bodies politic or corporate, spiritual or temporal, may be bound by usage and prescription only, because they are local and

WHO TO REPAIR AT COMMON LAW.

have a succession perpetual; but a natural person cannot be bound by act of his ancestor, without a lien, or binding, and assets. 2 *Inst.* 700.

In the case of *R.* v. *Ecclesfield*, 1 *B. & A.* 359, Lord *Ellenborough*, C. J. said, "As the case of parishes, and highways within them, is analogous to that of counties and bridges, the charge of repairing a highway shall fall upon the parish, in default of usage and custom to charge the particular portion of the parish wherein it is situate; and as a hundred, or parish, or other known portion of a county, may by usage and custom be chargeable to the repair of a bridge erected within it, so in like manner a township or other known portion of a parish may by usage and custom be chargeable to the repair of the highways within it. And upon an attentive perusal of the passages of Lord *Coke's* commentary, we think it plain, that in drawing the distinction between bodies politic and natural persons, the learned writer speaks of individual persons, and not of an aggregate of the inhabitants of parishes or other places."

Where an entire estate or manor is liable to the repair of a bridge, and the estate or manor is afterwards divided among several, they are each severally liable to the whole charge. 1 *Salk.* 357; 3 *Salk.* 77; 6 *Mod.* 150.

See further as to who may be indicted for not repairing, *post*, 506; and as to how far individuals are liable to repair highways in general, *post*, Highway, Vol. III. p. 14, 15.

Bridge built by a private person.

If a man make a bridge for the common good of all the subjects, he is not bound to repair it; for no particular man is bound to the reparation of bridges by the common law, but by tenure or prescription. 2 *Inst.* 701.

And if none are bound by tenure or prescription at common law, then the whole county or franchise shall repair it. *Id.*

The authorities on this subject were all considered in *R.* v. *West Riding of Yorkshire*, 5 *Burr.* 2594; 2 *Bla. R.* 685; in the case of *Glusburne* Bridge, where, to an indictment against the riding for the non-repair, the plea stated, that there was an ancient foot bridge over the stream, which the township of *Glusburne*, who were bound to repair it, took down, and in lieu thereof erected the carriage bridge in question, and had repaired the new bridge since its erection; that the new bridge was of public utility, and used constantly, till carried away by a flood; that the ancient foot bridge stood sixty yards below the new bridge in the same highway: and all the court held the riding liable to the repair, on the general principle, that if a private person build a bridge which afterwards becomes a public convenience, the county is bound to repair it.

The public benefit is the grand criterion. If a man wantonly erects an useless, or a mere ornamental bridge, neither he nor the public are bound to sustain it. And if it is principally for his own benefit, and only collaterally of benefit to others, the public have nothing to do with it. But where it is of public utility, the public, which reaps the benefit, ought to sustain the burden of repairing it. Else it would be a great discouragement to public spirited persons to erect a beneficial bridge, provided they must either repair it themselves, or it must run to ruin. *Id.*

The county is liable to repair a bridge built in the highway, and used by the public above forty years, though originally erected for the convenience of an individual. *R.* v. *Glamorganshire*, 2 *East*, 356, n.

In an indictment against the inhabitants of the county of Bucks for not repairing the half of Datchet Bridge, they pleaded specially, and traversed the bridge being a public one. The defendants were found guilty, subject to a special case. The case stated that Queen Anne, for her convenience in passing to and from Windsor Castle, built a bridge over the Thames at Datchet, in the common highway leading from London to Windsor, in lieu of an ancient ferry, with a toll which belonged to the crown. She and her successors repaired the bridge till 1796, when it having in part fallen in and become impassable, the whole was removed, and the materials converted to the use of the King, who re-established the ferry. The question was, whether this was a public bridge and the defendants liable to repair and rebuild? The opinion of the court, that this bridge, situated in a principal highway,

and used, as it so long was, for all persons as a public bridge, and being also of great public use and convenience, was and is a bridge repairable, as to the half part now in question, by the county of Bucks, in which it was, until the period of its late dilapidation and destruction, situate. *R.* v. *Bucks*, 12 *East*, 192.

Where a person about 45 years back erected a mill and dam thereto for his own profit, *per quod* he deepened the water of a ford, through which there was a public highway, but the passage through which was, before the deepening, very inconvenient at times to the public, and the miller afterwards built a bridge over it, which the public had ever since used, the Court of King's Bench held, that the county and not the miller were chargeable with the reparation. *R.* v. *Kent*, 2 *M. & S.* 513.

If a person erect a bridge in a highway of a slight and incommodious nature, and evidently intended to throw a burden on the county, it may be indicted and abated as a common nuisance; 2 *East*, 348; and see the enactment of the 43 Geo. III. c. 59, s. 5, *post*, 493.

Bridge erected under act of parliament.

The county or riding are even liable to the repair of a public bridge erected by commissioners under an act of parliament, though the latter are empowered to raise tolls in order to support it, or though other funds are provided for the repairs. *R.* v. *West Riding, Yorkshire*, 2 *East*, 342. *Et per* Lord *Ellenborough*, C. J. "By the common law, counties are chargeable with the repair of public bridges, unless it be shown as the statute 22 Hen. VIII. c. 5, (which was founded on the common law, and of which hereafter, *post*, 493,) says, 'what persons, lands, tenements, and bodies politic, ought to make and repair such bridges.' In the absence of such proof, that burden is, by the operation of the common law, thrown on the inhabitants of the county in which the bridge lies. But in order to effect this, it is not enough that a new bridge shall be built in a highway used by the public, it must also be useful to the public. I do not lay stress on the idea of the public having adopted the bridge by passengers going over it, because if it occupy the highway, they cannot help using it: I only rely on the using of it so far as to show that it does not appear to have been treated as a nuisance, but to have been acquiesced in by the public. If, however, it be built in a slight or incommodious manner, no person can at his choice impose such a burden on the county, and it may be treated altogether as a nuisance, and indicted as such. But if the public lie by without objection, and make use of it for some time, it is evidence that they adopt the act, and the bridge becoming of public benefit, the burden of repair ought properly to fall upon the public. Now that this bridge is for the common good, is proved by the use of it by all the King's subjects passing that way, by its not having been treated as a nuisance, but acquiesced in. Then, after having enjoyed the benefit of it, shall the public object to it when they begin to feel the burden of repair?" The rule laid down by *Aston*, J. in the *Glusburne* Bridge case, seems to be the true one, that "if a man build a bridge, and it becomes useful to the county in general, the county shall repair it." And as to the adoption of it by the public, there is good sense in not relying on that, except as evidence of its being a public bridge and of utility to the public. *Per Grose*, J. "It being stated in the plea that the bridge was erected by the trustees of a turnpike road under a public act of parliament, I cannot suppose that it was not a public bridge built for the benefit of the public, and of public utility; and not merely for ornament, or for private benefit. If it were shown that a bridge had been built at first in a slight and imperfect manner, for the purpose of throwing the expense immediately on the county, I should think that it was a public nuisance and indictable." *Lawrence*, J. agreed, and said, "the principle to be collected from the Glusburne Bridge case is, that if the bridge be of public utility, the county who derive advantage from it must support it. But it is said that we cannot collect that the bridge in question is of such a description. But when we observe that it was erected by trustees of a turnpike road under an act of parliament, we cannot suppose it was erected for other purposes than for the public utility."

WHO TO REPAIR AT COMMON LAW.

In the same case, as to the particular question of the liability of the trustees of the road, Lord *Ellenborough*, C. J. said, "as to the objection that it ought to be repaired by the commissioners of the turnpike by whom it was erected, and who have authority to raise tolls for the purposes of the act, I cannot find any authority for them to erect bridges under this act; however, I will suppose they were authorised to erect the bridge: yet no fund having been specially provided by the legislature for the repair of it, the burden must necessarily fall where the common law has placed it, viz. on the riding. I am aware of the extent of this opinion, and if the trustees under similar acts throw this burden generally on the counties, it may be necessary to make special legislative provision in future." *Per Lawrence*, J. "As to the objection that the trustees are empowered to take tolls, that is, supposing that they are to derive some private advantage from the tolls, which is not the case, whatever tolls are raised must be laid out on the maintenance of the roads. It might as well be contended, that if a parish were to build a new bridge on a road within their limits, they would be bound to keep it in repair afterwards, and that the county would not be liable, as that the trustees are in this case, because the bridge is built in the turnpike road; in truth, the trustees are merely substituted in lieu of the parish;" and *Le Blanc*, J. observed, "that the circumstance of the bridge being built by trustees under an act of parliament, to which the defendants must be considered as parties and assenting, and by those to whom the legislature delegated the trust of determining whether it were proper to build the bridge, made the case stronger against the defendants than where an individual had in the first instance exercised his own discretion."

And this common law liability of a county to repair a public bridge is so strong, that although a public bridge has been erected and constantly repaired by trustees under act of parliament, and although there be funds for the repairs, the county are still liable to repair it. *R.* v. *Oxfordshire*, 4 *B. & Cres.* 194; 6 *D. & R.* 231, S. C.

In 1 *Ld. Raym.* 725, Lord *Holt* says, "The inhabitants of every parish, of common right, ought to repair the highways, and, therefore, if particular persons are made chargeable to repair the said ways by a statute lately made, and they become insolvent, the justices of the peace may put that charge upon the rest of the inhabitants."

Where an act of parliament appoints trustees for taking down an old bridge and building a new one in its room, the county is not liable to repair until the purposes of the act are accomplished, and the powers it confers cease to operate. 16 *East*, 395.

Navigable river company.

And where certain persons and their successors were authorised by act of parliament to make a river navigable, and to cut the soil of any person for making any new channel, &c. by virtue of which they cut through a highway and rendered it impassable, and a bridge was built over the cut, over which the public passed, and which had been repaired by the proprietors of the navigation; the Court of King's Bench held, that the proprietors and not the county were liable to repair. After argument in this case, Lord *Ellenborough*, C. J. said, "The undertakers of this navigation have a duty, as it seems to me, arising out of the execution of their own powers under this act. The act enables them to cut new channels as occasion should require; and if occasion requires them to cut through a public highway, their duty is to furnish a substitute to the public by means of a bridge." *Bayley*, J. said, "This differs from the last case of *R.* v. *Kent*, (*ante*, 491); there the county derived a very essential benefit from the bridge; they had before but a passage through the ford, which is always an inconvenient one: but what benefit does this county derive from passing over a bridge instead of the solid highway." Judgment for the crown. *R.* v. *Kerrison*, 3 *M. & S.* 526.

Canal company.

So where a canal company cut and deepened a ford across a highway, and thereby rendered a bridge necessary for the use of the public, which they built; it was held they were bound to repair it, the bridge being necessary

for the purposes of the company, and not for the public. *R.* v. *Lindsey, Lincolnshire*, 14 *East*, 317.

Bridge enlarged by individual.

In the case of *R.* v. *West Riding of Yorkshire*, 2 *East*, 353, n. defendants were indicted for not repairing a public carriage bridge; plea, that certain townships had immemorially repaired: issue taken thereon. The facts were, that there had been immemorially a foot bridge till 1745, when the townships enlarged it to a horse bridge, and afterwards to a carriage bridge, at their own expense; that the riding had never repaired it. It was held, that this evidence did not maintain the defendant's plea; and further, that where a party is bound to repair a foot bridge, he shall not discharge himself by turning it into a horse or carriage bridge, but shall still repair it as a foot bridge, i. e. *pro rata*.

Repairing of house adjoining bridge.

A tenant at will of a house, which adjoins to a common bridge, is bound to repair the house, so that the public be not prejudiced by the want of repair, although, being only tenant at will, he be not bound to repair as to his landlord. *Reg.* v. *Watson*, 2 *Ld. Raym.* 856; 1 *Salk.* 357, S. C.

Freehold in bridges.

The freehold of bridges is in him that hath the freehold of the soil; but the free passage is for all the King's liege people. 2 *Inst.* 705; *ante*, 489.

(2.) By Statute.

Who to repair by statute.

By the Great Charter, 9 Hen. III. c. 15, "no town nor freeman shall be distrained to make bridges nor banks, but such as of old time and of right have been accustomed."

And none can be compelled to make new bridges where never any were before, but by act of parliament. 2 *Inst.* 701.

This statute is no more than declaratory of the common law.

County not to repair bridge unless erected substantially to satisfaction of surveyor.

In order to protect a county from the charge of repairing bridges, which in point of utility were not equal to the expense, it is enacted by stat. 43 Geo. III. c. 59, s. 5, "that no bridge hereafter to be erected or built in any county by or at the expense of any individual or private person or persons, body politic or corporate, shall be deemed or taken to be a county bridge, or a bridge which the inhabitants of any county shall be compellable or liable to maintain or repair, unless such bridge shall be erected in a substantial and commodious manner, under the direction or to the satisfaction of the county surveyor or person appointed by the justices of the peace at their general quarter sessions assembled, or by the justices of the peace of the county of Lancaster, at their annual general sessions; and which surveyor or person so appointed is hereby required to superintend and inspect the erection of such bridge when thereunto requested by the party or parties desirous of erecting the same; and in case the said party or parties shall be dissatisfied, the matter shall be determined by the said justices respectively at their next general quarter sessions, or at their annual general sessions in the county of Lancaster."

Act not to extend to bridges repaired by reason of tenure.

Sect. 7 provides, "that nothing herein contained shall extend to any bridges or roads which any person or persons, bodies politic or corporate, is, are, or shall be liable to maintain or repair by reason of tenure or by prescription, or to alter or affect the right to repair such bridges or roads."

As to who are inhabitants within the act, see *post*, 494.

Bridges in and out of cities, ridings, &c.

By the 22 Hen. VIII. c. 5, s. 2 & 3, after reciting by section 2, that "in many parts of this realm it cannot be known and proved what hundred, riding, wapentake, city, borough, town, or parish, nor what person certain or body politic ought of right to make such bridges decayed, by reason whereof such decayed bridges, for lack of knowledge of such as own to make them, for the most part lie long without any amendment, to the great annoyance of the King's subjects."

Sect. 3 enacts, "that in every such case the said bridges, if they be without city or town corporate, shall be made by the inhabitants of the shire or

WHO TO REPAIR BY STATUTE.

riding within the which the said bridge decayed shall happen to be; and if it be within any city or town corporate, then by the inhabitants of every such city or town corporate wherein such bridges shall happen to be; and if part of any such bridges so decayed happen to be in one shire, riding, city, or town corporate, and the other part thereof in another shire, riding, city, or town corporate, or if part be within the limits of any city or town corporate and part without, and part within one riding and part within another, that then in every such case the inhabitants of the shires, ridings, cities, or town corporate shall be charged and chargeable to amend, make, and repair such part and portion of such bridges so decayed as shall lie and be within the limits of the shire, riding, city, or town corporate, wherein they be inhabited at the time of the same decays."

This statute is only in affirmance of the common law.

Bridges broken in the Highways]—This extendeth only to common bridges in the King's highways, and not to private bridges, to mills or the like; the remedy in which case is not by indictment, but by action. 2 *Inst.* 701.

Within a City or Town Corporate]—It hath been questioned whether a borough, which hath no bridge within its own limits, be not liable to contribute to the repairs of a county bridge. 1 *Hawk.* c. 77, s. 19; 1 *Keb.* 68.

The inhabitants of a town are not bound to repair a bridge out of the town. *R.* v. *Gamlingay*, 3 *T. R.* 513.

Where townships have enlarged a bridge, which they were before bound to repair as a foot bridge to a carriage bridge, they shall be liable *pro rata*. *R.* v. *West Riding of Yorkshire*, 2 *East*, 353, n., *ante*, 493.

By the Inhabitants]—The persons to be charged by this act are comprehended under the word inhabitants; which word, being the largest word of the kind, is needful to be explained.

First, although a man be dwelling in a house in a foreign county, city, or town corporate, yet if he hath lands in his own possession and manurance in the county, city, or town corporate, where the decayed bridge is, he is an inhabitant, both where his person dwelleth, and where he hath lands in his own possession.

Secondly, if a man dwelleth in a foreign shire, city, or town corporate, and keepeth a house and servants in another shire, city, or town corporate, he is an inhabitant in each shire, city, or town corporate within this statute.

Thirdly, *ex vi termini*, every person that dwelleth in any shire, city, or town corporate, though he hath but a personal residence, yet he is said in law to be an inhabitant, or a dweller there, as servants or the like; but this statute extendeth not to them, but to such householders who may be distrained for non-payment; and it would be infinite and impossible to tax every inhabitant being no householder.

Fourthly, every corporation and body politic residing in any county, city, or town corporate, or having lands or tenements in any county, city, or town corporate, which they keep in their own hands and occupation, are said to be inhabitants there within the purview of this statute.

Fifthly, an infant that hath house or lands by descent or purchase, is liable to the public charge; and so is the husband of a feme covert. 2 *Inst.* 702.

See also **Inhabitants**, Vol. III. p. 375.

III. Concerning the 300 Feet at the Ends of Bridges.

22 Hen. 8, c. 5.

By stat. 22 Hen. VIII. c. 5, s. 9, such part and portion of the highways as well within franchises as without, as lie next adjoining to any ends of any bridges distant from any of the said ends by the space of 300 feet, shall be made, repaired, and amended as often as need shall require; and the justices, or four of them, one whereof being of the quorum, (*a*) shall have power to inquire, hear, and determine in the general sessions all manner of annoyances

(*a*) By a bill now before parliament, it is proposed to give all justices the like power whether of the quorum or not.

of and in such highways, so being and lying next adjoining to any ends of bridges distant from any one of the ends of such bridges 300 feet, and to do in every thing concerning the making, repairing, and amending of such highways, in as ample manner as they may do for the making, repairing and amending of bridges."

WHO TO REPAIR BY STATUTE.

The county is by law, *i. e.* the common law, bound *prima facie* to repair the road at the ends of every bridge, which bridge it is bound to repair; the statute has fixed the length at 300 feet. *Per* Lord *Eldon*, C., *R.* v. *West Riding of Yorkshire*, 5 *Taunt.* 284; and see 2 *Dow*, 1; *R.* v. *West Riding of Yorkshire*, 4 *B. & Ald.* 623.

The reason why the county is thus bound to repair this addition to the bridge is, that it is considered as intimately connected with the bridge itself; and it is difficult to ascertain the precise limits of the bridge from the continuation of arches on each side of the river. *R.* v. *West Riding of Yorkshire*, 7 *East*, 588.

The inhabitants of a county in which a new bridge was built within 300 feet of an old bridge in another county, were held liable to repair such new bridge. *R.* v. *Devonshire*, 14 *East*, 477. The county of Devon is divided from the county of Dorset by the river Yarty, over which there is a bridge maintained by Dorset, the inhabitants of which, in course, under stat. 22 Hen. VIII. c. 5, maintained the road for 300 feet on the Devonshire side from the bridge as part of such bridge. At the distance of 150 feet from the bridge on the same side, the road about thirty years ago led through a ford occasioned by a small stream which runs into the Yarty; but about that time, in order to avoid the inconvenience of the ford, a smaller bridge was built over it by an individual, which having been generally used by the public ever since, was considered as having been adopted by the county. The smaller bridge having fallen into decay, and requiring repair, the inhabitants of Devon were called upon to repair it; which they objected to, on the ground that being within 300 feet of the former bridge over the Yarty, which was repairable by Dorset, the inhabitants of Devon were no more bound to repair the smaller bridge than they were the road for that distance before that bridge was built, though lying within the limit of their county. Whereupon this indictment was preferred against them for the non-repair of the smaller bridge, and a verdict passed for the crown. And upon a motion for a new trial, Lord *Ellenborough*, C. J. said, "Each is a substantive bridge in a different county, and the new bridge cannot be considered as an appendage to the other. The statute of Hen. VIII. attaches equally on the inhabitants of each county in respect to its own bridge. It makes no difference that the new bridge was first built by an individual, if it were afterwards adopted by the public as of great public utility. While it continued a road, it was repairable as part of the old bridge; but now that there is a substantive bridge built on the Devonshire side, it is repairable as a bridge by the inhabitants of the county in which it is situate, according to the statute."

IV. Manner of Repairs.

Those who are bound to repair public bridges, must make them of such height and strength as shall be answerable to the course of the water, whether it continue in the old channel or make a new one. 1 *Hawk.* c. 77, s. 1.

Manner of repairing.

Those who are bound to repair bridges are not necessarily bound to *widen* them, at least the county are not so bound. *R.* v. *Devon*, 4 *B. & Cres.* 670; *Sed vide R.* v. *Cumberland*, 6 *T. R.* 194, *ante*, 489.

Persons bound to repair county bridges may, if necessary, enter on any adjoining lands for such repairs, or lay thereon the requisite materials. 1 *Hawk.* c. 77, s. 1.

By stat. 22 Hen. VIII. c. 5, s. 4, the justices of peace within the shires or ridings wherein such decayed bridges be out of cities and towns corporate; and if it be within cities or towns corporate, then the justices of peace within every such city, &c. or four of them at the least, (one of them being of the

Appointing surveyors; who are

MANNER, &c. OF REPAIRS, &c.

quorum,) within the limits of their commissions and authorities, shall have power to name and appoint two surveyors, with salaries, to see the bridges amended.

usually the high constables.

And this business of surveying the bridges, for the more convenience, is usually annexed by the justices to the office of the high constable; for which they have by this clause power to allow them salaries.

Provision for procuring materials, &c.

And by stat. 43 Geo. III. c. 59, (called Lord Gower's act,) after reciting, that whereas the inhabitants of counties in England, "are by law bound to repair, support, and maintain the public bridges, commonly called *county bridges*, within such counties respectively, and the roads at each of the ends thereof for limited distances; but the laws empowering them so to do are insufficient and defective: and whereas doubts have arisen how far the said inhabitants are liable to improve such bridges when they are not sufficiently commodious for the public," it is enacted, "that it shall be lawful to and for the surveyor of bridges and other public works, in each and every county respectively within that part of the United Kingdom called England, appointed or to be appointed by the justices at any general quarter sessions of the peace to be holden for such county, and the said surveyor is hereby authorised and empowered to search for, take, and carry away gravel, stone, sand, and other materials, for the repair of such bridges and roads at the ends thereof, as the inhabitants of counties are bound to repair; and to remove obstructions and annoyances from such bridges and roads, in such and the same manner as the surveyor or surveyors of any common highway within this kingdom is or are by stat. 13 Geo. III. c. 78, authorised to do: and the several powers and authorities thereby vested in the surveyor or surveyors of highways, as well for the getting of materials as the preventing and removing of all nuisances and annoyances from such bridges and roads, shall be, and the same are hereby vested in the surveyor and surveyors of county bridges, and the roads at the ends thereof as aforesaid; and the severel penalties, forfeitures, matters, and things, in the said act contained, relating to highways, shall be and the same are hereby extended and applied, as far as the same are applicable, to such bridges, and the roads at the ends thereof as aforesaid, as fully and effectually as if the same and every part thereof were herein repeated and re-enacted; the said surveyor or surveyors making satisfaction and compensation for all trespass and damage done in the execution of the powers of this act, in such and the same manner as the surveyors of highways are required to make in and by the said act of the 13 Geo. III. c. 78."

Surveyors of county bridges empowered to get materials for the repair of bridges in the same manner as surveyors of highways, under 13 Geo. 3, c. 78. (*a*)

Tools and materials, &c. vested in surveyor.

Sect. 3. "And the right and property of all tools, implements, timber, bricks, stones, gravel, and other materials, purchased, gotten or had, or to be purchased, gotten or had, by or by the order of justices in counties, or the surveyor of county bridges for the time being, or in any respect belonging to such counties, shall be and the same are hereby vested in such surveyor for the time being; in whom, upon any action or indictment being commenced or prosecuted, such property may be laid."

By sect. 7 the act is not to extend to bridges repairable by prescription, &c. See *ante*, 493.

These provisions extended to bridges in hundreds, &c.

By stat. 54 Geo. III. c. 90, s. 2, all the powers and provisions of stat. 43 Geo. III. c. 59, (except as to bridges hereafter to be erected) are extended "as well to bridges and the roads at the ends thereof repaired by the inhabitants of hundreds, and other general divisions in the nature of hundreds, as to bridges and the roads at the ends thereof repaired by the inhabitants of counties."

Power to obtain materials from quarries.

By stat. 55 Geo. III. c. 143, s. 1, after reciting the provisions of 43 Geo. III. c. 59, s. 1, and 54 Geo. III. c. 90, above noticed, and that "it is expedient that surveyors of county bridges and other persons, being under contract for the rebuilding or repairing such bridges, or bridges repaired by the inhabitants of hundreds and other general divisions of counties in the nature of hundreds, should have a more extended power for procuring materials than is at present vested in such surveyors of county bridges, by the operation of the said first recited act, 'so far as relates to the procuring of stone for such purposes from

(*a*) See the enactments, title Highway, Vol. III. p. 32.

55 Geo. 3, c. 143.

Surveyors and persons employed under contracts, empowered to take stones for repair of county bridges.

quarries;' it is enacted, that it shall and may be lawful to and for every surveyor of such bridges in each and every county within that part of the United Kingdom called England, appointed or to be appointed by the justices at any general quarter sessions of the peace to be holden for such county; and also to and for the bridge master or all and every persons or person who may at the passing of this act, or from and after the passing thereof, be under contract for the rebuilding or repairing of any public bridge, built or repaired at the expense of the inhabitants of any such county, hundred or general division as aforesaid; and such surveyor and surveyors, and also such other person or persons, are hereby authorised and empowered, with the consent and by the order of two justices of the peace, acting for the county in which such bridge is intended to be rebuilt or repaired, first had and obtained for that purpose, to search for, work, dig, get and carry away any stone, in, from or out of any quarry or quarries whatsoever, within the county or counties to which such bridge may belong; other than and except such quarries as may be situated within a garden, yard, avenue to a house, lawn, park, paddock or inclosed plantation, or as may now or hereafter have ornamental timber trees growing thereon, without the license or consent of the owner or owners of such quarry or quarries, as such surveyor or other person or persons shall judge necessary for the rebuilding or repairing of such bridges respectively, provided such quarry or quarries shall have been worked within the last three years preceding the time when such bridge shall be about to be rebuilt or repaired; the said surveyor or other person or persons making such satisfaction and recompense for the value of such stone, and also for the damage to be done to such quarry or quarries by the getting and carrying away the same, as shall be agreed upon between him or them and the owner, occupier or other person interested in such quarry or quarries respectively; and in case they cannot agree, or such owner or occupier or other person interested shall refuse to treat, then and in every such case the justices of the peace at their general or quarter sessions, or any two or more of them appointed for that purpose, fourteen days' notice having been given to the owner or his agent of the intention to require a jury, shall cause the value of such stones and amount of such damage to be inquired into and ascertained by a jury of indifferent men of the county, riding, division, city, town, liberty or precinct wherein the same shall be situated; and to that end shall summon and call before such jury and examine upon oath (which oath any two or more of such justices of the peace is and are hereby empowered to administer) any person or persons whomsoever; and such justices of the peace, or any two of them, shall, by ordering a view or otherwise, use all ways and means for the information of themselves and of such jury in the premises; and when such jury shall have inquired of and ascertained the value of such stones and amount of such damage, the said justices of the peace shall thereupon order that the sum or sums, which shall so appear to be the value of such stones and amount of such damage shall be paid; which verdict or inquisition and order shall be filed of record by the clerk of the peace, or other officer having the custody of the records of the said county, riding, division, city, town, liberty or precinct, and shall be final and conclusive to all intents and purposes whatsoever, against all parties and persons whomsoever claiming or to claim in possession, remainder, reversion or otherwise, their heirs and successors, as well absent as present, infants, lunatics, idiots, and persons under coverture, or any other disability whatsoever, corporations, guardians, committees, husbands, trustees and attornies, or any other person or persons whomsoever."

Consent and order of two justices necessary.

Quarries in gardens, &c. not to be used without consent of owners.

Satisfaction to be made for stone, and damage done.

On refusal to treat, justices at sessions to cause the value of the stones and amount of damage to be ascertained by a jury.

Witnesses before jury may be examined on oath.

Sect. 2. "And for the summoning and returning such juries, it is further enacted, that such justices of the peace, or any two of them, may issue their warrant or warrants, to the sheriff or bailiff of any particular county, riding, division, city, town, liberty or precinct, within the limits of which the quarry or quarries shall be situated, requiring him to impannel, summon and return an indifferent jury of twenty-four persons qualified to serve on juries to appear before the said justices, or any two of them, at such time and place as in

Justices may require sheriffs or bailiffs to return juries.

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quorum,) within the limits of [illegible] power to name [illegible] amende[illegible]

usually the high constables.

And [illegible] usual[illegible] they [illegible]

Provision for procuring materials, &c.

[illegible] thr[illegible] re[illegible]

Surveyors of county bridges empowered to materials for repair of b[illegible] in the same ner as su[illegible] of highw[illegible] 13 Geo.

[illegible] and such sheriff or bailiff is [illegible] appointed, and such sheriff or bailiff is [illegible] shall be appointed, and return such number of [illegible] persons so impannelled, summoned, and [illegible] out of the persons so impannelled, summoned, and [illegible] such summons, the [illegible] of them as shall appear upon such summons, the [illegible] any two of them as shall, and they are hereby em[illegible] to draw by ballot, and to swear or cause to be sworn, [illegible] for the purposes aforesaid; and in default [illegible] returned, the said sheriff or bailiff shall [illegible] ent men of the bystanders, or that can [illegible] vice, to make up the number of twelve; [illegible] their lawful challenges against any of [illegible] be sworn; and the said justices of the the said juryman when they come to be sworn, shall have power from time to time to impose a fine or fines on such sheriff or bailiff, or his deputy or deputies, making default thereof in the premises, and on any of the persons who shall be summoned and returned on such jury, and who shall not appear, or, appearing, shall refuse to be sworn on the said jury, or, being sworn, shall refuse to give or shall not give a verdict, or shall in any other manner wilfully neglect his or their duty therein, and also on any person who, being summoned and required to give evidence before the said jury, shall refuse or neglect to appear, or, appearing, shall refuse to be sworn or to give evidence, so that no such fine be more 10*l.* nor less than 20*s.* on any one person for one offence."

Expenses of jury, how defrayed.

Sect. 3. "That in case any jury shall give in and deliver a verdict for more money, as the value of such stones and amount of such damage, than what shall have been offered for the purchase thereof by such surveyor or other person or persons as aforesaid, the costs and expenses of summoning and maintaining the jury and witnesses shall be borne and paid out of the rates to be collected within such county respectively; but if such jury shall give in and deliver a verdict for no more or for less money than the money which shall have been so offered by such surveyor or other person or persons as aforesaid, then the costs and expenses of summoning and maintaining the said jury and witnesses shall be borne and paid by the person or persons with whom such controversy or dispute touching the value of such stones and amount of such damage shall arise, and shall be levied by the warrant of one of the said justices by distress and sale of the goods and chattels of the person or persons made liable to the payment thereof."

Appeal to general quarter sessions.

Sect. 4. "That if any person or persons shall or may think himself, herself or themselves aggrieved by any thing done or to be done in pursuance of this act, such person or persons may, within the space of three calendar months next after the cause of complaint shall have arisen, appeal to the justices of the peace at any general quarter sessions of the peace to be holden for the limit wherein the cause of complaint shall arise, every such appellant first giving or causing to be given fourteen days' notice at least in writing, of his or her intention to bring such appeal, and of the cause or matter thereof, to the person or persons against whom such complaint shall be made, and within three days next after such notice entering into a recognizance before some justice of the peace acting for the county wherein the cause of complaint shall arise, with two sufficient sureties conditioned to try such appeal, and to abide by the order of and pay such costs as shall be awarded by the justices at such session aforesaid; and the said justices at such session, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the cause and matter of every such appeal in a summary way, and make such award to the party appealing or appealed against, as the said justices shall think proper; and the determination of such justices so assembled shall be binding and conclusive to all intents and purposes."

Appellant to enter into recognizance.

Justices to determine matter of appeal in a summary way.

Changing situation of bridges.

It was said by *Buller*, J., in *R.* v. *Justices of Glamorganshire*, 5 *T. R.* 279, "As to the power of justices to change roads, by changing the local situation of a bridge, there certainly are old cases against it, and they were properly decided; because previous to stat. 14 Geo. II. c. 33, the sessions had no power to change the situation of bridges; but that act impliedly gives them

that power, for it enables them to purchase lands adjoining any county bridge, *for the more commodious enlarging and convenient rebuilding the same.* This, therefore, impliedly gives them the power of altering the position of the bridge to suit the convenience of the public." *Vide* stat. 43 Geo. III. c. 59, *infra*, which expressly enables justices to alter the position of bridges which are in decay.

As to *widening* bridges, *ante*, 489.

Widening bridges.

Quarter sessions may alter situation of county bridges, and roads at end thereof, or widen the same.

The defects in the laws for repairing and rebuilding county bridges, by enabling the justices at sessions to purchase lands under certain circumstances for such purposes, (which was in some degree supplied by stat. 14 Geo. II. c. 33, s. 1,) are more completely remedied by stat. 43 Geo. III. c. 59, s. 2, by which it is enacted, "that where any bridge or bridges, or roads at the ends thereof, repaired at the expense of any county, shall be narrow and incommodious, it shall and may be lawful to and for the said justices, at any of their general quarter sessions, to order and direct such bridge or bridges, and roads, to be widened, improved, and made commodious for the public; and that where any bridge or bridges, repaired at the expense of any county, shall be so much in decay as to render the taking the same wholly down necessary or expedient, it shall and may be lawful to and for the said justices, at any of their said general quarter sessions, to order and direct the same to be rebuilt, either on the old site or situation, or on any new one more convenient to the public, contiguous to or within two hundred yards of the former one, as to such justices shall seem meet; and if, for the purpose of altering the situation, or of widening or enlarging any such bridge or bridges, road or roads as aforesaid, it shall be necessary to purchase any land or ground, [or by stat. 54 Geo. III. c. 90, 'any building or buildings, or other erections,'] it shall and may be lawful for such county surveyor or surveyors, by and under the direction of such justices at their general quarter sessions as aforesaid, to set out and ascertain the same, not exceeding in the whole one acre at any one such bridge as aforesaid, and to contract and agree with the owner or owners of such land, and persons interested therein, for the purchase thereof, either by a sum in gross or by an annual rent, at the option of such owner or owners; and if the said surveyor or surveyors cannot agree with the said owner or owners for the purchase thereof, or the recompence to be made for the same, or by reason of such owner or owners not being to be found, shall be prevented from treating, then and in every such case the said justices in their general quarter sessions shall impannel a jury, and assess the compensation and satisfaction for such land, and for the trespass and damage to be done by the execution of the powers of this act, in the same manner as they are authorised and empowered to do by the said above-mentioned act of the thirteenth year of the reign of his present Majesty, in relation to highways; and all and every the clauses, powers, provisions, exemptions, penalties, matters, and things in the said act contained, as well with respect to impannelling juries, examining and swearing witnesses, payments of expenses, enabling bodies politic, corporate, and collegiate, and other incapacitated persons, to sell and convey, and all other the powers and provisions of the said act, shall be, and the same are hereby extended and applied to the works by this act authorised to be done and performed, as far as the same are applicable, as fully and effectually, to all intents and purposes, as if the same were herein particularly repeated and re-enacted; provided that no money shall be applied to the amendment or alteration of any such bridge or bridges, until presentment shall have been made of the insufficiency, inconveniency, or want of reparation of such bridge or bridges, in pursuance of some or one of the statutes made and now in force concerning public bridges."

54 Geo. 3, c. 90.

Presentment to be made.

Actions for damages done to bridges to be in the name of surveyor.

Sect. 4. "That the inhabitants of counties shall and may sue for any damages done to bridges and other works maintained and repaired at the expense of such counties respectively, and for the recovering of any property belonging to such counties, in the name of their surveyor, and also shall and may be sued in the name of such surveyor; and no action or prosecution to be brought or commenced by or against the inhabitants of counties, by virtue

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43 Geo. 3, c. 59.

of this act, in the name of the said surveyor, shall abate or be discontinued by the death or removal of such surveyor, or by the act of the surveyor, without the consent of the justices at their general quarter sessions assembled, but the surveyor for the time being shall be deemed the plaintiff or defendant in such actions, as the case may be: provided always, that every such surveyor in whose name any action or suit shall be commenced, prosecuted, or defended in pursuance of this act, shall always be reimbursed and paid out of the monies in the hands of the treasurer of the public stock of such county respectively, all such costs and charges as he shall be put unto or become chargeable with by reason of his being so made plaintiff or defendant therein; and also all the costs and charges of prosecuting any indictment or indictments, or other proceedings, against any person or persons whomsoever."

Orders respecting bridges in Yorkshire to be made by sessions held first week after Easter.

Sect. 6. "That all orders and proceedings made and had within the county of York, relative to county bridges, shall in future be made and had by the justices of the respective ridings, assembled at the annual and general quarter sessions of the peace holden the first whole week after Easter, and at no other sessions whatever within such ridings, except at such adjournment as shall be made at the above annual and general quarter sessions so holden as aforesaid, for the express purpose of carrying such orders made as aforesaid into effect: provided nevertheless, that it shall and may be lawful for any two justices of the said ridings respectively, in cases of emergency, to give such orders for making temporary bridges, or such temporary repairs as shall be necessary for the temporary accommodation of the public."

Pulling down old bridge before new one built.

R. v. *Js. Dorsetshire and others*, 15 *East*, 594. The justices of Dorset having, under stat. 43 Geo. III. c. 59, contracted for the building of a new bridge in a different site in lieu of the old one, which was ruinous; and having directed the old bridge to be taken down before the new one was passable, for the benefit of the old materials to be used by the contractor in finishing the new bridge; the Court of King's Bench refused a *writ of prohibition* to them to restrain them from pulling down the old before the new bridge was passable; though there were strong affidavits of the inconvenience and loss to be sustained by the neighbourhood in being obliged to use a round-about way in the interval; referring the complainants to the ordinary remedy by indictment, if the pulling down the old bridge under these circumstances were a nuisance; and seeing no occasion to interfere by applying a prompt remedy of a novel kind in modern practice. *Bayley*, J., there asked, "If the justices had not changed the site of the bridge, would they not have a right to use the materials of the old bridge in building the new one? Then, can they be obliged to incur the additional expense of providing all new materials for the new bridge because they have exercised the discretion given to them in changing it to another site?"

In *R.* v. *Severn Railway Company*, 2 *B.* & *A.* 646, a *mandamus* was granted to enforce the reinstating a rail-road that had been illegally taken up.

Tolls of materials for repairs.

By stat. 3 Geo. IV. c. 126, s. 32, *post*, Vol. II. p. 187, materials for the repairs of bridges carried along a turnpike road are exempted from toll. See the case of *Osmond* v. *Widdicombe*, 2 *B.* & *A.* 49.

V. Expenses of and Contracts for Repairs, &c.

Expenses payable out of county rates.

By 12 Geo. II. c. 29, s. 1, the charges of repairing and amending bridges and highways at the ends of bridges, shall be paid out of the general county rate.

Regulations enabling counties to contract for repairs.

By s. 14 of the same act, when any public bridges, ramparts, banks, or cops, or other works, are to be repaired at the expense of the county, city, riding, &c. the justices at their general or quarter sessions after presentment (*a*) made by the grand jury of want of reparation thereof, may con-

(*a*) But now this presentment is unnecessary, 52 Geo. III. c. 110, s. 1, *post*, 501.

tract with any person for rebuilding, repairing, and amending the same for any term not exceeding seven years at a certain annual sum. EXPENSES AND CONTRACTS FOR, &c. REPAIRS, &c.

In order to which they shall at their general quarter sessions give public notice of their intention of contracting with any person for rebuilding, repairing, and amending the same.

And such contracts shall be made at the most reasonable price which shall be proposed by the contractors, who shall give sufficient security for the due performance thereof to the clerk of the peace, or the town clerk, or chief officer of such county, &c.

And all contracts when agreed to, and all orders relating thereto, shall be entered in a book to be kept by the clerk of the peace, &c. for that purpose, who shall keep the same amongst the records of the county, &c. to be inspected by any of the justices within their limits, at all seasonable times, and by any person employed by any parish or place contributing to the same, without fee.

By 52 Geo. III. c. 110, s. 1, reciting, that whereas by stat. 12 Geo. II. c. 29, "no part of the money to be raised and collected in pursuance of this act shall be applied to the repair of any bridges, gaols, prisons, or houses of correction, until presentments be made by the respective grand juries at the assize, great sessions, general gaol delivery, or general or quarter sessions of the peace, held for any county, riding, division, city, town corporate, or liberty, of the insufficiency, inconveniency, or want of reparation of their bridges, gaols, prisons, or houses of correction; and it is further enacted, that from and after the 1st day of June, 1739, when any public bridges, ramparts, banks or cops, or other works, are to be repaired at the expense of any county, city, riding, hundred, division, liberty, or town corporate, it shall and may be lawful to and for the justices of the peace at their general or quarter sessions respectively, or the greater part of them then and there assembled, if they think proper and convenient, after presentment to be made as aforesaid of the want of reparation of such bridges, ramparts, banks or cops, to contract and agree with any person or persons for rebuilding, repairing, and amending of such bridges, ramparts, banks or cops, as shall be within their respective counties, cities, ridings, hundreds, divisions, liberties, or towns corporate, and all other works which are to be repaired and done by assessment on the respective counties, cities, ridings, hundreds, divisions, liberties, or towns corporate, for any term or terms of years not exceeding seven years, at a certain annual sum, payment or allowance for the same, such contractor or contractors giving sufficient security for the due performance thereof to the respective clerk of the peace for the time being, or the town clerk, high bailiff or chief officer of any city, town corporate, or liberty; and that such justices at their respective general or quarter sessions shall give public notice of their intention of contracting with any person or persons for rebuilding, repairing, and amending the bridges, ramparts, banks or cops, and other works aforesaid, and that such contracts shall be made at the most reasonable price or prices which shall be proposed by such contractors respectively; and that all contracts when agreed to, and all orders relating thereto, shall be entered in a book to be kept by the respective clerk of the peace for the time being, or the town clerk, high bailiff, or chief officer of any city, town corporate, or liberty, for that purpose, who is and are hereby required to keep them amongst the records of such county, city, town corporate, or liberty, to be from time to time inspected at all seasonable times by any of the said justices within the limits of their commissions, and by any person or persons employed or to be employed by any parish, township, or place, contributing to the purposes of this act, without fee or reward: and whereas great expense in the repairs of county bridges, ramparts, banks, cops, and other works appertaining to the same, and of the roads over the same, and of so much of the roads at the ends thereof as by law is to be repaired at the expense of any county, riding, hundred, division, liberty, or town corporate, and great inconvenience to the public may be often in a great measure prevented by the timely and immediate repair of any incon-

52 Geo. 3, c. 110.

County bridges repaired under contract may be repaired without presentment.

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52 Geo. 3, c. 110.

siderable damage, injury, defect, or sudden want of repair or amendment of the same, without the delay which must generally arise from the necessity imposed by the aforesaid act, of a presentment by the grand jury at the assize, great sessions, or general or quarter sessions of the peace held for any county, city, riding, division, town corporate, or liberty, of the want of reparation of the same; by means of which delay the aforesaid want of repair is often very much increased, to the great expense of the county and great inconvenience of the public: and whereas it is also expedient that the justices of the peace of any county, city, riding, division, town corporate, or liberty, at their general quarter sessions respectively, before any presentment shall have been made as aforesaid, as directed by the aforesaid act, of the want of repair of such roads, should be enabled without any such presentment to contract and agree with certain persons hereinafter mentioned, for the repairing and amending of the same; and also for keeping the same in repair when so repaired and amended;" it is enacted, "that from and after the 1st day of July, 1812, it shall and may be lawful for the justices of the peace of any county, city, riding, division, town corporate, or liberty, at their general quarter sessions or great sessions respectively, to be holden in the week next after the clause of Easter, or the greater part of them then and there assembled, to appoint annually two or more justices of the peace acting in and for any division of justices in such county, city, riding, division, town corporate, or liberty, in or near which any such county bridge, or any bridge which is in part a county bridge, ramparts, banks, cops, or other works appertaining to the same, or any part or parts thereof, or the roads over the same, or so much of the roads at the ends thereof as by law is to be repaired at the expense of any county, city, riding, division, town corporate, or liberty shall be situate, to superintend the same, and whenever it shall appear on their own inspection to be necessary, for the purpose of preventing the further decay and injury of the same, to order any immediate repairs or amendments to be done to the same or to any part thereof; but it shall and may be lawful for any two such justices so to be appointed as aforesaid, and any two such justices are hereby empowered by a written order (*a*) signed by their hands respectively, to order such immediate repairs to be done by such person or persons as to them shall seem fit and proper: provided, that in no case the sum to be expended by them in such repairs shall exceed the sum of twenty pounds; and further, that such appointments of such justices as aforesaid shall remain in force until one week after the following Easter sessions respectively; and that in case of the death of, or removal of, or refusal to act by any such justice or justices so appointed as aforesaid, the said court of general quarter sessions or great sessions may at any other of the four quarterly sessions appoint any other justice or justices to act for the remainder of the then current year, in the place of any such justice or justices so dying, removing, or refusing to act as aforesaid."

Quarter sessions may appoint annually two or more justices near to superintend roads and bridges.

And they may expend 20*l.*(*b*)

The two justices to remain in office for one year, finishing one week after quarter sessions.

Sect. 2. "That it shall and may be lawful for the justices of the peace of any county, city, riding, division, town corporate, or liberty, at the general quarter sessions or great sessions which shall next happen after such repairs so ordered to be made by such justices so appointed as aforesaid shall be completed, or the greater part of them then and there assembled, to order the payment of such sum or sums of money, not exceeding ten pounds, as shall be sufficient to pay for such repairs, to be made out of the county rate, to such person or persons who shall have so repaired the same by such order of such justices as aforesaid, although no presentment shall have been made by any grand jury at the assize, great sessions, or general quarter sessions of the peace of any county, city, riding, division, town corporate, or liberty in which such repairs shall have been done, of the want of such reparation, as by the said act of the twelfth year of his late Majesty King George the Second, above recited, was directed: provided nevertheless, that before such

Quarter sessions to order payment for repairs.

Not exceeding 10*l.*

(*a*) See form, (No. 1), *post*.

(*b*) See now the 55 Geo. III. c. 143, s. 5, *post*, 503.

52 Geo. 3, c. 110.

payment be ordered to be made as aforesaid, a certificate (*a*) be returned to such justices of the peace so assembled at such last mentioned sessions, signed by two at the least of such justices so appointed as aforesaid, who shall have so ordered such repairs as aforesaid, stating the nature of such repairs, and the defects, damage, or injuries, which they had so ordered to be repaired, and their reason for so ordering such immediate repairs as aforesaid: provided also, that such justices of the peace, so assembled as last aforesaid, be satisfied by the parties concerned, that the charges made by them for such repairs are reasonable and just."

Certificate signed by two of the said justices.

Sect. 5. "That from and after the 1st day of July, 1812, it shall and may be lawful for the justices of the peace, of any county, city, riding, division, town corporate, or liberty, at their general quarter sessions respectively, or the greater part of them then and there assembled, if they shall think proper and convenient, to contract and agree with the commissioner or commissioners, trustee or trustees, of any turnpike road within the said county, city, riding, division, town corporate, or liberty, or with their surveyor or clerk, or with both their surveyor and clerk, or with the surveyor or surveyors of the highway of any parish, place, or tything within the said county, city, riding, division, town corporate, or liberty respectively, or with any other person or persons, for the maintaining and keeping in repair roads over any county bridges, and so much of the roads at the ending thereof as by law is to be repaired at the expense of any such county, city, riding, division, town corporate, or liberty, or any part of the same, for any term not exceeding seven years, nor less than one, although no presentment shall have been made as directed by the said recited act of the twelfth year of his late Majesty King George the Second, of the insufficiency, inconveniency, decay, or want of repair of the same; subject however to all the rules, restrictions, regulations, directions, and conditions, required by the above recited act in case where the same shall have been presented or directed by that act."

Justices may contract for repairs.

By stat. 55 Geo. III. c. 143, s. 5, reciting, that "whereas it is expedient that the powers contained in an act passed in the forty-third year of his present Majesty, intituled, 'An Act for remedying certain defects in the laws relative to the building and repairing of county bridges, and other works maintained at the expense of the inhabitants of counties in England,' for authorising the justices of the peace of any county, city, riding, division, town corporate, or liberty, at their general quarter session of the peace, to contract for maintaining and keeping in repair roads over county bridges, and so much of the roads at the ending thereof as by law is to be repaired at the expense of counties, although no presentment shall have been made of the want of repair, as directed by an act passed in the twelfth year of his late Majesty King George the Second, intituled, 'An Act for the more easy assessing, collecting, and levying of county rates,' should be extended to the bridges as well as to the roads at the end thereof;" it is enacted, "that from and after the day of passing this act, it shall and may be lawful to and for the justices of the peace of any county, city, riding, division, town corporate, or liberty, at their general quarter sessions respectively, to contract and agree, or to authorise any other person or persons to contract and agree, with any person or persons, for the maintaining and keeping in repair any county or hundred bridge, and the road over such county or hundred bridge, and so much of the road at the ends thereof as are by law liable to be repaired at the expense of any such county, hundred, city, riding, division, town corporate, or liberty, or any part of the same; and the said justices are hereby empowered to order such sum or sums of money as may be contracted for and agreed to be paid for the repairing, amending, and supporting such bridges, and the roads over the same, or the ends thereof, to be paid (in cases where the county is liable to the repair thereof) by the treasurer of the county out of the county rate, or (in cases where the hundred is liable to the repair of the same) by the bridgemaster (or other public officer charged

Further regulations enabling justices to contract for repairs.

(*a*) See form, (No. 2), *post*.

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with the repair of bridges)[1] of the hundred by which such bridge is liable to be repaired, for any term not exceeding seven years nor less than one, although no presentment of the insufficiency, decay, or want of repair of the same shall have been made, and although no public notice shall have been given by the said justices, at their respective general or quarter session, of their intention to contract for the repair of such bridges, or the roads at the ends thereof, as respectively directed by the said act of the twelfth year of his late Majesty King George the Second: provided nevertheless, that before any such contract shall be made, the said justices shall cause notices to be given in some public paper circulated in such county, city, riding, hundred, division, town corporate, or liberty, of their intention to contract."

[1] 55 Geo. 3, c. 143, s. 5.

By this statute it will be seen that now justices may without indictment or presentment order repairs to any county or hundred bridges to any extent. See 1 *B. & A.* 317.

Power of sessions to reimburse fees of clerk of peace.

The sessions are not authorised to order the payment by the bridgemaster to the clerk of the peace of a per-centage on all money to be raised for the repair of bridges in a particular district in lieu of all his fees for indictments, presentments, &c., for bridges within it, although such per-centage was claimed as an ancient fee and had been paid without dispute for a long period of time. *R.* v. *Houldgrave*, 1 *B. & A.* 312. *Et Lord Ellenborough*, C. J. "I accede fully to the doctrine laid down by *Lord Kenyon* in the case of *R.* v. *Essex*, 4 *T. R.* 591, that wherever a duty is imposed on a county, and where costs incidentally and necessarily arise in questioning the propriety of acts done to enforce that duty, the magistrates who have the superintendence over the county purse have necessarily a right to defray such expenses out of the county stock. It is therefore quite clear, that in this case the magistrates had a jurisdiction over the subject-matter. They had a full right to order these expenses to be defrayed out of the county stock: but the question is whether they had a right to make that order in these terms. It is not necessary for us to say whether the order is bad in point of form, as being on the bridgemaster and directing him to pay this money absolutely and not out of such funds as may at the time be in his hands, for I think it cannot be supported on another ground. The magistrates had no authority to make an accumulated compensation of this nature to the clerk of the peace; their duty was at the end of each year to ascertain how much business had been done by him and what sum was due for it; but here they have, instead of taking the items of his bill division, substituted a sort of average computation. They have in this order directed the bridgemaster to pay an ancient and accustomed fee of 1*s.* in the pound on all the money raised in lieu of all the fees due to him upon all business relating to the indictments and presentments for not repairing bridges and roads in this hundred. Now how can that be for a moment considered as an award by them to him of a fair compensation for his trouble? It does not depend on his trouble, and is not more or less in proportion to it; then this court, seeing that the magistrates have here adopted an improper and illegal rule for computing the amount of this compensation, can do no otherwise than quash this order, which is founded on that computation."

Contracts for repairs of bridges not repairable by county.

By the General Turnpike Act, 3 Geo. IV. c. 126, s. 107, 108, for the better amendment of bridges which are not repairable by the county, counties are empowered to contract and compound for the repair of such bridges. See the act, *post*, Highways, Vol. III. p. 164.

VI. Modes of Prosecution for Non-Repairs.

In general, the modes of prosecution for the non-repair of or nuisances to bridges are the same as those for the non-repair of and nuisances to highways, and the reader is referred to title Highways, Vol. III. p. 164, for any further information not to be found under this title.

The modes of prosecution are either—by criminal information—by presentment—or by indictment. BY PRESENTMENT.

(1.) By Criminal Information.

In cases of very aggravated neglect to repair, or where there appears little chance of obtaining justice by preferring an indictment, the Court of King's Bench will grant a criminal information against the party liable to repair. *R.* v. ——, 1 *Stra.* 180; see *post*, **Information**, Vol. III. p. 367. But this course of proceeding is very rarely resorted to, the more usual one being by presentment or indictment. 2 *Inst.* 701. By criminal information.

(2.) By Presentment.

The presentment of a public bridge for non-repairs, &c., may at common law be before the King's Bench or at the assizes. 2 *Inst.* 701. By presentment in King's Bench.

Decays of bridges are also presentable in the leet or torn. 2 *Inst.* 701. At court leet.

By stat. 22 Hen. VIII. c. 5, s. 1, 5, the justices of peace in every shire of this realm, franchise, city, or borough, or four of them at least, one of them being of the quorum, shall have power to inquire, hear, and determine, in the general sessions, all manner of annoyances of bridges broken in the highways, to the damage of the King's liege people, and to make such process and pains upon every presentment against such as ought to be charged to make or amend them, as the King's Bench usually doth, or as it shall seem by their discretions to be necessary and convenient for the speedy amendment of such bridges. By justices.

Four of them at the least]—If the bridge be within a franchise which hath not four justices and a sessions of its own, the justices of the county shall inquire; but if the franchise be a county of itself, and hath not four justices, one of them being of the quorum, it is not within this statute, but is left to the remedy which it had at common law. 2 *Inst.* 702.

And to make Process]—By s. 5, where the bridge is in one shire and the persons or lands which ought to be charged in another shire, or where the bridge is within a city or town corporate, and the persons or lands that ought to be charged are out of the said city, the justices of such shire, city, or town corporate, shall have power to hear and determine such annoyances, being within the limits of their commission; and if the annoyance be presented, then to make process into every shire of the realm, against such as ought to repair the same, and to do further in every behalf as they might do if the persons or lands chargeable were in the same shire, city, or town corporate where the annoyance is.

This statute of 22 Hen. VIII. is confirmed by the 1 Ann. sess. 1, c. 18, except so far as the proceedings are altered by the last provision. 1 Ann. sess. 1, c. 18.

This act of Anne empowers justices on presentment before them to lay such a sum on every parish towards the repair as each has been accustomed to collect; it directs the proceedings to originate in the jurisdiction where the defect exists, and provides that no *certiorari* shall be allowed to remove them. But this last proviso extends only to bridges which the county are bound to repair, and where a district or individual is charged, or the duty comes in question, the 5 Will & Mary, c. 11, allows the removal. 2 *Stra.* 900; and see 3 *B. & P.* 354, *post*, 508.

As to the fine and other matters, see the next division as to the indictment.

The court of quarter sessions cannot impose more than one fine for the non-repair of a bridge. This was held in the case of *R.* v. *Machynlleth, &c.* 4 *B. & A.* 469. In that case an order of sessions of the county of Montgomery was removed by *certiorari* into the Court of King's Bench. The order was as follows: "It is ordered, that the fine heretofore imposed by the court on the inhabitants of the township of Machynlleth and the parish of Pennegoes, for not repairing Pontfelingerrig bridge, be, and the same is hereby in-

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creased by the sum of 200*l.*" On the motion for quashing this order, it appeared from the affidavits that the defendants had been presented at the January sessions, 1818, for the non-repair of the bridge in question, to which presentment they at the same sessions submitted, and a fine of 300*l.* was imposed and afterwards levied upon them. At Michaelmas sessions, 1820, the fine not having been sufficient, the order in question was made, imposing a second fine of 200*l.* The court were of opinion, that the power of the sessions was at an end after the first fine, and that they had no jurisdiction to impose a second, and they quoted the case of *R.* v. *Old Malton*, therein mentioned, as an authority directly in point, and the order of sessions was quashed.

12 Geo. 2, c. 29.

By stat. 12 Geo. II. c. 29, s. 13, no money shall be applied to the repair of bridges until presentment be made by the grand jury at the assizes or sessions of their insufficiency, inconveniency, or want of reparation.

55 Geo. 3, c. 143.

Now, however, by stat. 55 Geo. III. c 143, s. 5, *ante*, 503, county bridges, repaired under contract, may be repaired without presentment, &c.

(3.) By Indictment.

By indictment.

Where a bridge is so out of repair as to be prejudicial to the public, it may be the subject of indictment.

Who may be made defendants.

Against whom]—Any particular inhabitant of a county, or tenant of land charged to the repairs of a bridge, may be made defendant to an indictment for not repairing it, and be liable to pay the whole fine assessed by the court for the default of repairs, and shall be put to his remedy at law for a contribution from those who are bound to bear a proportionable share in the charge; for the necessity of the case requires the greatest expedition in cases of this nature; for bridges being of absolute necessity are not to lie unrepaired till suits are determined. 1 *Hawk.* c. 77, s. 2.

Where a man is obliged to repair a bridge, his tenant for years, being in possession, will be obliged to do it; and if he fail he may be indictable for it. 2 *Ld. Raym.* 804.

If a manor be held by the service or tenure of repairing a common bridge or highway, and that manor afterwards comes to be divided into several hands; every one of these alienees, being tenants of any parcel either of the demesnes or services, shall be liable to the whole charge, and they are contributory among themselves. And though the lord of the manor might upon the several alienations agree to discharge those that purchased of him of such repairs, yet that shall not alter the remedy for the public, but only bind the lord and those that claim under him. As the whole manor, and every part of it, in the possession of one tenant, was once chargeable with the reparations, so it shall remain, notwithstanding any act of the proprietor: it shall not be in his power to apportion the charge whereby the remedy for public benefit shall be made more difficult, or by alienations to persons unable, to render it, in respect of the parts which should come into such hands, quite frustrate. *R.* v. *Duchess of Buccleugh*, 1 *Salk.* 358.

The rules with respect to indictments for suffering *highways* to be out of repair will, in general, be here applicable, and will be found, *post*, Highways, Vol. III. p. 67 to 69.

Form of indictment.

Form of Indictment]—The indictment ought to state *what sort* of bridge it is, whether for carts or carriages, or for horses or footmen only. *R.* v. *Sainthill*, 2 *Ld. Raym.* 1175. Such statement must correspond with the proof. Where an indictment alleged that a bridge was a public carriage bridge, and also for the King's subjects passing and repassing on foot, and upon the evidence it appeared, that it had been used by passengers on horseback and on foot, and not with carriages, it was held, that the defendants could not be convicted of any part of the charge. *R.* v. *Lancashire*, *per Bayley, J.*, *Lancaster Sum. Ass.* 1820. *Stark. on Evid.* part iv. 316.

As to the statement of the *termini*, see *post*, Highways, Vol. III. p. 68.

If the right to use the bridge be only at particular times, it must be so described. 4 *Campb.* 189. *Post*, Highways, Vol. III. p. 68.

It must be stated that the bridge is public and that it is in decay. *Andr.* 285.

Where the indictment is against the inhabitants of any *particular town*, it is necessary to show that the bridge is within the *town*; and it is insufficient to charge that it is within the *parish*, unless the parish also be alleged to be within the town: moreover, as this is a charge against common right, a consideration must be shown for the liability of the inhabitants of the town; and it has been held, that no sufficient consideration is shown by alleging that the inhabitants of the town were liable by reason of the tenure of certain lands, for as inhabitants they cannot hold lands. *R.* v. *Macchynlleth*, 2 *B. & Cres.* 166; 3 *D. & R.* 388, S.C.

Where a party is bound to repair *ratione tenuræ*, that circumstance must be set forth on the record. Thus even against a lord of the manor it will not suffice to charge a prescription without these expressions. *R.* v. *Bucknall*, 2 *Ld. Raym.* 792, 804. Where this duty is charged the indictment must show the place in which the lands are situate. 2 *Hale*, 181. The very terms "by reason of his tenure" should then also be inserted, and the courts will not allow the words "owner and proprietor" to be substituted in their room. *R.* v. *Kerrison*, 1 *M. & S.* 439. But in presentments by the grand jury there is no occasion to show who ought to repair, it is sufficient if the defect be shown and the bridge stated to be public. *Andr.* 285.

A corporation must be charged as being bound by prescription. 13 *Rep.* 33.

Plea to.

Plea.]—It hath been resolved that it is not sufficient for the defendants to an indictment for not repairing a bridge, to excuse themselves, by showing either that they are not bound to repair the whole, or any part of the bridge, without showing what other person is bound to repair the same: and it is said that in such case the whole charge shall be laid upon such defendants, by reason of their ill plea. 1 *Hawk.* c. 77, s. 4.

In an indictment for not repairing a highway, a special verdict was found. The indictment alleged that a certain part of the highway, at the township of Quick, in the West Riding, &c., to wit, a certain part thereof lying next adjoining the west end of a certain public bridge there called Tamewater Bridge, and within the distance of 300 feet thereof, &c. was and yet is very ruinous, &c. And that the inhabitants of the West Riding of, &c. of right ought to repair, &c. Plea, not guilty. The evidence (as far as it is material to this point) was, that the township of Quick lay in the parish of Saddleworth in the said riding, which parish had been immemorially divided into four districts called Mears, in one of which mears, called Shaw Mear, the highway in Quick (hereinbefore mentioned) lay; and that the 300 feet at the other end of the bridge lay in another mear; and that each mear had respectively repaired the said respective highways, &c. The main argument was upon the liability of the county to repair these *ends* of 300 feet each, in the same manner as they were liable to repair the bridge. This was decided in the affirmative. But in arguing, it was said by Mr. *Holroyd*, who was counsel for the crown, and not contradicted by the court, that no question could arise as to any special liability of the respective mears, because the general issue only was pleaded; and any question of that sort, he said, could only be raised by a special plea. He cited *R.* v. *City of Norwich*, 1 *Stra.* 180, 182. The counsel for the defendants argued against this, upon the principle of assuming that these *ends* were *highways* and not parts of the bridge. This, however, the court overruled. *R.* v. *W. R. Yorkshire*, 7 *East*, 588; 3 *Smith's Rep.* 467, S.C.

It is suggested, however, that this doctrine must be understood only of indictments against the county, and not of indictments against *individuals*, or bodies corporate. 1 *Russ.* 356; 2 *Saund.* 159, n. 10.

Though the county, under the plea of not guilty, can only prove that the

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bridge was not a public bridge, or that it was in good condition, they may give evidence that particular individuals have been accustomed to repair, not immediately for the purpose of throwing the liability on them, but to afford ground for the jury to conclude that the bridge is not public. *R.* v. ——, 2 *M. & S.* 262.

It is said that where the defendants plead, whether necessarily or otherwise, that others ought to repair, and traverse the charge against themselves, the attorney-general may, in such case, take a traverse upon a traverse, by insisting that the defendants are bound to repair, and traversing the charge against the parties named in the plea; that, on this last traverse issue must be taken, and that the attorney-general may afterwards surmise that the defendants are liable to repair, and that the whole matter shall be tried by an indifferent jury, &c. 1 *Hawk.* c. 77, s. 5.

In a plea by the inhabitants of a county, that the inhabitants of a particular township have immemorially repaired the highway at the end of a county bridge, situate within the township, it is not necessary to allege any consideration for such prescription. *R.* v. *W. R. Yorkshire*, 4 *B. & A.* 623.

The plea must correspond exactly with the facts which come out in evidence. Therefore, a plea by the inhabitants of the county, that certain townships had *immemorially* used to repair a bridge, is disproved by evidence that the townships had enlarged the bridge to a carriage bridge, which they had before been bound to repair as a foot bridge. *R.* v. *W. R. Yorkshire*, 2 *East*, 353; and see *R.* v. *Surrey*, 2 *Campb.* 455; *R.* v. *Duchess of Buccleugh*, 1 *Salk.* 357; 6 *Mod.* 150; *R.* v. *Cumberland*, 3 *B. & P.* 351. *Post*, Highways, Vol. III. p. 70.

So where upon an indictment against a county, the defendants pleaded that J. S. was liable *ratione tenuræ*, and it appeared that J. S. had purchased part of an estate, the owner of which, both before and after the purchase, had repaired the bridge: it was held, that this was not sufficient evidence to support the plea. *R.* v. *Oxfordshire*, 16 *East*, 223. *Et per* Lord *Ellenborough*, C. J. "The defendants have not maintained their plea. It is pleaded that M. and all those whose estate he hath, have immemorially repaired. Now, there is no evidence that he and those who had the estate have repaired, for it appears that since he purchased the estate another person has repaired. It would have been more correct to have pleaded that 'he and those whose estate he hath with others have repaired,' instead of which, the burthen is cast on him impartibly, without giving him the benefit of a contribution from Lord *Cadogan*. But I should be sorry to conclude the county from bringing forward their case."

Removal by certiorari.

CERTIORARI]—By 1 Ann. st. 1, c. 18, s. 5, no presentment or indictment for not repairing bridges, or highways at the ends of bridges, shall be removed by *certiorari* out of the county into another court.

In the case of *Rex* v. *Inhabitants of Cumberland*, 6 *T. R.* 194, the chief question was, whether an indictment for not repairing a bridge could be removed by *certiorari* or not? To show that it could *not*, the defendants relied on the above clause; but the prosecutor contended that it was intended only to prevent *defendants* removing such presentments or indictments, and did not take away the *certiorari* from the *prosecutor*. Lord *Kenyon*, C. J. stated several cases in which informations and indictments for non-repair of bridges had been removed by writs of *certiorari* applied for by the prosecutors. And that therefore the court were of opinion that the *certiorari* was properly issued. He also stated, that if it were otherwise it would be an anomalous case in the law of England, for that in these cases the defendants are the inhabitants of a county, and if the indictments cannot be removed by *certiorari*, they must be tried by the very persons who are parties to the cause.

This case afterwards came by writ of error before the House of Lords, where the above judgment was affirmed. 3 *Bos. & Pull.* 354.

A *certiorari* lies to remove an order made by the justices concerning the

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repair of a bridge, pursuant to a private act of parliament; and the justices ought to return the private act upon which their order is founded. *Dalt.* 504.

From sessions.

R. v. *Hamworth*, 2 *Stra.* 900. Upon motion to quash a *certiorari* to remove an indictment against the defendants at sessions, for not repairing a bridge, it was insisted, that by stat. 1 Ann. c. 18, the *certiorari* is taken away. To which it was answered, and resolved by the court, that this act extendeth only to bridges where the county is charged to repair; and that where a private person or parish is charged, and the right will come in question, the act of the 5 & 6 Will. c. 11, hath allowed the granting a *certiorari*; and therefore they refused to quash.

In such a case the *certiorari* must be moved for before judgment has been pronounced in the inferior court. Therefore where, upon an indictment at the quarter sessions for not repairing a bridge, a verdict was found for the crown, and judgment pronounced accordingly, the Court of King's Bench would not allow a *certiorari* to issue to remove the indictment for the purpose of taking objections to it. *Per Curiam.* The defendants have thought proper to take the chance of succeeding at the sessions. They ought clearly to have applied for a *certiorari* before the trial, and it ought not to issue in this late stage of the proceedings. They can now avail themselves of objections to the indictment by writ of error only. *R.* v. *Machynlleth*, 1 *B. & C.* 142; 3 *D. & R.* 388, S. C.

Evidence.

Evidence]—The preceding observations will for the most part show the requisite evidence for the prosecution or defence; and see further, *post*, Highways, Vol. III. p. 70—75.

Where the indictment charged a corporation with a prescriptive obligation to repair a bridge, and a charter of a corporation granted by Edw. VI. was given in evidence, from the terms of which it appeared to be doubtful whether the corporation had before existed immemorially, and whether lands had not been given for the repair of the bridge; 14 *East*, 348; but parol evidence was given that the corporation had in fact repaired the bridge as far back as living memory could go; it was held that parol evidence and the charter might be taken in aid of each other, and that the preponderance of evidence was, that this was a corporation by prescription, although words of incorporation were used in the incorporating part of the charter only; and that the corporation were still bound to repair by prescription and not by tenure. *Id.*

Witnesses.

By the 1 Ann, st. 1, c. 18, s. 13, upon the trials of informations and indictments for the non-repair of bridges, the inhabitants of the town, corporation, county, &c. where the bridge is, are competent witnesses. Previous to this statute such witnesses were, in some instances, held to be competent on the ground of necessity. 2 *Show.* 47; 2 *East*, 561.

Trial. Jurors.

Trial]—It seemeth that no inhabitant of a county ought to be a *juror* for the trial of an issue, whether the county be bound to such repairs or not; and therefore the jury must come from some adjacent county. 1 *Hawk.* c. 77, s. 6.

What justices may try.

And it seemeth that the same objection may lie as to the *justices*, where they are (as it may probably happen) all interested: in which case it seemeth that the trial shall be in the next county; for where an impartial trial cannot be had in the proper county, it shall be tried as near to the same as may be; as in the case of *R.* v. *Norwich*, concerning a county bridge, the trial was in Suffolk. 2 *Burr.* 859, 860. But now, by a special statute, *viz.* 1 Ann. st. 1, c. 18, *supra*, an inhabitant of the county in such case may be a witness.

Where the bridge lies within the county of a city or town corporate, and the point in dispute is whether the inhabitants of the city or the county at large ought to repair, on a suggestion of these facts on the record, and that consequently no impartial investigation can take place in either of those jurisdictions, the *venire* will be awarded into the county adjacent to the larger division. 1 *Stra.* 177.

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55 Geo. 3, c. 143.

such warrant or warrants shall be appointed; and such sheriff or bailiff is and are hereby required to impannel, summon and return such number of persons accordingly; and out of the persons so impannelled, summoned, and returned, or out of such of them as shall appear upon such summons, the justices of the peace, or any two of them, shall, and they are hereby empowered and required to draw by ballot, and to swear or cause to be sworn, twelve men, who shall be the jury for the purposes aforesaid; and in default of a sufficient number of jurymen so returned, the said sheriff or bailiff shall take such other honest and indifferent men of the bystanders, or that can speedily be procured to attend that service, to make up the number of twelve; and all persons concerned shall have their lawful challenges against any of the said jurymen when they come to be sworn; and the said justices of the peace, or any two of them, shall have power from time to time to impose a fine or fines on such sheriff or bailiff, or his deputy or deputies, making default thereof in the premises, and on any of the persons who shall be summoned and returned on such jury, and who shall not appear, or, appearing, shall refuse to be sworn on the said jury, or, being sworn, shall refuse to give or shall not give a verdict, or shall in any other manner wilfully neglect his or their duty therein, and also on any person who, being summoned and required to give evidence before the said jury, shall refuse or neglect to appear, or, appearing, shall refuse to be sworn or to give evidence, so that no such fine be more 10*l.* nor less than 20*s.* on any one person for one offence."

Jury.

Penalty on jury refusing to appear or be sworn, and on witnesses refusing to give evidence.

Expenses of jury, how defrayed.

Sect. 3. "That in case any jury shall give in and deliver a verdict for more money, as the value of such stones and amount of such damage, than what shall have been offered for the purchase thereof by such surveyor or other person or persons as aforesaid, the costs and expenses of summoning and maintaining the jury and witnesses shall be borne and paid out of the rates to be collected within such county respectively; but if such jury shall give in and deliver a verdict for no more or for less money than the money which shall have been so offered by such surveyor or other person or persons as aforesaid, then the costs and expenses of summoning and maintaining the said jury and witnesses shall be borne and paid by the person or persons with whom such controversy or dispute touching the value of such stones and amount of such damage shall arise, and shall be levied by the warrant of one of the said justices by distress and sale of the goods and chattels of the person or persons made liable to the payment thereof."

Appeal to general quarter sessions.

Sect. 4. "That if any person or persons shall or may think himself, herself or themselves aggrieved by any thing done or to be done in pursuance of this act, such person or persons may, within the space of three calendar months next after the cause of complaint shall have arisen, appeal to the justices of the peace at any general quarter sessions of the peace to be holden for the limit wherein the cause of complaint shall arise, every such appellant first giving or causing to be given fourteen days' notice at least in writing, of his or her intention to bring such appeal, and of the cause or matter thereof, to the person or persons against whom such complaint shall be made, and within three days next after such notice entering into a recognizance before some justice of the peace acting for the county wherein the cause of complaint shall arise, with two sufficient sureties conditioned to try such appeal, and to abide by the order of and pay such costs as shall be awarded by the justices at such session aforesaid; and the said justices at such session, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the cause and matter of every such appeal in a summary way, and make such award to the party appealing or appealed against, as the said justices shall think proper; and the determination of such justices so assembled shall be binding and conclusive to all intents and purposes."

Appellant to enter into recognizance.

Justices to determine matter of appeal in a summary way.

Changing situation of bridges.

It was said by *Buller*, J., in *R.* v. *Justices of Glamorganshire*, 5 *T. R.* 279, "As to the power of justices to change roads, by changing the local situation of a bridge, there certainly are old cases against it, and they were properly decided; because previous to stat. 14 Geo. II. c. 33, the sessions had no power to change the situation of bridges; but that act impliedly gives them

that power, for it enables them to purchase lands adjoining any county bridge, *for the more commodious enlarging and convenient rebuilding the same.* This, therefore, impliedly gives them the power of altering the position of the bridge to suit the convenience of the public." *Vide* stat. 43 Geo. III. c. 59, *infra*, which expressly enables justices to alter the position of bridges which are in decay.

As to *widening* bridges, *ante*, 489.

Widening bridges.

Quarter sessions may alter situation of county bridges, and roads at end thereof, or widen the same.

The defects in the laws for repairing and rebuilding county bridges, by enabling the justices at sessions to purchase lands under certain circumstances for such purposes, (which was in some degree supplied by stat. 14 Geo. II. c. 33, s. 1,) are more completely remedied by stat. 43 Geo. III. c. 59, s. 2, by which it is enacted, "that where any bridge or bridges, or roads at the ends thereof, repaired at the expense of any county, shall be narrow and incommodious, it shall and may be lawful to and for the said justices, at any of their general quarter sessions, to order and direct such bridge or bridges, and roads, to be widened, improved, and made commodious for the public; and that where any bridge or bridges, repaired at the expense of any county, shall be so much in decay as to render the taking the same wholly down necessary or expedient, it shall and may be lawful to and for the said justices, at any of their said general quarter sessions, to order and direct the same to be rebuilt, either on the old site or situation, or on any new one more convenient to the public, contiguous to or within two hundred yards of the former one, as to such justices shall seem meet; and if, for the purpose of altering the situation, or of widening or enlarging any such bridge or bridges, road or roads as aforesaid, it shall be necessary to purchase any land or ground, [or by stat. 54 Geo. III. c. 90, 'any building or buildings, or other erections,'] it shall and may be lawful for such county surveyor or surveyors, by and under the direction of such justices at their general quarter sessions as aforesaid, to set out and ascertain the same, not exceeding in the whole one acre at any one such bridge as aforesaid, and to contract and agree with the owner or owners of such land, and persons interested therein, for the purchase thereof, either by a sum in gross or by an annual rent, at the option of such owner or owners; and if the said surveyor or surveyors cannot agree with the said owner or owners for the purchase thereof, or the recompence to be made for the same, or by reason of such owner or owners not being to be found, shall be prevented from treating, then and in every such case the said justices in their general quarter sessions shall impannel a jury, and assess the compensation and satisfaction for such land, and for the trespass and damage to be done by the execution of the powers of this act, in the same manner as they are authorised and empowered to do by the said above-mentioned act of the thirteenth year of the reign of his present Majesty, in relation to highways; and all and every the clauses, powers, provisions, exemptions, penalties, matters, and things in the said act contained, as well with respect to impannelling juries, examining and swearing witnesses, payments of expenses, enabling bodies politic, corporate, and collegiate, and other incapacitated persons, to sell and convey, and all other the powers and provisions of the said act, shall be, and the same are hereby extended and applied to the works by this act authorised to be done and performed, as far as the same are applicable, as fully and effectually, to all intents and purposes, as if the same were herein particularly repeated and re-enacted; provided that no money shall be applied to the amendment or alteration of any such bridge or bridges, until presentment shall have been made of the insufficiency, inconveniency, or want of reparation of such bridge or bridges, in pursuance of some or one of the statutes made and now in force concerning public bridges."

54 Geo. 3, c. 90.

Presentment to be made.

Actions for damages done to bridges to be in the name of surveyor.

Sect. 4. "That the inhabitants of counties shall and may sue for any damages done to bridges and other works maintained and repaired at the expense of such counties respectively, and for the recovering of any property belonging to such counties, in the name of their surveyor, and also shall and may be sued in the name of such surveyor; and no action or prosecution to be brought or commenced by or against the inhabitants of counties, by virtue

BY INDICTMENT.

Judgment.

JUDGMENT]—The judgment of the court upon a conviction will generally be regulated by those principles which govern the judgment on conviction for not repairing highways; and for which see *post*, Highway, Vol. III. p. 71; *Fine*, Vol. II.

It seems that in some cases, where the evidence is greatly in favour of the non-liability of the defendants to repair, the Court of King's Bench will, upon motion, direct a rule to be drawn up for staying the judgment, upon payment of the costs of prosecution; the county in the meantime proceeding to indict the parties whom they contend to be liable. *R.* v. *Oxford*, 16 *East*, 223. The court, however, will not stay judgment generally, but only till further order; and, if the trial of another indictment be not proceeded in with all dispatch, judgment will be given. *R.* v. *Southampton*, 2 *Chit.* 215.

Fines.

By 1 Anne, stat. 1, c. 18, s. 4, no fine, issue, penalty, or forfeiture, upon any presentment or indictment for not repairing bridges, or the highways at the end of bridges, shall be returned into the exchequer, but shall be paid to the treasurer, to be applied towards the said repairs and not otherwise.

We have already seen that the court of quarter sessions cannot impose more than one fine for the non-repair. *R.* v. *Mackynlleth*, 4 *B.* & *A.* 469, *ante*, 505, 506.

VII. Destroying or Injuring Public Bridges.

Destroying, &c. bridges.

The 7 & 8 Geo. 4, c. 30, s. 13, enacts, "that if any person shall unlawfully and maliciously pull down, or in anywise destroy any public bridge, or do any injury with intent, and so as thereby to render such bridge or any part thereof dangerous or impassable, every such offender shall be guilty of felony, and,

Transportation for life, or imprisonment.

being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years; and, if a male, to be once, twice, or thrice publicly or privately whipped, (if the court shall so think fit), in addition to such imprisonment."

See the general clauses of this act, *post*, Malicious Injuries to Property, Vol. III.

The 9 Geo. 2, c. 29, s. 5, made it a capital offence to attempt to destroy Westminster bridge. However, that clause, and also all such clauses in the other bridge acts, were repealed by the statute 1 Geo. 4, c. 116.

The 7 & 8 Geo. 4, c. 27, repeals the 1 Geo. 4, c. 116, except as to its repealing such other acts.

VIII. Forms, *List of.*

ORDER of two Justices to repair a County Bridge, under 52 Geo. III. c. 110, s. 1, (No. 1.)

CERTIFICATE to be returned to Sessions, pursuant to 52 Geo. III. c. 110, s. 2, (No. 2.)

INDICTMENT against a County for suffering a Public Bridge to be out of repair, (No. 3.)

PRESENTMENT at a Quarter Sessions of a Bridge, which the County ought to repair, being out of repair, (No. 4.)

INDICTMENT against an Individual for not repairing a Bridge, which he ought to do *ratione tenuræ*, (No. 5.)

INDICTMENT for not repairing a Highway within distance of 300 Feet from a Bridge, (No. 6.)

COMMITMENT under 7 & 8 Geo. IV. c. 30, s. 13, for destroying a Bridge, (No. 7.)

INDICTMENT for a like offence, (No. 8.)

COMMITMENT on like Act, for doing Injury to a Bridge to render it dangerous, (No. 9.)

INDICTMENT for a like offence, (No. 10.)

FORMS.

(No. 1.)

Order of two justices to repair a county bridge, under 52 Geo. 3, c. 110, s. 1. (*a*)

County of } *TO* *of the parish of* *in the said county. We*
to wit. } *and* *, two of his Majesty's justices of the peace in and for the said county, duly appointed, in pursuance of the statute in that case made and provided, to superintend the county bridges, ramparts, banks, cops, and other works appertaining to the same, and the roads over the same, and so much of the roads at the ends thereof as by law is to be repaired at the expense of the said county, within the division or hundred of in the said county, having on this day inspected the county bridge situate in the parish of in the said county, and within the said division or hundred; and it appearing to us, on our own inspection thereof, to be necessary for the purpose of preventing the further decay and injury of the same, to order the immediate repairs and amendments to be done to the same, as in the schedule of particulars by you prepared and signed and hereto annexed: Now, therefore, we, the said justices, do hereby order and direct you, immediately to repair and amend the said county bridge, according to the said schedule of particulars by you prepared and signed and hereto annexed, provided that the sum to be expended in such repairs shall not exceed the sum of .*
Given under our hands this day of 18 .

(No. 2.)

Certificate to be returned to the sessions, pursuant to 52 Geo. 3, c. 110, s. 2. (*b*)

County of } *TO the justices of the peace at the general quarter sessions, to be*
to wit. } *holden at in the said county, the day of*
18 . We and , two of his Majesty's justices of the peace in and for the said county, duly appointed, in pursuance of the statute in that case made and provided, to superintend the county bridges, ramparts, banks, cops, and other works appertaining to the same, and the roads over the same, and so much of the roads at the ends thereof as by law is to be repaired at the expense of the said county, within the division or hundred of in the said county, do hereby certify to the said court of quarter sessions, that on the day of last, we did inspect the county bridge situate in the parish of in the said county, and within the division aforesaid; and it having appeared to us, on our own inspection thereof, that and that it was necessary, for the purpose of preventing the further decay and injury of the same, to order the immediate repairs and amendments to be done to the same, as follows, viz. ; therefore we, the said justices, did, on the said day of , make our order, in writing, signed with our respective hands, and did thereby order and direct of the parish of in the said county of immediately to make the said repairs and amendments, provided that the sum to be expended in such repairs should not exceed the sum of pounds. And we, the said justices, do hereby further certify, that the said repairs, so directed to be made as aforesaid, have been made accordingly by the said , and that the reasonable price and charges payable to the said for the same amounts to the sum of as per account hereto annexed, and verified on the oath of . Given under our hands this day of , in the year of our Lord 18 .

(No. 3.)

Indictment against a county for suffering a public bridge to be out of repair. (*c*)

—— *THE jurors for our Lord the King upon their oath present, that on, &c. there was and from thence hitherto hath been and still is* [don't state it was immemorially public] *a certain common and public bridge, commonly called bridge, situate and being in the parish of in the county of in the common King's highway leading from the* [*market town of*] *in the county aforesaid, towards and unto the* [*market town of*] *in the same county, being a common highway for all the liege subjects of our said Lord the King on foot and with their horses, coaches, carts, and other carriages,* [according to the fact,] *to go, return, pass, repass, ride, and labour upon and over every year, at all times of the year,* [see *ante*, 507,] *at their free-will and pleasure; and that the same during all the time aforesaid of right ought to have been used, and still of right ought to be used by all the said liege subjects for the purposes in that behalf aforesaid, and that the said common and public bridge on the day and year aforesaid, and continually from thence until*

(*a*) *Ante*, 502. The Act gives this form. (*b*) *Ante*, 503. The Act gives this form.
(*c*) See other Forms, 3 Chit. C. L. 593, *et seq.*

FORMS.

the day of the taking of this inquisition, at the parish of aforesaid, in the county aforesaid, was and yet is ruinous, broken, dangerous, and in great decay, for want of needful and necessary upholding, maintaining, amending, and repairing the same, so that the liege subjects of our said Lord the King, in, upon, and over the said bridge on foot, and with horses, coaches, carts, and carriages, could not and cannot pass and repass, ride, and labour, without great danger of their lives and loss of their goods, as they ought and were accustomed to do, and still of right ought to do; to the great damage and common nuisance of all the liege subjects of our said Lord the King upon and over the said bridge on foot and with their horses, coaches, carts, and other carriages about their necessary affairs and business, going, returning, passing, riding, and labouring; and against the peace of our said Lord the King his crown and dignity; and that the inhabitants of the county of aforesaid of right have been, and still of right are bound to repair and amend the said common bridge when and so often as it shall be necessary.

(No. 4.)

Presentment at a quarter sessions of a bridge which the county ought to repair, being out of repair.

[Commence as usual, *post*, **Presentment**, Vol. V. p. 221.] *that at a general quarter sessions of the peace of our Lord the King, holden at for the said county, on, &c. before E. F. G. H., &c. Esquires, and others, justices of our said Lord the King assigned to keep the peace of our said Lord the King in and for the said county, and also to hear and determine divers felonies, trespasses, and misdemeanors committed within the said county, it is presented by the oath of A. B. &c.* [the names of the grand jurors,] *good and lawful men of the said county, then and there sworn and charged to inquire for our said Lord the King and the body of the said county as followeth, that is to say, aforesaid; the jurors present for our Sovereign Lord the King upon their oath, that a certain bridge over the river commonly called bridge, lying and being in the several parishes of and in the said county of in the King's common highway there, leading from* [*the market town of*] *in the county of to* [*the market town of*] *in the county of for and during twenty years last and upwards, being a common King's highway for all the liege subjects of our said Lord the King, with their horses, carts, and carriages, to go, pass, ride and travel at their free-will and pleasure, on, &c. was and continually from thenceforth hitherto hath been and still is in great decay, broken down, and ruinous, so that the liege subjects of our said Lord the King, upon and over the said bridge with their horses, carts, and carriages, could not and cannot go, pass, ride, and travel, without great danger, to the grievous damage and nuisance of all the liege subjects of our said Lord the King upon and over the said bridge, going, passing, riding, and travelling, against the peace of our said Lord the King his crown and dignity; and that the inhabitants of the county of aforesaid, the common bridge aforesaid, (so as aforesaid being in decay), ought to repair and amend when and so often as it shall be necessary.*

(No. 5.)

Indictment against an individual for not repairing a bridge which he ought to do *ratione tenuræ*.

[Proceed as in the form (No. 3), *ante*, 511, to the words *crown and dignity*, and then conclude as follows]: *and that C. D. late of* [*gentleman*], *by reason of his tenure of certain lands, situate, lying, and being in the parish of in the said county of during all the time aforesaid was and still is bound to repair and amend the said common bridge as often and whenever it hath been and shall be necessary.*

(No. 6.)

Indictment for not repairing a highway within distance of 300 feet from a bridge.

—— *THE jurors for our Lord the King upon their oath present, that from time immemorial there was and yet is a common and ancient King's highway leading from* [*the market town*] *of in the* [*west riding of the*] *county of towards and unto* [*the market town of*] *in the county* [*palatine*] *of in, through, and over the* [*township*] *of in the* [*west riding of*] *the county of aforesaid, used for all the liege subjects of the King for themselves, with carriages, &c. to pass, &c.* [*as ante*, 511.] *And that a certain part of the said highway at the said* [*township*] *of in the* [*west riding*] *aforesaid, to wit, a certain part thereof lying next adjoining the* [*west*] *end of a certain public bridge there, called Bridge, and within the distance 300 feet thereof, beginning at the west end of the said public bridge and extending from thence* [*westwards,*] *containing in length* [45] *feet, and in breadth* [*seven*] *yards, and a certain other part thereof lying next adjoining to the* [*east*] *end of the said bridge,*

FORMS.

and within the distance of 300 *feet thereof, beginning at the east end of the said bridge, and extending from thence eastwards, containing in length* 150 *feet and in breadth seven yards, on, &c. at, &c. was and yet is very ruinous and in decay for want of repair, &c.* [as *ante*, 507], *so that the subjects of the King cannot safely pass; to the common nuisance, &c.* [as *ante*, 512], *against the peace of our said Lord the King his crown and dignity, and against the form of the statute in such case made and provided. And that the inhabitants of the west riding of the county of the said common highway so as aforesaid being in decay, of right ought to repair and amend when and so often as it shall be necessary.*

(No. 7.)

Commitment under 7 & 8 Geo. 4, c. 30, s. 13, for destroying a bridge. (a)

[Commencement as usual, as *ante*, 8, (No. 1.)] *on, &c. at, &c. a certain public bridge there situate, commonly called Bridge, unlawfully, maliciously, and feloniously did pull down and destroy; against the form of the statute in such case made and provided. And you the said keeper, &c.* [as usual, as *ante*, 8, to the end.]

(No. 8.)

Indictment for a like offence. (a)

—— *THE jurors for our Lord the King upon their oath present, that C. D. late of on, &c. with force and arms, at, &c. aforesaid, a certain public bridge there situate, commonly called Bridge, then and there unlawfully, maliciously, and feloniously did pull down and destroy; against the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity.* [If any doubt as to the name or situation of the bridge, add another count or more.]

(No. 9.)

Commitment on like act for doing injury to a bridge to render it dangerous, &c. (a)

[Commencement as usual, as *ante*, 8, (No. 1.)] *on, &c. at, &c. unlawfully, maliciously, and feloniously did, &c.* [state the injury done, see the act, *ante*, 510], *with intent thereby the said bridge* ["such bridge or any part thereof"] *to render dangerous and impassable; and that the said C. D. thereby did render the same dangerous and impassable; against the form of the statute in such case made and provided. And you the said keeper, &c.* [as usual, as *ante*, 8, to the end.]

(No. 10.)

Indictment for a like offence. (a)

—— *THE jurors for our Lord the King upon their oath present, that C. D. late of, &c. on, &c. with force and arms, at, &c. unlawfully, maliciously, and feloniously did, &c.* [state the injury done], *with intent thereby then and there the said bridge to render dangerous and impassable; and that the said C. D. then and there did thereby render the same dangerous and impassable; against the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity.*

Borough, *Jurisdiction of Justices in. See* **Justices**, Vol. III. p. 462.; **Sessions**, Vol. V.

British Plate Glass Company. *See* **Malicious Injuries to Property**, Vol. III.

Broker. *See* **Extortion**, Vol. II.; **Larceny**, Vol. III.

Brothel. *See* **Disorderly House**, Vol. I.; **Lewdness**, Vol. III.

(a) See the act, *ante*, 510.

Buggery.

[9 Geo. IV. c. 31, s. 15, 18; 22 Geo. II. c. 3, s. 19.]

What it is.

BUGGERY (from the Italian *bugarone*, a buggerer, this vice being said to have been brought into England out of Italy by the Lombards) is a detestable and abominable sin, amongst Christians not to be named, committed by carnal knowledge against the ordinance of the Creator and order of nature by mankind with mankind, or with brute beast, or by womankind with brute beast. 3 *Inst.* 58.

Where the defendant was indicted for having committed this offence with a woman, a majority of the judges held that this was within the statute, but two or three of them held that it was not; no opinion was publicly given. *R.* v. *Wiseman, Fortesque*, 91.

If it be committed on a boy under fourteen years of age, it is felony in the agent only. 1 *Hale*, 670; 3 *Inst.* 59.

Where the prisoner forced open a child's mouth, and put in his private parts, and proceeded to a completion of his lust, the judges were of opinion that this did not constitute the offence of sodomy. *R.* v. *Jacobs, R. & R. C.C.* 331.

Punishment for.

In ancient times, according to some authors, this offence was punishable with burning, the others say with burning alive.

The stat. 9 Geo. IV. c. 31, s. 15, enacts, "that every person convicted of the abominable crime of buggery, committed either with mankind or with *any animal*, shall suffer death as a felon."

Observations.

See the general clauses affecting all the provisions of this act, *post*, Malicious Injuries to Persons, Vol. III.

This statute repeals the 25 Hen. VIII. c. 6, and 5 Eliz. c. 17.

The act differs from the former ones by having the word *animal* therein instead of *beast*.

What shall be sufficient proof of carnal knowledge.

The law as regards the mode of proving the offence is materially altered from what it previously was, for by 9 Geo. IV. c. 31, s. 18, after reciting, "that whereas upon trials for the crimes of *buggery* and of rape, and of carnally abusing girls under the respective ages hereinbefore mentioned, offenders frequently escape by reason of the difficulty of the proof which has been required of the completion of those several crimes;" for remedy thereof it is enacted, "that it shall not be necessary in any of these cases to prove the actual *emission* of seed in order to constitute a carnal knowledge, but that the carnal knowledge shall be deemed complete *upon proof of penetration only*."

Before this statute it was not a felony unless there was an *emission*, but merely a misdemeanor.

The evidence in a prosecution for sodomy is the same as in rape, see *post*, Rape, Vol. V. with two exceptions; 1st. That it is not necessary to prove the offence to have been committed against the consent of the person upon whom it was perpetrated; and 2dly. Both agent and patient (if consenting) are equally guilty. 3 *Inst.* 59; 1 *Hale*, 670.

It may be proper to suggest to magistrates, before whom persons are brought on charges of this kind, that they should not bind over the parties accused to answer the capital part of this charge, unless it appears that the crime was complete.

In proportion as the crime is most detestable, so ought the proof of guilt to be the clearest and most undoubted. 1 *East's P. C.* 480; 4 *Bla. Com.* 215.

An admission by the prisoner that he had committed such an offence at another time and with another person, and that he had a tendency towards such practices, ought not to be received in evidence in an indictment for this offence. *R.* v. *Cole*, by the twelve judges, *Phill. on Evid.* 7 ed. 181.

The indictment has the words *contra naturæ ordinem rem habuit veneream, et carnaliter cognovit*: but Mr. *J. Foster* says, this was never thought sufficient without also charging *peccatumq. illud sodomiticum, anglicé dictum* buggery, *adtunc et ibidem nequiter felonicè, &c. commisit, et perpetravit;* and he refers to *Co. Ent.* 351 b, as a precedent settled by great advice. 1 *East's P. C.* 480. Indictment.

By the articles of the navy (22 Geo. II. c. 33, s. 19,) if any person in the fleet shall commit the unnatural and detestable sin of buggery or sodomy with man or beast, he shall be punished with death by the sentence of a court martial. 22 Geo. 2, c. 33. Mariners.

As to the offence of an assault to commit sodomy, see *ante*, 278, 279.

Forms.

(No. 1.)

[Commencement as usual, as *ante*, 8, (No. 1.)] *on, &c. at, &c. feloniously did assault one A. B., and then and there feloniously, wickedly, diabolically, and against the order of nature, had a venereal affair with the said A. B.; and then and there knew the said A. B.; and then and there feloniously, wickedly, diabolically, and against the order of nature, with the said A. B. did commit and perpetrate that detestable and abominable crime of buggery; against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual to the end.] Commitment for sodomy.

(No. 2.)

[Commencement as usual, as *ante*, 8, (No. 1.)] *on, &c. at, &c. in the said county, with a certain* [*cow,*] *feloniously, wickedly, diabolically, and against the order of nature, had a venereal affair, and then and there feloniously, wickedly, diabolically, and against the order of nature, carnally knew the said* [*cow*]; *and then and there feloniously, wickedly, diabolically, and against the order of nature, did commit and perpetrate that detestable and abominable crime of buggery; against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual to the end.] Commitment for bestiality.

(No. 3.)

—— *THE jurors for our Lord the King upon their oath present, that C. D. late of, &c. on, &c. with force and arms, at, &c. in and upon one A. B. then and there being, feloniously did make an assault, and then and there feloniously, wickedly, diabolically, and against the order of nature, had a venereal affair with the said A. B., and then and there carnally knew him the said A. B. and then and there feloniously, wickedly, diabolically, and against the order of nature, with the said A. B. did commit and perpetrate that detestable and abominable crime of buggery (not to be named amongst Christians); against the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity.* Indictment for sodomy.

(No. 4.)

—— *THE jurors for our Lord the King upon their oath present, that C. D. late of, &c. with force and arms, on, &c. at, &c. aforesaid, with a certain* [*cow*] *then and there being, feloniously, wickedly, diabolically, and against the order of nature, had a venereal affair, and then and there feloniously, wickedly, and diabolically, and against the order of nature, carnally knew the said* [*cow*]; *and then and there feloniously, wickedly, diabolically, and against the order of nature, with the said* [*cow*] *did commit and perpetrate that detestable and abominable crime of buggery (not to be named amongst Christians); against the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity.* Indictment for bestiality.

BUILDING ACT.

Building Act.

THIS act is the 14 Geo. III. c. 78, relating to London and its precincts, the provisions, however, being extremely long and local, are not here inserted.

In the case of *Rix and another*, 4 *D. & R.* 332; 2 *D. & R. M. C.* 249, S. C. where justices omitted to set out in the record of a conviction on the act the evidence adduced on the hearing of the information as nearly as possible, in the words used by each of the witnesses, in pursuance of the 3 Geo. IV. c. 23, a *mandamus* was granted to compel them to set it out.

Bull Baiting. *See* Cattle, *Ill-treatment of, post*, 569.

THE 121st section of the General Turnpike Act, 3 Geo. IV. c. 126, imposes a penalty on persons bull baiting near turnpike roads. See *post*, Highways, Turnpike, Vol. III. p. 202.

Bullion. *See* Coin, Vol. I.

Bum Boat Act, 2 *Geo. III. c.* 28. *See post*, Excise and Customs, Vol. III.

Burglary.

OFFENCES against the house of another, which fall short of burglary, belong to tit. Larceny, and are to be found under the head Larceny *(from the House)* Vol. III., and see tit. House, Vol. II.

I. *What is Burglary*, 517.
  (1.) *What a Breaking*, 517.
    [7 & 8 Geo. IV. c. 29, s. 11.]
  (2.) *What an Entry*, 520.
  (3.) *What a Dwellinghouse*, 521.
    [7 & 8 Geo. IV. c. 29, s. 13.]
  (4.) *Who is the Owner of*, 523.
  (5.) *At what Time Offence must be committed*, 527.
  (6.) *What Intention necessary to constitute Offence*, 528.

II. *Indictment, &c. for*, 529.
    [7 & 8 Geo. IV. c. 29, s. 11.]

III. *Verdict*, 530.

IV. *Punishment*, 531.

V. *Rewards for apprehending a Burglar*, 531.
VI. *Offence of having Housebreaking Tools in Possession*, 531.
[5 Geo. IV. c. 83.]
VII. *Forms*, 532.

I. What is a Burglary.

The word *burglar* seemeth to have been brought unto us out of *Germany* by the *Saxons*, and to be derived of the German *burg*, a house, and *larron* a thief, probably from the Latin, *latro*, *latronis*. Derivation.

Burglary *is a felony at common law, in breaking and entering the mansion-house of another, in the night, with intent to commit some felony within the same, whether the felonious intent be executed or not. Hale's Sum.* 79. Definition.

(1.) What a Breaking.

To amount to a *breaking* within this branch of the definition, the entrance must be obtained either by fraud, conspiracy, threat, or force. Must be a *breaking*.

But every entrance into the house by a trespasser is not a breaking in this case; there must be an actual breaking. As if the door of a mansionhouse stand open, and the thief enter, this is not breaking. So, if the window of the house be open, and a thief with a hook or other engine draweth out some of the goods of the owner, this is no burglary, because there is no actual breaking of the house. But if the thief breaketh the glass of a window, and with a hook or other engine draweth out some of the goods of the owner, this is burglary, for there was an actual breaking of the house. 3 *Inst.* 64; 1 *Hale*, 551. What is one.

There is no need of any demolition of the walls, or any manual violence, to constitute a breaking. Lord *Hale* says, "these acts amount to an actual breaking; *viz.* opening the casement or breaking the glass window, picking open the lock of a door, or putting back the lock, or the leaf of a window, or unlatching the door that is only latched." 1 *Hale*, 552. Violence not necessary.

Where a glass window was broken, and the window opened with the hand, but the shutters in the inside were not broken; this was ruled to be burglary by *Ward*, C. B., *Powis* and *Tracy*, justices, and the Recorder; but they thought this the extremity of the law; and on a subsequent conference, *Holt*, C. J., and *Powel*, C. J., doubting and inclining to another opinion, no judgment was given. 2 *East's P. C.* 487. See *R.* v. *Bailey* and *Spencer*, *post*, p. 520, 518.

Where an entry was effected by taking the glass out of a door, it was holden to be a burglary. *R.* v. *John Smith*, *Russ. & R. C. C.* 417.

If a thief enter by the chimney it is a breaking; for that is as much closed as the nature of things will permit. 1 *Hawk.* c. 38, s. 4; 4 *Bla. Com.* 226. Entering by chimney.

Getting into a chimney of a house is a sufficient breaking and entering to constitute burglary, though the party does not enter any of the rooms of the house. Thus in *R.* v. *Brice*, *R. & R. C. C.* 450, the prisoner got in at a chimney, and lowered himself a considerable way down, just above the mantelpiece of a room on the ground floor. *Holroyd* and *Burrough*, Js., thought this was not a breaking and entering of the dwellinghouse, on the ground that he was not in the dwellinghouse till he was below the chimneypiece. The rest of the judges, however, held otherwise; for that the chimney was part of the dwellinghouse, that the getting in at the top was a breaking of the dwellinghouse, and that the lowering himself was an entry therein.

Where the prisoner effected an entry, by pulling down the upper sash of a window, which had not been fastened, but merely kept in its place by the pulley weight: the judges held this to be a sufficient breaking to constitute burglary, even although it also appeared that an outside shutter, by which the Must be a fastening.

WHAT A BREAKING.

window was usually secured, was not closed or fastened at the time. *R.* v. *Haines and Harrison*, *R. & R. C. C.* 451.

Where an entry was effected, first into an outer cellar by lifting up a heavy iron grating that led into it, and thence into the house by a window; and it appeared that the window, which opened by hinges, had been fastened by means of two nails as wedges, but could notwithstanding easily be opened by pushing: the judges held that opening the window, so secured, was a breaking sufficient to constitute burglary. *R.* v. *Hall*, *R. & R. C. C.* 355.

Where thing shut with its own weight.

But if a window thus opening on hinges, or a door, be not fastened at all, opening them would not be a breaking, within the definition of burglary. Even where the heavy flat door of a cellar, which would keep closed by its own weight, and would require some degree of force to raise it, was opened; it had bolts by which it might have been fastened on the inside, but it did not appear that it was so fastened at the time: the judges were divided in opinion whether the opening of this door was such a breaking of the house as constituted burglary. *R.* v. *Cullan*, *R. & R. C. C.* 157. It was holden in *Brown's case*, 2 *East's P. C.* 487, that it was. It seems the only difference between these two cases is, that in *Brown's case* there were no interior fastenings, but in *Cullan's* there were, though not used. In a later case it has been held by *Bolland*, Baron, that the lifting up of a trap door covering a cellar, which was merely kept in its place by its own weight, and which had no fastenings, because it being a new trap door, they had not been put on, is not a sufficient breaking to constitute a burglary. *R.* v. *Lawrence*, 4 *C. & P.* 231.

Where a window was a little open, and not sufficiently so to admit a person, and the prisoner pushed it wide open and got in, this was held to be no sufficient breaking. *R.* v. *Smith*, *Car. C. L.* 293; *R. & M. C. C.* 178, S. C.

If there be an aperture in a cellar window to admit light, through which a thief enters in the night, this is not burglary. *R.* v. *Lewis*, 2 *Car. & P.* 628.

Must be into part of a house.

Some part of the house must be broken.

Where the prisoner opened the area gate with a skeleton key, and from the area passed into the kitchen through a door which did not appear to have been shut at the time: the judges held that opening the area gate was not a breaking of the dwellinghouse, as there was no free passage, in the time of sleep, from the area into the house. *R.* v. *Davis*, *R. & R. C. C.* 322.

So, breaking a door which formed part of the outward fence of the curtilage of a dwellinghouse, and which opened, not into any building, but into a yard only, was holden not to be a breaking of the dwellinghouse: the premises consisted of a dwellinghouse, warehouses and stables, surrounding a yard; there was an immediate entrance to the dwellinghouse from the street, and a gate and gateway, under one of the warehouses, leading into the yard; the prisoner entered the premises by breaking this gate: the judges held that this was not burglary; that breaking this gate, which was part of the outward fence of the curtilage, and not opening into any of the buildings, was not a breaking of any part of the dwellinghouse. *R.* v. *Bennett*, *R. & R. C. C.* 289.

As to what is a dwellinghouse, see *post*, 521, and *post*, House, Vol. III.

Entering by fraud.

Where the offender, with intent to commit a felony, obtains admission by some artifice or trick for the purpose of effecting it, he will be guilty of burglary. Thus where thieves, having an intent to rob, raised the hue and cry, and brought the constable, to whom the owner opened the door; and when they came in they bound the constable and robbed the owner; this was held a burglary. So if admission be gained under pretence of business; or if one take lodgings with a like felonious intent, and afterwards rob the landlord; or get possession of a dwellinghouse by false affidavits without any colour of title, and then rifle the house; such entrance being gained by fraud, it will be burglarious. 2 *East's P. C.* 485.

So in *A. Hawkin's case*, *O. B.* 1704, 2 *East's P. C.* 485; she was indicted for burglary; upon evidence it appeared that she was acquainted with the house, and knew that the family were in the country; and meeting with the

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boy who kept the key, she prevailed upon him to go with her to the house, by the promise of a pot of ale; the boy accordingly went with her, opened the door, and let her in, whereupon she sent the boy for the pot of ale, robbed the house, and went off; and this being *in the night time*, it was adjudged that the prisoner was clearly guilty of burglary. And see 8 *T. R.* 302.

If a servant conspire with a robber, and let him into the house by night, this is burglary in both: 1 *Hale*, 553; 1 *Hawk.* c. 38, s. 14; *R.* v. *Cornwall*, 2 *Str.* 881; for the servant is doing an unlawful act; and the opportunity afforded him of doing it with greater ease rather aggravates than extenuates the guilt.

Entering by threats.

A breaking may be also in law, as where in consequence of violence commenced or threatened, in order to obtain entrance, the owner, either from apprehension of the force or with a view more effectually to repel it, opens the door through which the robbers enter. But where no fraud or conspiracy is made use of, or violence commenced or threatened, in order to obtain an entrance, there must be an actual breach of some part of the house, though it need not be accompanied with any violence as to the manner of executing it. 2 *East's P. C.* 486.

Breaking inner rooms, &c.

A burglary may be committed by a breaking on the inside: for though a thief enter a dwellinghouse in the night time through the outer door being left open, or by an open window, yet, if when within the house, he turn the key or unlatch a chamber door, with intent to commit felony, this is burglary. 2 *East's P. C.* 488.

And this may be done by a servant, who sleeps in an adjacent room, unlatching his master's door, and entering his apartment with intent to kill him, 1 *Hale*, 544; 2 *East's P. C.* 488; or to commit a rape on his mistress, *Gray's case*, 1 *Stra.* 481.

But Lord *Hale* doubts whether a guest at an inn is guilty of burglary by rising in the night, opening his own door, and stealing goods from other rooms. 1 *Hale*, 554.

And it seems certain that breaking open a chest or trunk is not in itself burglarious; *Fost.* 108, 9; 2 *East's P. C.* 488; and, according to the better opinion, the same principle applies to cupboards, presses, and other fixtures, which, though attached to the freehold, are intended only the better to supply the place of moveable depositories. *Fost.* 109. And Mr. J. *Foster* there says, "in questions between the heir or devisee, and the executor, (see 2 *Vern.* 508; 1 *P. Wms.* 94,) those fixtures may with propriety enough be considered as annexed to and parts of the freehold. The law will presume that it was the intention of the owner, *under whose bounty the executor claimeth*, that they should be so considered; to the end that the house might remain to those who, by operation of law, or by his bequest, should become entitled to it, in the same plight he put it or should leave it, entire and undefaced. But in capital cases I am of opinion that such fixtures, which merely supply the place of chests and other ordinary utensils of household, should be considered in no other light than as mere moveables, partaking of the nature of those utensils, and adapted to the same use." See 1 *Hale*, 555; 2 *East's P. C.* 489; see also Mr. Amos's useful work on Fixtures.

Breaking out of a house.

It was formerly doubted whether the breaking might not be subsequent to the entry; as if the prisoner being in the house, without violence should break it, in order to escape with his booty; 1 *Hale*, 554; but this difficulty was removed by 12 Ann. c. 7.

7 & 8 Geo. 4, c. 29, s. 11.

And now by the 7 & 8 Geo. IV. c. 29, s. 11, it is enacted, "that every person convicted of burglary shall suffer death as a felon; and it is hereby declared, that if any person shall enter the dwellinghouse of another with intent to commit felony, or being in such dwellinghouse shall commit any felony, *and* shall in either case *break out* of the said dwellinghouse in the night time, such person shall be deemed guilty of burglary." See *post*, 531.

The 7 & 8 Geo. IV. c. 27, repeals the 12 Ann. c. 7.

Unlocking and opening a hall door of a house and running away, is a sufficient breaking out of the house. *R.* v. *Lawrence*, 4 *C. & P.* 231.

WHAT AN ENTRY.

(2.) What an Entry.

There must be an entry.

It is essential that there should be an *entry* as well as a *breaking*. 1 *Hale*, 555.

What amounts to.

It is deemed an entry when the thief breaketh the house, and his body, or any part thereof, as his foot or his arm, is within any part of the house; or when he putteth a gun into a window which he hath broken, (though the hand be not in,) or into a hole of the house which he hath made, with intent to murder or kill; this is an entry and breaking of the house; but if he doth barely break the house, without any such entry at all, this is no burglary. 3 *Inst.* 64; 2 *East's P. C.* 490.

Thieves came by night to rob a house; the owner went out and struck one of them; another made a pass with a sword at persons he saw in the entry, and in so doing his hand was over the threshold. This was adjudged burglary by great advice. 2 *East's P. C.* 490.

In the case of George Gibbons, Old Bailey, June, 1752, *Fost.* 107; 2 *East's P. C.* 490; who was indicted for burglary in the dwellinghouse of John Allan, it appeared in evidence that the prisoner in the night time cut a hole in the window shutters of the prosecutor's shop, which was part of his dwellinghouse, and putting his hand through the hole took out watches and other things, which hung in the shop within his reach; but no entry was proved, otherwise than by putting his hand through the hole. This was held to be burglary, and the prisoner was convicted.

Introducing the hand through a pane of glass, broken by the prisoner, between the outer window and an inner shutter, for the purpose of undoing the window latch, is a sufficient entry. *R.* v. *Bailey*, *R. & R. C. C.* 341. So would the mere introduction of the offender's finger. *R.* v. *Davis*, *R. & R. C. C.* 499; and see 1 *Hale*, 533.

It is even said that discharging a loaded gun into a house is a sufficient entry. 1 *Hawk.* c. 38, s. 11; 1 *Hale*, 555; 4 *Campb.* 220; *Pickering* v. *Rudd*, 1 *Stark. Rep.* 48.

If the instrument with which the house is broken happen to enter the house, but without any intention upon the part of the burglar to effect his felonious intent (as, for instance, to draw out the goods) with it, this will not be a sufficient entry to constitute a burglary. *R.* v. *Hughes & al.* 1 *Leach*, 406; see *R.* v. *Roberts*, 2 *East's P. C.* 487.

We have already seen how far descending by a chimney will constitute an entry, *ante*, 517.

The prisoner raised a window which was not bolted, and he thrust a crowbar under the bottom of the shutter (which was about half a foot within the window) so as to make an indent on the inside of the shutter, but from the length of the bar his hand was not inside the house. This was held not to be a sufficient entry to constitute burglary. *R.* v. *Rust & Ford*, *R. & M. C. C.* 183; *Car. C. L.* 293, S. C. by the name of *R.* v. *Roberts*.

Where the house was broken, but not entered, and the owner for fear threw out his money, it was holden to be no burglary; though clearly robbery, if taken in the presence of the owner. 2 *East's P. C.* 490.

Where thieves bored a hole through the door with a centre-bit, and part of the chips were found in the inside of the house, by which it was apparent that the end of the centre-bit had penetrated into the house, yet as the instrument had not been introduced for the purpose of taking the property or committing any other felony, it was decided that this entry was not sufficient to constitute burglary. *R.* v. *Hughes*, 2 *East's P. C.* 491.

If divers come in the night to do a burglary, and one of them break and enter, the rest of them standing to watch at a distance, this is burglary in all. 3 *Inst.* 64.

The entry need not be at the same time as the break in the night; therefore, if thieves break a hole in the intent to enter another night and commit felony, cordingly, it is burglary.

(3.) What a Dwellinghouse and Residence.

WHAT A DWELLING-HOUSE.

The breaking and entering, to constitute a burglary, must be into the dwellinghouse of another, that is to say, a house which the occupier or his family regularly *reside* in.

The burglary must be in a dwelling-house.

It has been said that a church may be the subject of burglary; 3 *Inst.* 64; 1 *Hale*, 556; but this seems questionable; see 1 *Hawk.* c. 38, s. 17; the late act, 7 & 8 Geo. IV. c. 29, s. 11, merely mentions "*dwellinghouse.*"

Church.

A house under repair, or a building intended for and constructed as a dwellinghouse, in which no one lives, though the owner's property is deposited there, is not a place in which burglary can be committed; for it cannot be deemed his dwellinghouse, until he has taken possession and began to inhabit it; 1 *Leach*, 185; *Fuller's case*, 2 *East's P. C.* 498; 1 *Leach*, 196, n.; *Elsmore* v. *St. Briavells*, 8 *B. & Cres.* 461; nor will it make any difference if one of the workmen engaged in the repairs sleep there in order to protect it; 1 *Leach*, 186, *in notis*; nor though the house is ready for the reception of the owner, and he has sent his property into it preparatory to his own removal, will it become for this purpose his mansion. *R.* v. *Hallard*, 2 *East's P. C.* 498; *R.* v. *Thompson*, *Id.*; 2 *Leach*, 771

Person must reside in it.

So if the landlord of a house purchase the furniture of his out-going tenant, and procure a servant to sleep there in order to guard it, but without any intention of making it his own residence, a breaking into the house will not amount to burglary. *R.* v. *Davis*, 2 *Leach*, 876; *R.* v. *Smith*, 2 *East's P. C.* 497; *R.* v. *Fuller*, *Id.* 498; 1 *Leach*, 196, n.

The mere casual use of a tenement will not suffice. 1 *Hale*, 557.

Where neither the owner nor any of his family have slept in the house, it is not his dwellinghouse, so as to make the breaking into it burglary, though he had used it for his meals and all the purposes of his business. *R.* v. *Martin*, *R. & R. C. C.* 108.

If a man die in his leasehold house, and his executors put servants in it, and keep them there at board wages, burglary may be committed in breaking it, and it may be laid to be the executors' property. 2 *East's P. C.* 499.

It is not absolutely necessary to make it burglary that any person should be actually within the house at the time the offence is committed. For if the owner leaves it *animo revertendi*, though no person resides there in his absence, it will still be his mansion. 1 *Hawk.* c. 38, s. 11.

What actual residence necessary or not.

As if a man has a house in town and another in the country, and goes to the latter in the summer, the nocturnal breaking into either, with a felonious design, will be burglarious; *Fost.* 77; 2 *East's P. C.* 496, *Nutbrown's case*; so if he goes a journey; *R.* v. *Murray*, 2 *East's P. C.* 496.

And though a man leaves his house and never means to live in it again, yet if he uses part of it as a shop, and lets a servant and his family live and sleep in another part of it, for fear the place should be robbed, and lets the rest to lodgers, the habitation by his servant and family will be a habitation by him, and the shop may still be considered as part of his dwellinghouse. *R.* v. *Gibbons*, *R. & R. C. C.* 442.

But where the prosecutor, an upholsterer, left the house in which he had resided with his family, without an intent of returning to live in it, and took a dwellinghouse elsewhere, but still retained the former house as a warehouse and workshop; two women, employed by him as work-women in his business, and not as domestic servants, slept there to take care of the house, but did not have their meals there, or use the house for any other purpose than sleeping in it as a security to the house; the judges held that this was not properly described as the dwellinghouse of the prosecutor. *R.* v. *Flannagan*, *R. & R. C. C.* 187.

The occupation of a *servant* in that capacity, and not as tenant, is in many cases the occupation of the master, and will be a sufficient residence to render it the dwellinghouse of the master. *R.* v. *Stock*, *R. & R. C. C.* 185, *post*, 525; *R.* v. *Wilson*, *R. & R. C. C.* 115.

Residence by a servant.

WHAT A DWELLING-HOUSE.

If a servant live in a house of his master's at a yearly rent, the house cannot be described as the master's house, though it is on the premises where the master's business is carried on, and although the servant has it because of his service. The servant is in such a case the tenant of the master, who might have distrained for rent, and could not arbitrarily have removed him, and consequently the occupation of the servant cannot be deemed the occupation of the master. *R.* v. *Jarvis & al. R. & M. C. C.* 7; and see further, *post*, 524; Larceny, Vol. III.

What a sufficient house.

Every permanent building, in which a party may dwell and lie, is deemed a dwellinghouse, and burglary may be committed in it.

A set of chambers in an inn of court or college is deemed a distinct dwellinghouse for this purpose. 1 *Hale*, 556; 1 *Hawk.* c. 38, s. 11.

So even a loft over a stable, used for the abode of a coachman, which he rents for his own use and that of his family, is a place which may be burglariously broken. *R.* v. *Turner*, 1 *Leach*, 305.

So also burglary may be committed in a lodging-room, 1 *Leach*, 89; or in a garret used for a workshop, and rented together with an apartment for sleeping, and if the landlord does not sleep under the same roof, the place may be laid as the mansion of the lodger; 1 *Leach*, 237; see further *post*, 526.

But burglary cannot be committed in a tent or booth in a market or fair, even although the owner lodge in it. 1 *Hawk.* c. 38, s. 35; 1 *Hale*, 557; because it is a temporary, not a permanent, edifice.

Outhouses, &c.

The term "mansionhouse," in its common sense, not only includes the dwellinghouse but also all outhouses, as barn, stable, cowhouse, dairyhouse, if they be parcel of the mansion, though they be not under the same roof or joining contiguous to it. 1 *Hale*, 558, 559.

The 13th section of stat. 7 & 8 Geo. IV. c. 29, however, enacts, "that no building, although within the same curtilage with the dwellinghouse, and occupied therewith, shall be deemed to be part of such dwellinghouse for the purpose of burglary, or for any of the purposes aforesaid, *unless there shall be a communication* between such building and dwellinghouse, *either immediate* or *by means of a covered and inclosed passage leading from the one to the other.*"

This provision makes an important alteration in the law as it previously stood, for no communication as that pointed out by the act was absolutely necessary at common law to constitute burglary, see cases, *infra*, note, (*a*).

(*a*) The following decisions will show how the law stood previously to the above act of 7 & 8 Geo. IV. c. 29. Their insertion is deemed useful, especially in deciding questions arising as to what is a house to constitute the offence of arson; as to which, see *post*, Burning.

This offence was deemed to be committed by breaking open a shop built close to a dwellinghouse, although no one slept in it, and it had no internal communicatiou with the principal mansion. *R.* v. ——, 1 *Leach*, 357. And a building used with a dwellinghouse and opening into an inclosed yard belonging thereto was deemed parcel of the dwellinghouse, though it also opened into an adjoining street, and although it had no internal communication with the dwellinghouse. *R.* v. *Lithgo*, *R. & R. C. C.* 357. And where the prosecutor's house was at the corner of a street, and adjoining thereto was a workshop, beyond which a stable and coachhouse adjoined, all were used with the house, and had doors opening into a yard belonging to the house, which yard was surrounded by adjoining buildings, &c. making altogether an inclosed yard; the workshop had no internal communication with the house, and it had a door opening into the street; its roof was higher than that of the dwellinghouse. The street door of the workshop was broken open in the night and the offender being indicted for burglary and convicted, the judges held this workshop was parcel of the dwelling, and that the conviction was right. *R.* v. *Chalking*, *R. & R. C. C.* 334. So where the prisoner broke into a goosehouse opening into the prosecutor's yard, into which his house also opened, and the yard was surrounded partly by other buildings of the homestead and partly by a wall, some of the buildings had doors opening backward, and there was a gate in one part of the

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arising from property vested in trustees for her separate use, the judges held that a house which she had lived in was properly described as her husband's dwellinghouse, though she paid the rent out of her separate property, and the husband had never been in it. *R.* v. *French, Russ. & Ry. C. C.* 491.

Upon an indictment for burglary in the dwellinghouse of George Gillings, it appeared that Gillings owned and had built the house in question, but had never lived in it; that suspecting his wife of infidelity with one Websdale, they agreed to separate, and he told her she might live in the house in question, and gave her a bed and bedding, &c for the purpose; she afterwards lived and cohabited with Websdale in the house, with the knowledge of her husband; Websdale paid the expenses of housekeeping, but never paid any rent for the house to Gillings: the judges held, that the house was properly described as the dwellinghouse of the husband. *R.* v. *Wilford, Russ. & Ry. C. C.* 517.

Insolvent debtor.

A house in part of which a man lives, and other parts of which he lets to lodgers, may be considered and described as his house, though he has taken the benefit of the insolvent debtor's act, and executed an assignment including the house, if the assignee has not taken possession; at least, no objection can be made if in other counts it be stated as the house of the assignee, and in others of the lodger in whose room the offence was committed. *R.* v. *Ball, R. & M. C. C.* 30.

Public offices, palaces, &c.

In the case of persons employed by the crown or public companies, the same rule prevails as in other cases. If burglary be committed in the invalid office at Chelsea, in Somerset House, in Whitehall, in any of the public offices or royal palaces, the mansion must be laid as the King's. 1 *Leach*, 324, and in notis; *R.* v. *Williams*, 1 *Hale*, 522.

Corporations, &c.

The same principle applies to corporations; for if a burglary be laid to be in the dwellinghouse of one of the officers belonging to the African Company, it will be bad although a corporation cannot be resident. *Kel.* 37; 1 *Leach*, 324, in notis; 2 *East*, 501.

But it has been holden that if the agent of a trading company resides in the house of his employers in town, it may properly be laid as his dwelling. *R.* v. *Margette*, 2 *Leach*, 930. So a city hall may be described as the residence of the clerk to the company to whom it belongs, *id.* in notis.

The ground for these two last decisions is stated to be that the punishment of burglary was intended to protect the actual occupant from the terror of disturbance during the hours of darkness and repose, but it would be absurd to suppose that that terror which is of the essence of the crime could from a breaking and entry in one place produce an effect in another. 2 *Leach*, 931.

J. Picket was indicted for burglary in the dwellinghouse of the East India Company, which is inhabited by their servants; and he was convicted and executed. O. B. April, 1765. 2 *East's P. C.* 501.

C. Maynard was indicted for burglary in the mansionhouse of the master, fellows, and scholars of Bennet College, in Cambridge. It appeared that he broke into the buttery of the college, and there stole some money; and it was agreed by all the judges, upon a reference to them, that it was burglary. *C. Maynard's case*, 2 *East's P. C.* 501.

Where house divided.

If by an actual severance all internal communication be cut off, the partitions become distinct houses, so that if one house is divided to accommodate the families of two partners, though the rent and taxes of the whole are paid out of one common fund, each part will be regarded as a mansion. *R.* v. *Jones*, 1 *Leach*, 537; 2 *East's P. C.* 504; *Salk.* 532.

Inn.

If the chamber of a guest at an inn be forced open and his goods stolen, the burglary must be laid in the dwellinghouse of the landlord. 1 *Hale*, 557; *R.* v. *Prosser*, 2 *East*, 502; 2 *MS. Sum.* 249.

Inmates.

Where inmates have several rooms in a house of which they keep the keys, and inhabit them severally with their families, yet if they enter at one outer door with the owner, these rooms cannot be said to be the dwellinghouses of

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the inmates, but the indictment ought to be for breaking the house of the owner. But if the owner inhabit no part of the house, or even if he occupy a shop or a cellar in it, but do not sleep therein, the apartments of such inmates shall be considered as their respective dwellinghouses. *Carrell's case*, 1 *Leach*, 237; *Trapshaw's case*, 1 *Leach*, 427, and see 1 *Hawk.* c. 38, s. 26.

Owner letting off part, and residing in residue.

If the owner, who lets out apartments in his house to other persons, sleep under the same roof, and have but one outer door common to him and his lodgers, such lodgers are only inmates, and all their apartments are parcel of the one dwellinghouse of the owner. *Kel.* 84. But if the owner do not lodge in the same house, or if he and the lodgers enter by different outer doors, the apartments so let out are the mansion for the time being of each lodger respectively, even though the rooms are let by the year. 2 *East's P. C.* 505, *infra.*

Where a servant of the prosecutor dwelt in a part of the house, and the rest (excepting the shop) was let off to lodgers: the judges held that the shop, which was in the prosecutor's occupation, was properly described as the dwellinghouse of the prosecutor. *R.* v. *Gibbons, Russ. & Ry. C. C.* 442, *ante*, 521.

Where the prosecutor, having a dwellinghouse with a shop adjoining to it, with separate entrances from the street, but the shop having a back door into a passage in the house, let the shop to his son, who used it as a place of business only, and did not reside there; a burglary having been committed in the shop, the judges held, that it was properly described in the indictment as the dwellinghouse of the father. *R.* v. *Sefton, Russ. & Ry. C. C.* 202.

Owner letting off part, but not residing in residue.

If the owner let off a part, but do not dwell in the part he reserves for himself, then the part let off is deemed in law the dwellinghouse of the party who dwells in it, whether it communicates internally with the other part or not; but the part he has reserved for himself is not the subject of burglary: it is not his dwellinghouse, for he does not dwell in it; nor can it be deemed the dwellinghouse of the tenant, for it forms no part of his holding. 1 *Leach*, 89, 237, 437.

Where a coachman rented the loft over a coachhouse and stables, and he and his family resided in it, a burglary committed in it was holden to be well laid to have been committed in the dwellinghouse of the coachman. *R.* v. *Turner*, 1 *Leach*, 305.

The governor of the workhouse at Birmingham, under a contract for seven years with the guardians and overseers of the poor of that place, occupied and dwelt in the governor's house, with the exception of one room, which the guardians and overseers reserved for themselves as an office, and three other rooms as store-rooms; the clerk of the guardians and overseers kept one key of the office, the governor another, for the purpose of securing the effects in case of fire, and the room was cleaned and taken care of by the governor's servant: this office being broken and entered in the night time, ten of the judges held, that it could not be described as the dwellinghouse of the governor. *R.* v. *Wilson, Russ. & Ry. C. C.* 115.

So where the owner of a dwellinghouse, warehouse, and countinghouse, within the same curtilage, let the dwellinghouse to his warehouseman at a yearly rent: the countinghouse and warehouse being broken and entered in the night time, the judges held, that this was not burglary; that the countinghouse and warehouse could not be described as the dwellinghouse of the master; because the dwellinghouse was occupied by the warehouseman as tenant, and not as servant; nor could they be described as the dwellinghouse of the tenant, for they formed no part of his holding. *R.* v. *Jarvis, R. & M. C. C.* 7.

Owner letting whole of house to different tenants.

If the owner let the whole of a dwellinghouse, retaining no part of it for his or his family's dwelling, the part each tenant occupies and dwells in is deemed in law to be the dwellinghouse of such tenant, whether the parts

WHO IS THE OWNER OF THE HOUSE.

holden by the respective tenants communicate with each other internally or not.

Thus where the owner of a house divided the shop into two by a partition, each having a door opening into the street, and let one of them and some rooms in the house to Choice, and the other with the remainder of the house to Ryan; at the end of each shop was a door, opening into a common passage, that led to one common staircase; Choice paid 100*l.* a-year and the taxes for the whole house, for his part; Ryan 80*l.* a-year for his; each had his separate family, separate kitchen, &c.; but the rooms occupied by each opened on the common staircase above-mentioned: upon an indictment for burglary, it appeared that the prisoner entered at the window of the common staircase, unlocked the door of Ryan's shop, and entered it; and the judges held, that the place was rightly described in the indictment as the dwellinghouse of Ryan. *R.* v. *Bailey, R. & M. C. C.* 23.

One Richards let her dwellinghouse to her son Josiah, and a warehouse, communicating internally with the dwellinghouse, to Josiah and his younger brother, at a separate rent; Josiah lived in the dwellinghouse, and constantly used the communication between that and the warehouse; both brothers carried on their joint business in the warehouse: the warehouse being broken and entered in the night time, the judges held, that it could not be deemed a part of the dwellinghouse, as the dwellinghouse was holden under a demise to Josiah alone, and he alone dwelt in it, and the warehouse was holden under a distinct demise to himself and his brother. *R.* v. *Jenkins, Russ. & Ry. C. C.* 244.

Where a lodger occupied a sleeping-room on the first floor, and a workshop in the attic, and the rest of the house was occupied by other lodgers, a burglary in the workshop was holden by the judges to be well laid to have been committed in the dwellinghouse of the lodger who rented it. *R.* v. *Carroll*, 1 *Leach*, 237.

(5.) What Offence must be Committed.

The entry must be in the night time. 4 *Bla. Com.* 224.

Entry must be in the night time.

As to what shall be reckoned night, and what day, for this purpose; anciently the day was accounted to begin only at sun-rising, and to end immediately upon sun-set: but the better opinion now seems to be, that if there be day light, or *crepusculum*, (twilight,) enough begun or left to discern a man's face withal, it is no burglary. 3 *Inst.* 63; 1 *Hale*, 350; 2 *East's P.C.* 509.

What shall be deemed night.

But this does not extend to moon-light, for then many midnight burglaries would go unpunished; and besides the malignity of the offence does not so properly arise from its being done in the dark, as at the dead of night, when all the creation, except beasts of prey, are at rest, when sleep has disarmed the owner, and rendered his castle defenceless. 4 *Bla. Com.* 224.

The ancient law appears to be the most reasonable. In the summer there is but a very short time when there is not day-light sufficient to discover the countenance of the offender; and it is well known that a very considerable portion of the offences of this nature are committed during that light. Besides, the same reason why moon-light is not sufficient to protect the burglar would apply to twilight.

The breaking and entering must both be committed in the night time; if the breaking be in the day and the entering in the night, or the breaking in the night and the entering in the day, it is no burglary. 1 *Hale*, 551.

But the breaking may be on one night, and the entry on another. 1 *Hale*, 551.

The breaking, however, must be with intent to enter. Where the prisoner took the glass out of a door on Friday night, with intent thereby to enter the house, and afterwards on the Sunday night, and before the glass was replaced, he entered by the aperture he had thus made: the judges held, that the breaking being originally with intent to enter, and the breaking and the entering being both in the night time, the offence amounted to burglary, notwithstanding the time that had elapsed between the breaking and the entry. *R.* v. *Smith, R. & R. C. C.* 417.

WHAT INTENTION NECESSARY.

(6.) What Intention is necessary to constitute Burglary.

The burglary must be with a felonious intent.

There can be no burglary but where the indictment both expressly alleges, and the verdict also finds an intention to commit some felony; for if it appear that the offender meant only to commit a trespass, as to beat the party, or the like, he is not guilty of burglary. 1 *Hawk.* c. 38, s. 18; 3 *Inst.* 65; 1 *Hale*, 561.

In the case of *R.* v. *Knight and Roffey* the prisoners were indicted for a burglary in the dwellinghouse of Mary Snelling, the indictment stating the intent to be to steal the goods of Leonard Hawkins. It appeared from the evidence that Hawkins, who was an excise officer, had seized some bags of tea in a shop, entered in the name of Smith, as being there without a legal permit, and had removed them to Mary Snelling's, where he lodged. The prisoners and many other persons broke open Mary Snelling's house in the night, with intent to take this tea. Smith did not appear to have been in company with them; but it was shown that they supposed the tea to belong to Smith; and that the act was committed either in company with him, or by his procurement. The jury being directed to find as a fact with what intent the prisoners broke and entered the house, found that they intended to take the goods on the behalf of Smith; and upon the point being reserved, the twelve judges were of opinion, that the indictment was not supported, as however outrageous the conduct of the prisoners was in so endeavouring to get back Smith's goods, still there was no intention to steal. But if the indictment had been for breaking the house with intent feloniously to rescue goods seized, &c., which is felony by stat. 19 Geo. II. c. 34, some of the judges thought that it would have been burglary. But even in that case it was agreed, that evidence must be given on the part of the prosecutor to show that the goods were uncustomed, in order to throw the proof upon the prisoners that the duty was paid; but being found in oil cases, or in great quantities in an unentered place, would have been sufficient for that purpose. 2 *East's P. C.* 510.

It seems the better opinion, that an intention to commit a rape, or other such crime, which is made felony by statute, and was a trespass only at common law, will make a man guilty of burglary, as much as if such offence were a felony at common law; because wherever a statute makes any offence felony, it incidentally gives it all the properties of felony at common law. 1 *Hawk.* c. 38, s. 18.

Immaterial whether intent be executed.

It is immaterial whether the felonious intent be executed or not: thus they are burglars who, with a felonious intent, break any house or church in the night, although they take nothing away. And herein this offence differs from robbery, which requires that something be taken, though it be not material of what value.

J. Dobbs was indicted for burglary, in breaking and entering the stable of J. Bayley, part of his dwellinghouse, in the night, with a felonious intent to kill and destroy a gelding of one A. B. there being. It appeared that the gelding was to have run for 40 guineas, and that the prisoner cut the sinews of his fore-leg to prevent his running, in consequence of which he died. *Parker*, C. J. ordered him to be acquitted; for his intention was not to commit the felony by killing and destroying the gelding, but a trespass only to prevent his running, and, therefore, no burglary. But the prisoner was again indicted for killing the gelding, and capitally convicted. *Dobb's case*, 2 *East's P. C.* 513; *vide* 1 *Hale*, 561.

If the breaking and entering be at different times, both must appear to have been done with the same felonious intent. *R.* v. *Smith, R. & R. C. C. ante*, 427.

The felonious intent with which the prisoner broke and entered the house cannot be proved by positive testimony; it can be proved only by the admission of the party, or by circumstances from which the jury may presume it.

Where it appears that the prisoner actually committed a felony after he entered the house, this is satisfactory evidence, and almost conclusive, that

the intent with which he broke and entered the house was to commit that felony. Indeed the very fact of a man's breaking and entering a dwelling-house in the night time is strong presumptive evidence that he did so with intent to steal; and the jury will be warranted in finding him guilty, unless the contrary be proved. *Arch. Peel's Acts*, 40.

Where a man was found in the night time in the chimney of a shop, just above the mantle-piece, and before he had entered the shop; the jury found him guilty of burglary with intent to steal upon this evidence merely, and the judges confirmed the conviction. *R.* v. *Brice, R. & R. C.C.* 450; *ante*, 517.

As to what is a variance in the statement of the intent, see *post*, 530.

II. Indictment for.

Description of offence.

The indictment must describe the facts necessary to constitute the offence of burglary, viz. the breaking and entering a dwellinghouse of another in the night time, and with some felonious intent.

Breaking and entering.

The words *broke and entered* must both be inserted, both of them being essential to constitute the offence. 1 *Hale*, 550.

The word *burglariously* is necessary; 4 *Co.* 39, 40; as also the word *feloniously*, as in other felonies.

Dwellinghouse.

It must be stated that the offence was committed in a mansion or dwellinghouse; and if it be stated to have been in a "house" merely, the proceedings will be defective. 1 *Hale*, 550.

When the place is an outhouse which adjoins the mansion, it must either be laid in the dwellinghouse generally, or in a stable, &c. part of the dwellinghouse, either of which methods may be adopted. 1 *Leach*, 144; 2 *East's P. C.* 512, 513.

Care must be taken that the local description of the house be according to the fact, as a variance would be fatal.

If it be not expressly stated where the dwellinghouse is situated, it shall be taken to be situated at the place named in the indictment by way of special venue. See *R.* v. *Napper, R. & M. C. C.* 44.

Where it appeared that the dwellinghouse was in the parish of A. and an outhouse connected and occupied with it in the parish of B., and a burglary was committed in the outhouse; one of the questions reserved for the opinion of the judges was, whether the dwellinghouse was properly described in the indictment, as being in the parish of B.; but the judges gave no opinion upon this point, having decided the case upon another ground. *R.* v. *William Bennett and another, R. & R. C. C.* 289.

Ownership of house.

The name of the owner of the house must be stated with such certainty to a common intent, as is in general necessary in the description of the party who has sustained the injury.

An error in such statement would be fatal. 2 *Leach*, 774; 2 *East's P.C.* 514. See the cases and authorities as to who is to be deemed the owner, &c. *ante*, 523 to 527.

The owner may be described by an assumed name, by which he had been known for the preceding five years, and during that time had never been known by his original name. *R.* v. *Norton, R. & R.* 510.

Where a person was indicted for burglary in the house of Sarah Lunns, and her name appeared to be London, he was acquitted of the capital part of the charge; 1 *Leach*, 253, *in notis*; and though it is said to be doubtful whether the leaving of a blank for the surname would not be vicious; 1 *Hale*, 558; *Moore*, 466; there can be but little doubt that at the present day such an omission would be material. 3 *Chit. C. L.* 1113.

As to the mode of describing the ownership in companies, &c. see *post*, Indictment, Vol. III. p. 341.

If there be any doubt whether the house broken and entered belongs to A., B., or C., to obviate the difficulty, counts alleging it to be the dwellinghouse of A., B., and C. respectively should be inserted.

INDICTMENT FOR.

Time.

It must be stated that the offence was committed in the night time; and it is not only necessary to state a day and year, but also an *hour* about which the offence was committed; in order that it may appear to the court to be at a time when there could be no day light remaining. If this be wanting, the defendant can only be convicted of a simple larceny.

At the Lancaster Lent Assizes, 1771, *R.* v. *Waddington*, 2 *East's P. C.* 513, there was an indictment for burglary, alleging the fact to have been committed in the night, but not expressing about what hour it was done, Mr. J. *Gould* held the indictment insufficient as for a burglary, and directed the prisoner to be found guilty of a simple felony only. He said, that according to the old doctrine, a burglary might be committed at any time between sun-setting and sun-rising; but that the rule now established is, that it cannot be committed during the *crepusculum*; that therefore it is necessary to specify the *hour*, in order that the fact may appear upon the face of the indictment to be done between the twilight of the evening and that of the morning.

But it is not necessary that the evidence should correspond with the allegation either as to the day or hour, so that it shows the offence to have been committed in the time of darkness. 2 *Hale*, 179.

Both breaking and entering must be charged to have taken place in the night, or there is no charge of burglary. 1 *Hale*, 549.

The hour should, though after twelve o'clock at night, be stated to be in the night of the preceding day.

Felonious intent.

The felonious intent must be stated, and this correctly so; for if it be stated that the defendant intended to commit one species of felony, and it is proved that he intended another, the indictment will be bad. 1 *Hale*, 561. *R.* v. *Dobbs*, 2 *East's P. C.* 513; *R.* v. *Dingley*, 2 *Leach*, 840; 2 *East's P. C.* 510, 514.

Where the intent laid was to steal the goods of J. W., and it appeared in evidence that no goods of any person of the name of J. W. were in the house, but that the name of J. W. had been inserted in the indictment by mistake; the judges held the variance to be fatal, and the defendant was accordingly acquitted. *R.* v. *Jenks*, 2 *East's P. C.* 514; 2 *Leach*, 774.

If an actual larceny is averred, and it is proved that the theft was not complete, the defendants must be acquitted. 2 *Leach*, 708; *R.* v. *Furnival*, *R. & R.* 445; 2 *East's P. C.* 514. Nor can a previous stealing in the same house be connected with a subsequent breaking, so as to support this charge. *Id.*

On the other hand, if a felony has been actually committed, an averment of the intent to commit it will suffice. 1 *Hale*, 560.

Where there is a doubt as to what specific felony was intended, the intention should be laid differently in separate counts. 2 *East's P. C.* 515.

III. Verdict.

Verdict.

The indictment may be so laid as to comprise several offences, arising out of the same transaction, so that the prisoner may be found guilty of part and acquitted of the rest. As if the prisoner be charged with burglariously breaking and entering the dwellinghouse, and stealing goods of the value of 40*s.*; he may be acquitted of breaking and entering in the night time, &c., and yet found guilty of stealing in the dwellinghouse. *R.* v. *Withal and Overend*, 1 *Leach*, 88, and 2 *East's P. C.* 517; and *R.* v. *Hungerford*, *id.* See **Indictment**, Vol. III. p. 355; **Evidence**, Vol. II. p. 30.

Or upon such an indictment the prisoner may be acquitted of the capital charges, *viz.* of the burglary, and of stealing in the dwellinghouse to the value of 40*s.*, and be convicted of the simple larceny. 1 *Hale*, 561.

Upon an indictment for burglary and larceny against two, one may be found guilty of the burglary and the larceny, and the other of the larceny only. *R.* v. *Butterworth*, *R. & R. C. C.* 520.

IV. Punishment.

Punishment. Death.

By the 7 & 8 Geo. IV. c. 29, s. 11, it is enacted, "that every person convicted of burglary shall suffer death as a felon. And it is hereby declared, that if any person shall enter the dwellinghouse of another with intent to commit felony, or being in such dwellinghouse shall commit any felony, and shall in either case break out of the said dwellinghouse, in the night time, such person shall be deemed guilty of burglary."

By this act so much of 18 Eliz. c. 7, as relates to burglary and to persons admitted to the benefit of clergy is repealed.

The first part of the above enactment inflicts a capital punishment on every case which was burglary at common law, and the burglary need not come within the definition in the concluding part of the enactment.

See the general clauses of the act affecting the whole of its provisions, and as to accessaries, &c. *post*, **Malicious Injuries to Property**, Vol. III.; *ante*, **Accessary**, p. 13.

V. Reward for Apprehending, &c. a Burglar.

Indemnity and reward.

It may be observed, that it is provided by stat. 24 Hen. VIII. c. 36, that there shall be no forfeiture of lands or goods for killing any person that attempts to commit burglary.

But besides this indulgence to a person killing such an offender in defence of his house, there are special advantages and rewards for apprehending him. See **Reward**, Vol. V.; 7 Geo. IV. c. 64, s. 28; **Costs**, Vol. I.

VI. Offence of having House-breaking Instruments.

Persons having house breaking implements. 5 Geo. 4, c. 83.

By stat. 5 Geo. IV. c. 83, s. 4, for the purpose of preventing burglary and house-breaking, it is enacted, "that every person having in his or her custody or possession any picklock key, crow, jack, bit, or other implement, with an intent feloniously to break and enter into any dwellinghouse, warehouse, coachhouse, stable, or out-building; or being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon; or having upon him or her any instrument with intent to commit any felonious act; every person being found in or upon any dwellinghouse, warehouse, coachhouse, stable, or outhouse, or in any inclosed yard, garden, or area, for any unlawful purpose, shall be deemed a rogue and vagabond within the true intent and meaning of this act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months; and every such picklock key, crow, jack, bit, and other implement; and every such gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon; and every such instrument as aforesaid, shall, by the conviction of the offender, become forfeited to his Majesty."

Punishment.

Implements, how disposed of.

In the case of *R.* v. *Brown*, 8 *T. R.* 26, (upon stat. 23 Geo. III. c. 88, now repealed by the above stat. 5 Geo. IV. c. 83, s. 1,) a warrant of commitment was holden defective, because it did not state that the defendant was apprehended with the implements of house-breaking upon him *at the time of such apprehension*. Lord *Kenyon*, C. J. said that he yielded with great reluctance to the objection.

VII. Forms.

(No. 1.)

Warrant to apprehend a burglar where he actually stole goods.

County of } *To the Constable of*

FORASMUCH as A. I. of , in the county of , [yeoman,] hath this day made information and complaint upon oath before J. P. Esquire, one of his Majesty's justices of the peace for the said county, that yesterday in the night the dwellinghouse of him the said A. I. at aforesaid, in the county aforesaid, was feloniously and burglariously broken open, and [one silver tankard] of the value of [5l.] of the goods and chattels of him the said A. I. feloniously and burglariously stolen, taken and carried away from thence; and that he hath just cause to suspect and doth suspect that A. O. late of , in the county of , [labourer,] the said felony and burglary did commit; these are therefore in his said Majesty's name to command you, that immediately upon sight hereof you do apprehend the said A. O. and bring him before me to answer the premises, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal the day of , in the year .

(No. 2.)

Commitment for like offence.

[Commencement as usual, as *ante*, p. 8]: *on, &c. about the hour of [twelve] in the night, at , in the county aforesaid, the [dwellinghouse] of A. B. there situate, feloniously and burglariously did break and enter, with intent the goods and chattels of the said A. B. in the said [dwellinghouse] then and there being, then and there feloniously and burglariously to steal, take, and carry away, and then and there in the said [dwellinghouse], [twelve silver spoons] of the goods and chattels of the said A. B., then and there feloniously and burglariously did steal, take, and carry away. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 3.)

Commitment for breaking out of a house.

[Commencement as usual, as *ante*, p. 8]: *on, &c. at, &c. being in the [dwellinghouse] of A. B. there situate, [twelve silver spoons] of the goods and chattels of the said A. B., in the said [dwellinghouse] then and there being found, then and there in the said dwellinghouse feloniously did steal, take, and carry away: and that the said C. D., so being in the said [dwellinghouse] as aforesaid, and having committed the felony aforesaid, on the day and year aforesaid, about the hour of twelve in the night of the same day, at the parish aforesaid, in the county aforesaid, feloniously and burglariously did break out of the said [dwellinghouse,] against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 4.)

Indictment for burglary, laying an intent to steal as well as actual theft.

—— *THE jurors for our Lord the King upon their oath present, that C. D., late of, &c. on, &c.* (ante, 530) *about the hour of one in the night of the same day, with force and arms, at the parish of,* (ante, 529) *aforesaid, in the county aforesaid, the [dwellinghouse]* (ante, 529) *of A. B.* (ante, 529) *there situate, feloniously and burglariously did break and enter,* (ante, 529,) *with intent the goods and chattels of the said A. B. in the said [dwellinghouse] then and there being then and there feloniously and burglariously to steal, take, and carry away, and then and there, with force and arms, [one silver tea pot] of the value of [5l.]* [here state the articles stolen as in larceny,] *of the goods and chattels of the said A. B. in the said dwellinghouse then and there being found, then and there feloniously and burglariously did steal, take, and carry away, against the peace of our said Lord the King his crown and dignity.* [If bank notes or other valuable security be stolen, conclude also, *against the form of the statute in that case made and provided.*]

(No. 5.)

The like against two persons for a burglary with intent to steal.

—— *THE jurors for our Lord the King upon their oath present, that C. D. late of, &c. on, &c. about the hour of [twelve] in the night of the same day, with force and arms, at, &c. aforesaid, the dwellinghouse of A. B. there situate feloniously and*

burglariously did break and enter, with intent the goods and chattels of the said A. B. in the said dwellinghouse then and there being found, then and there feloniously and burglariously to steal, take, and carry away, against the peace of our said Lord the King his crown and dignity.

(No. 6.)

Indictment on 7 & 8 Geo. 4, c. 29, s. 11, for burglary in breaking out of a house.

—— *THE jurors for our Lord the King upon their oath present, that C. D. late of, &c. on, &c. about the hour of* [*twelve*] *in the night of the same day, at, &c. aforesaid, being in the dwellinghouse of A. B. there situate,* [*twelve silver spoons*] *of the value of* [*six pounds,*] *of the goods and chattels of the said A. B. in the said dwellinghouse then and there being, with force and arms, feloniously did steal, take, and carry away; and that the said C. D. being so as aforesaid in the said dwellinghouse, and having committed the felony aforesaid in manner and form aforesaid, he the said C. D. afterwards, to wit, on the same day and year aforesaid, about the hour of* [*twelve*] *in the night of the same day, with force and arms, at, &c. aforesaid, the same dwellinghouse of the said A. B. then and there feloniously and burglariously did break to get out of the same, and then and there feloniously did break and get out of the same, against the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity.*

Burial of Dead Bodies cast on Shore.

As to the stealing, selling, and preventing the burial of dead bodies, see *ante*, Bodies, p. 402.

As to burial of a felo de se, see *post*, Homicide, Vol. III. p. 258.

As to funerals being exempted from tolls, see *post*, Highway, Vol. III. p. 187.

48 Geo. 3, c. 75,

The stat. 48 Geo. III. c. 75, after reciting, that "whereas no provision hath yet been made by the laws now in force for providing suitable interment in churchyards or parochial burying grounds, for such dead human bodies as may be cast on shore from the sea by wreck or otherwise, in that part of the United Kingdom called England: and whereas it is expedient that provision should be made for the decent interment of such bodies;" it is enacted, "that from and after the passing of this act, the churchwarden and churchwardens, overseer and overseers of the poor for the time being of the respective parishes throughout England, in which any dead human body or dead human bodies shall be found thrown in or cast on shore from the sea, by wreck or otherwise, shall, and he and they is and are hereby required, upon notice to him or them given that any such body or bodies are thrown in or cast on shore by the sea, and is or are lying within the bounds of the parish for which he or they shall be churchwarden or churchwardens, overseer or overseers of the poor, to cause the same to be forthwith removed to some convenient place, and with all convenient speed to cause such body or bodies to be decently interred in the churchyard or burial ground of such parish, so that the expenses attending on such burial do not exceed the sum which at that time is allowed in such parish for the burial of any person or persons buried at the expense of such parish: provided always, that in case any such body or bodies shall be thrown in or cast on shore from the sea in any extra-parochial place where there is no churchwarden or churchwardens, overseer or overseers of the poor, then and in every such case the constable or headborough of such place shall, on notice being given to him that such body or bodies is or are lying in such extra-parochial place, forthwith cause such body or bodies to be removed to some convenient place, and with all convenient speed cause the same to be buried in such and the like manner

Where dead human bodies are cast on shore, the churchwardens, &c. of the parish shall cause the same to be removed and interred in a decent manner in the churchyard.

BURIAL OF DEAD BODIES CAST ON SHORE.

as the churchwardens and overseers within England are hereby required to bury such body or bodies."

48 Geo. 3, c. 75.

Minister of the parish to perform the funeral service, &c.

Sect. 2. "That every minister, parish clerk, and sexton of such respective parishes shall perform their several and respective duties in such and the like manner as is customary in other funerals, and shall admit of such body or bodies being interred in such churchyards or burial grounds without any improper loss of time, receiving for the same, by way of compensation, such and the like sums as in cases of burials made at the expense of such parishes."

Rewarding persons finding dead human bodies, and giving notice thereof to parish officers.

Sect. 3. "That in case any person or persons shall find any such body or bodies cast on shore from the sea, by wreck or otherwise, and shall within six hours thereafter give notice thereof to some one of the churchwardens or overseers of the poor of the parish for the time being in which such body or bodies shall be found, or to the constable or headborough for the time being, in case such body or bodies shall be found in any extra-parochial place, or cause such notice to be left at his or their last or usual place or places of abode, then and in every such case such person or persons shall receive the sum of 5*s.* for his, her, or their trouble, such sum to be forthwith paid to the person or persons first giving such notice only; but nevertheless that no greater sum than 5*s.* shall be paid for any one notice, although there may be a greater number of such bodies than one."

Persons finding dead human bodies cast on shore, and not giving notice, subject to a penalty.

Sect. 4. "That in case any person or persons shall find any such body or bodies cast on shore from the sea by wreck or otherwise, and shall not within six hours thereafter give notice to some one of the churchwardens or overseers of the poor of the parish for the time being in which such body or bodies shall be found, or to the constable or headborough for the time being, in case such body or bodies shall be found in any extra-parochial place, or cause such notice to be left at his or their last or usual place or places of abode, then and in every case such person or persons shall for every such offence forfeit and pay the sum of 5*l.*"

Expenses to be paid by churchwardens, &c.

Sect. 5. "That all necessary and proper payments, costs, charges, and expenses which shall be made or incurred in or about the execution of this act, shall be made and paid by the churchwarden or churchwardens, overseer or overseers, constable or headborough for the time being of such respective parishes and places as aforesaid."

Who are to be reimbursed by the treasurer of the county.

Sect. 6. "And for the purpose of reimbursing him or them all such payments, costs, charges, and expenses," it is enacted, "that it shall and may be lawful to and for any one justice of the peace for the county or place within that part of the United Kingdom called England, in which any such body or bodies shall have been so removed and buried as aforesaid, by any writing under his hand, (*a*) to order and direct (*b*) the treasurer for such county to pay such sum or sums of money to such churchwarden and churchwardens, overseer and overseers, constable or headborough, for his or their costs and expenses in or about the execution of this act (after the same shall have been duly verified on oath,) as to the said justice shall seem reasonable and necessary; and such treasurer shall and he is hereby authorised and required forthwith to pay the sum or sums of money so ordered and directed to be paid to the person or persons empowered to receive the same; and such treasurer shall be allowed the same in his accounts."

Penalty on parish officers neglecting to remove and inter dead human bodies so found or cast on shore.

Sect. 7. "That in case any such churchwarden or churchwardens, overseer or overseers, constable or headborough, shall refuse or neglect to remove or cause to be removed such body or bodies from the sea shore to some conve-

(*a*) See form, (No. 1), *post.*

(*b*) Where a party framed an order, purporting to be the order of a magistrate on the treasurer of a county, to reimburse one *Coss* the expenses of burying a dead body cast on shore: it was held by a majority of the judges, that this was a forgery, though there was no such magistrate as the individual mentioned in the order, and though the order did not state *Coss* to be a parish officer, or that the expenses incurred were reasonable and necessary. *R. v. Proud*, 1 *Brod. & Bing.* 399; 3 *Moore*, 645, S. C.

nient place prior to the interment thereof, for the space of twelve hours after such notice given to him or them, or left in writing at his or their last or usual place or places of abode by any person or persons whomsoever, or shall neglect or refuse to perform the several other duties required of him and them by this act, then and in every such case every such churchwarden or overseer, constable or headborough, shall for every such offence forfeit and pay the sum of *5l.*"

Recovery of penalties under this act.

Sect. 8. "That all penalties and forfeitures which shall be incurred under this act, if not paid on conviction, shall be levied and recovered by distress and sale of the goods and chattels of the offender or offenders, by warrant under the hand and seal of any justice of the peace for the county or place where the offence shall happen (which warrant such justice is hereby empowered to grant on the confession of the party, or upon the evidence of any credible witness upon oath,) and the surplus of the money arising by such distress and sale shall be returned on demand to the owner of such goods and chattels, after deducting the costs and charges of making, keeping, and selling the distress; and such penalties and forfeitures, when recovered, shall be paid to the informer or informers; and in case sufficient distress shall not be found, or such penalties and forfeitures shall not be paid forthwith, it shall and may be lawful to and for such justice, and he is hereby authorised and required, by warrant under his hand and seal, to cause the offender or offenders to be committed to the common gaol or house of correction of such county or place, there to remain without bail or mainprize, for any time not exceeding two calendar months nor less than fourteen days, unless such penalties and forfeitures, and all reasonable charges attending the recovery thereof, shall be sooner fully paid and satisfied."

Form of conviction.

Sect. 9. "That in all cases where any conviction shall be had for any offence or offences committed against this act, or against any order of sessions, or any matter in pursuance of this act, the form of conviction shall be in the words or to the effect following; (that is to say,)

"BE it *remembered, that on this day of in the year of the reign of A. B. is convicted before one of his Majesty's justices of the peace for the of having* [as the offence shall be,] *and I the said do adjudge him* [or *them*] *to forfeit and pay for the same the sum of Given under my hand and seal the day and year aforesaid.*"

Appeal to the quarter sessions.

Sect. 10. "That if any person or persons shall think himself, herself, or themselves aggrieved by any judgment or determination, or by any matter or thing done in pursuance of this act, such person or persons may appeal to the justices of the peace at the first general or quarter sessions of the peace to be holden for the county or place (within which the matter of appeal shall arise) next after the expiration of one calendar month from the time such matter of appeal shall have arisen, the person or persons appealing having first given ten days notice at least of his or their intention to bring such appeal, and of the matter thereof, to the person or persons so appealed against, and forthwith after such notice entering into a recognizance before some justice of the peace for such county or place, with sufficient sureties conditioned to try such appeal and abide the order and award of the said court thereon; and the said justices at such sessions, upon due proof of such notice and recognizance having been given and entered into, are hereby authorised and required to hear and determine the matter of such appeal in a summary way, and to make such determination therein, and to award such costs to either of the parties, or otherwise, as they shall judge proper; and the said justices may, if they see cause, mitigate any fine, penalty, or forfeiture, and may also order such further satisfaction to be made to the party injured as they shall judge reasonable; and all such determinations of the said justices shall be final, binding, and conclusive upon all parties to all intents and purposes whatsoever."

Proceedings not to be quashed for want of form.

Sect. 11. "That where any distress shall be made for any sum of money to be levied by virtue of this act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers on account of any defect or want of form in the information,

BURIAL OF DEAD BODIES CAST ON SHORE.

48 Geo. 3, c. 75.

summons, conviction, warrant of distress, or other proceedings relating thereto; nor shall the party or parties distrained be deemed a trespasser or trespassers *ab initio*, on account of any irregularity that shall be afterwards done by the party or parties so distraining, but the person or persons aggrieved by such irregularity shall and may recover full satisfaction for the special damage in an action upon the case."

Penalties to be paid by persons incurring the same, and not by the parish.

Sect. 12. "That all penalties and expenses attendant thereon, which shall be incurred under the provisions of this act, shall be paid and borne by the person or persons incurring the same, and that the parish or place wherein such person or persons ought to have acted in the duties prescribed by this act shall be wholly exempted therefrom."

Lords of manors, &c. to pay the same fee as heretofore on interring dead human bodies, &c.

Sect. 13, after reciting, that "whereas in cases of dead wrecks, wherein no living person is found, or owner known, the lords of manors on which any such dead body or dead bodies may be washed in, and who are entitled to wreck there, have usually paid a small fee for the placing such body or bodies in the ground in the state in which the same have been found, and such payments have been adduced and admitted as proof on trials at common law of the right of such lords of manors to wrecks in such manors;" it is enacted, "that in all and every such cases it shall and may be lawful to and for all and every lord or lords of any manor or manors throughout England to pay or cause to be paid to the churchwarden or churchwardens, overseer or overseers, constable or headborough, of such respective parishes and places as aforesaid, such and the like sums as he or they was or were heretofore accustomed to pay for the placing any such body or bodies into the ground as aforesaid; such sums to go in part payment and discharge of the costs and expenses to be incurred in or about the execution of this act, and credit to be given for the same by such overseers, churchwardens, constable, or headborough, in their accounts with the county to which such accounts shall be submitted; any thing in this act to the contrary thereof in anywise notwithstanding."

How expenses of interment shall be defrayed.

Sect. 14. "And for defraying the expenses of the removal and burial of such body or bodies as aforesaid, and all other expenses necessary for the execution of this act," it is enacted, "that the justices of the peace at the general or quarter sessions may cause such sums of money as shall be necessary for all or any of the purposes aforesaid to be raised in the same manner as rates are directed to be raised by an act made in the twelfth year of the reign of his late Majesty King George the Second, intituled, 'An Act for the more easy assessing, collecting, and levying of county rates.'"

Forms.

(No. 1.)

Order for reimbursement on 48 Geo. 3, c. 75, s. 6. (a)

To the Treasurer of the county of .

I, J. P. Esquire, one of his Majesty's justices of the peace for the county of having inquired into and ascertained upon oath the payments, costs, charges, and expenses in the account annexed, amounting to the sum of incurred by the overseers of the poor of the parish of in the said county, by reason of a dead human body having been found cast by the sea on the shore of the aforesaid parish, on the day of one thousand eight hundred and and interred by the said overseers of the poor at the like sums as in cases of burials made at the expense of the said parish, do hereby order you immediately on sight thereof to pay unto A. O. overseer of the poor of the before-mentioned parish, the said sum of according to an act passed in the forty-eighth year of the reign of his late Majesty King George the Third, intituled, "An Act for providing suitable interment in churchyards or parochial burying-grounds in England, for such dead human bodies as may be cast on shore from the sea, in cases of wreck or otherwise," and the same will be allowed you in your accounts. Given under my hand at in the said county of this day of in the year of our Lord one thousand eight hundred and . J. P.

(a) *Ante*, 534.

(No. 2.)

FORMS.

} *BE it remembered, that on, &c. at, &c. A. B. of, &c.* [*farmer,*] *cometh before to wit.* } *me, J. P. one of his Majesty's justices of the peace for the said county, and informeth me, that C. D. late of in the said county,* [*labourer,*] *on the, &c. at, &c. the bank of, &c. did find a certain dead human body there cast on shore from the sea by wreck or otherwise, and did not, within six hours thereafter, give notice thereof to any one of the churchwardens or overseers of the said parish of in which such dead human body was so found as aforesaid, or cause such notice to be left at the last or usual place of abode of any such churchwarden or overseer; contrary to the form of the statute in such case made and provided; whereby, &c.* [as usual to the end.]

Information on 48 Geo. 3, c. 75, s. 4, for finding dead human bodies cast on shore, and not giving notice thereof.

(No. 3.)

See the form given by the act, *ante*, 535.

Conviction thereon.

(No. 4.)

[Same as the form (No. 2.), but describing the offence, thus]: *that on, &c. at the parish of in the said county, a certain dead human body was cast on shore from the sea by wreck or otherwise, and notice thereof was then and there given to one C. D. the churchwarden* [*churchwarden or overseer*, or if in an extra-parochial place, *constable or headborough,*] *of the said parish; and that the said C. D. well knowing the premises, did nevertheless then and there* [*refuse and*] *neglect to remove or cause to be removed the said body from the sea-shore to some convenient place prior to the interment thereof, for the space of twelve hours next after the said notice so given as aforesaid; contrary to the form of the statute in such case made and provided. Whereby, &c.*

Information against parish officers, on 48 Geo. 3, c. 75, for neglecting to remove and inter dead human bodies cast on shore. (*a*)

Burning.

I. *Offence of, at Common Law*, 537.

II. *Offence of, by Statute, and how Punishable*, 539.

(1.) *Burning of Buildings, &c.* 539.
[7 & 8 Geo. IV. c. 30, s. 2.]

(2.) ——— *of Crops, Stacks, &c.* 540.
[7 & 8 Geo. IV. c. 30, s. 17.]

(3.) ——— *of Mines, &c.* 541; *post*, **Coals**, Vol. I.; **Mines**, Vol. III.

(4.) ——— *of Ships, Stores, &c.* 541; *post*, **Ships, Stores**, Vol. V.

III. *Indictment for*, 541.

IV. *Punishment for Servants carelessly Firing Houses, &c.* 542.
[6 Anne, c. 31, s. 3; 14 Geo. III. c. 78, s. 84.]

V. *Using Threats to Burn*, 543.

VI. *Forms*, 543.

I. Offence at Common Law.

MALICIOUSLY and voluntarily burning the house of another by night or by day is felony at the common law. 1 *Hawk.* c. 39.

Offence by common law.

Maliciously and voluntarily]—For if it be done by mischance or negligence, it is no felony. 3 *Inst.* 67.

Intent.

As if an unqualified person happen to set fire to the thatch of a house; or even if a man were shooting at the poultry of another, by which means the

(*a*) See the provision, *ante*, 534

OFFENCE AT COMMON LAW.

house is fired, that is, provided he did not mean to steal the poultry, but merely to commit a trespass; for otherwise the first intent being felonious, the party must abide all the consequences. 2 *East's P. C.* 1019; 1 *Hale*, 569.

If a man maliciously intending only to burn one person's house happen thereby to burn the house of another, it is certain that he may be indicted as having maliciously burned the house of that other; for where a felonious design against one man misseth its aim, and takes effect upon another, it shall have the like construction as if it had been levied against him who suffers by it. 1 *Hawk.* c. 39, s. 5; 1 *Hale*, 569.

Even if a man by wilfully setting fire to his own house burn also the house of one of his neighbours, it will be felony, (see *R.* v. *Probert*, 2 *East's P. C.* 1031; *R.* v. *Isaac*, *id*); for the law in such a case implies malice, particularly if the party's house were so situate that the probable consequence of its taking fire was that the fire would communicate to the houses in its neighbourhood.

In *R.* v. *Salmon*, *Russ. & Ry. C. C.* 26, it was held not necessary to constitute an offence under the Black Act, 9 Geo. I. (now repealed,) that the prisoner should have malice or spite against the *owner* of the property burnt, and at all events it is not necessary now by the express provisions of the 25th sect. of 7 & 8 Geo. IV. c. 30.

The *intent to injure* may be always inferred from the wrongful act of setting fire, for a man must be supposed to intend the necessary consequence of his own act. *R.* v. *Farrington*, *Russ. & Ry. C. C.* 207.

Burning.

Burning]—Neither a bare intention to burn a house, nor even an actual attempt to do it by putting fire to part of a house, will amount to felony, if no part of it be burned: but if any part of the house be burned, the offender is guilty of felony, notwithstanding the fire afterwards be put out, or go out of itself. 1 *Hawk.* c. 39, s. 4; 5 *East's P. C.* 1020; 1 *Leach*, 49.

The attempt to commit arson is a misdemeanor at common law, and as such may be punished severely. 1 *Wils.* 139; see *ante*, **Attempts**, p. 292.

What house.

The House]—This extendeth not only to the very dwellinghouse, but to all outhouses that are parcel thereof, though not contiguous to it, nor under the same roof; as in the case of burglary, the barn, stable, cowhouse, sheephouse, dairyhouse, millhouse. 1 *Hale*, 567.

But if the barn or outhouse be not parcel of a dwellinghouse, it is not felony unless the barn have hay or corn in it; and then, though it be no parcel of a dwellinghouse, it is felony. 3 *Inst.* 67.

See tit. **Burglary**, *ante*, 521, 522, for what is considered as parcel of the dwellinghouse, and which should govern the question as to what is a house or outhouse in the case of arson. See also *post*, **House**, Vol. III. p. 277.

Owner of house.

Of Another]—But a person seised in fee, or but possessed for years, of a house standing by itself at a distance from all others, cannot commit felony in burning the same. So a man so seised or possessed of a house in a town, who burned his own with an intent to burn his neighbour's, but in the event burned his own only, was not guilty of felony; it was, however, certainly an offence highly punishable in regard of the malice thereof, and the great danger to the public which attended it; and the offender was liable to be severely fined, and imprisoned during the King's pleasure, and set on the pillory, (*a*) and bound to his good behaviour. 1 *Hawk.* c. 39, s. 3; *Brecne's case*, 1 *Leach*, 220, 4th ed.; *Cro. Car.* 376.

The frequent commission of the latter offence, and the very serious mischief that resulted from its being merely a misdemeanor, at last attracted the attention of the legislature, and the party who would occasion, by burning his own possession, an injury to another, the extent of which in many cases cannot be calculated, will be liable to the penalty of death; formerly, by 43 Geo. III. c. 58, usually called Lord Ellenborough's Act, and now by 7 & 8 Geo. IV. c. 30, s. 2, 17. (Vide *post*, 539, 540.)

(*a*) Now abolished, except in perjury, by 56 Geo. III. c. 138.

Various kinds of property also, the burning of which was no felony at common law, are now made so by the legislature. See *infra.*

II. Offence by Statutes.

(1.) Burning of Buildings, Churches, and Houses.

Burning of buildings, churches, houses, &c.

The 7 & 8 Geo. IV. c. 30, s. 2, enacts, "that if any person shall unlawfully and maliciously set fire to any church or chapel, or to any chapel for the religious worship of persons dissenting from the united church of England and Ireland, duly registered or recorded, or shall unlawfully and maliciously set fire to any house, stable, coachhouse, outhouse, warehouse, office, shop, mill, malthouse, hopoast, barn, or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, with intent thereby to injure or defraud any person, every such offender shall be guilty of felony, and, being convicted thereof, shall suffer death as a felon."

See the general clauses affecting all the provisions of this act *post*, tit. **Malicious Injuries to Property**, Vol. III. p. 722 to 727.

This provision consolidates the provisions on this subject contained in the stats. 9 Geo. I. c. 22; 9 Geo. III. c. 29, s. 2; 48 Geo. III. c. 58, and 52 Geo. III. c. 130.

The 7 & 8 Geo. IV. c. 27, wholly repeals 23 Hen. VIII. c. 1; 43 Eliz. c. 13; 22 & 23 Car. II. c. 7; 9 Geo. I. c. 22, (the Black Act); 9 Geo. III. c. 29, and 52 Geo. III. c. 130; and the stat. 9 Geo. IV. c. 31, wholly repeals the 43 Geo. III. c. 58, (Lord Ellenborough's Act.)

Observations and decisions.

The above clause in the 7 & 8 Geo. IV. c. 30, s. 2, relating to *churches* and *chapels*, is new.

The act should be construed strictly. See *Elsmore* v. *St. Briavells*, 8 *B. & Cres.* 464, 466; 1 *Leach*, 81; *Russ. & Ry. C. C.* 295.

The clause, it will be observed, omits the word "burn," which was in the repealed act of 52 Geo. III. c. 150, and has only the words "set fire to;" it should seem, however, that *burning* is still necessary, for some part must necessarily be burnt if it was set on fire. It is not necessary in an indictment to aver that the building was *burnt*. See *R.* v. *Salmon*, *Russ. & Ry. C. C.* 26.

It is to be observed, that the stat. 9 Geo. I. c. 22, s. 7, did not alter the nature of the crime of arson, (as it existed before,) or make any new offence, but excluded the principal from clergy more clearly than he was before. *North's case*, 2 *East's P. C.* 1021; *post*, 540; *Breem's case*, 1 *Leach*, 31, 3d ed., 220, 4 ed.; 8 *B. & Cres.* 465; *Russ. & Ry. C. C.* 207.

A wife setting fire to her husband's house is not guilty of an offence within the act. *R.* v. *March*, *R. & M. C. C.* 182.

What building within the act.

The building in respect of which the offence is committed must come within the ordinary and established meaning of the words used in the statute. The mere using the building for a particular purpose does not necessarily alter the nature of the building.

Therefore a building intended for and constructed as a dwellinghouse, but which had not been completed or inhabited, and in which the owner had deposited straw and agricultural instruments, was held not a house, outhouse, or barn within the 9 Geo. I. *Elsmore* v. *St. Briavells*, 8 *B. & Cres.* 461.

A school-room, which was separated from the dwellinghouse by a narrow passage, about a yard wide, the roof of which was partly overhung by that of the dwellinghouse, the two buildings, together with some others, and the court which enclosed them, being rented by the same person, was ruled to be well described as an *outhouse*. *Winter's case*, *Russ. & Ry. C. C.* 295.

It can scarcely be conceived that a dairyhouse or a millhouse should not

OFFENCE BY STATUTES.

be deemed an *outhouse* within the act, but at any rate, if they be parcel of the mansionhouse, the burning of them is indictable at common law. 3 *Inst.* 67.

Sarah Taylor was indicted for setting fire to an outhouse, commonly called a paper-mill. It appeared that she had set fire to a large quantity of paper which was drying in a loft annexed and belonging to the mill; but no part of the mill itself was consumed; and therefore the judges thought the case not within the statute on that ground; though another doubt was started, whether a *mill* were an *outhouse* within the meaning of the act. *Sarah Taylor's case*, 2 *East's P. C.* 1020; 1 *Leach*, 49.

North was indicted for feloniously, wilfully, and maliciously, against the form of the statute 9 Geo. I. c. 22, setting fire to a certain outhouse of J. Taylor, situate in Knaresborough. It appeared that the prisoner had set fire to and burnt part of a building of the prosecutor, which was situated in a yard of his at the back of his dwellinghouse, which was in the street of the town of Knaresborough. The building was about four or five yards distant from the dwellinghouse, but not joined to it. The yard was enclosed on all sides, in part by the dwellinghouse, in another part by a wall, in a third part by a railing, which separated it from a field, and in the remaining part by a hedge. The prosecutor kept a public house and also carried on the business of a flax dresser. The buildings set fire to, and in part burned, consisted of a stable and a chamber over it, which was used by the prosecutor as a shop for keeping and dressing flax. It was objected on behalf of the prisoner that this building was not an *outhouse* within the stat. 9 Geo. I. c. 22, as that must be understood to mean outhouses, which in contemplation of law were not part of the dwelling, which it was insisted this was, and that the indictment should have been for arson at common law. The jury found the prisoner guilty, and the point was reserved. November, 1795, (*Hotham*, B. absent,) all the other judges agreed that the verdict was right. They said, that though for some purposes this might be part of the dwellinghouse, yet still in fact it was an outhouse. In *Breeme's case* it was considered that the stat. 9 Geo. I. did not alter the nature of the crime, or create any new offence, but only excluded the principal from clergy more clearly than he was before. *North's case*, 2 *East's P. C.* 1021.

Upon the construction of stat. 9 Geo. I. c. 22, it has been holden that a common *gaol* is a house within the meaning of it. The entrance to the prison was through the dwellinghouse of the gaoler, and the prisoners were sometimes allowed to lie in it. All the judges held, that the dwellinghouse was to be considered as part of the prison, and the whole prison was the house of the corporation, to whom it belonged. One set of the counts there laid it to be the house of the corporation, another of the gaoler, and a third of the person whom the gaoler suffered to live in the dwellinghouse. *Donovan's case*, *Lanc.* 1770, 2 *Bl. Rep.* 682; 2 *East's P. C.* 1020.

A cotton-mill was held to be within the meaning of the 9 Geo. III. c. 29, s. 2, relating to the burning of mills. *Anon.* 2 *Russ. Crim. & Mis.* 493.

Intent to injure. As to the intent to injure, see *ante*, 537, 538.

Accessaries. As to accessaries, see *post*, **Malicious Injuries to Property**, Vol. III. p. 723; *ante*, **Accessary**, p. 13.

Ipdictment. As to the indictment, see *post*, 541.

(2.) Setting Fire to Crops, Stacks, Woods, Heath, &c.

Setting fire to stacks of corn, &c. The stat. 7 & 8 Geo. IV. c. 30, s. 17, enacts, "that if any person shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, straw, hay, or wood, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon; and if any person shall unlawfully and maliciously set fire to any crop of corn, grain or pulse, whether standing or cut down, or to any part of a wood, coppice, or plantation of trees, or to any heath, gorze, furze, or fern, wheresoever the same may be growing, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not ex-

Death.

Setting fire to crops, woods, or heaths, &c.

Seven years' transportation or imprisonment.

ceeding two years; and, if a male, to be once, twice, or thrice publicly or privately whipped, (if the court shall so think fit,) in addition to such imprisonment."

OFFENCE BY STATUTES.

See the general clauses, affecting all the provisions of this act, *post*, **Malicious Injuries to Property**, Vol. III.

This provision consolidates the 22 & 23 Car. II. c. 7, a part of the 9 Geo. I. c. 22, and the 4th section of the stat. 1 Geo. I. st. 2, c. 48, which related to the burning of woods.

The stat. 7 & 8 Geo. IV. c. 27, wholly repeals the stats. 27 Hen. VIII. c. 6; 22 & 23 Car. II. c. 7; 4 & 5 Will. III. c. 23, s. 11.; 43 Eliz. c. 13; 6 Geo. I. c. 16; 9 Geo. I. c. 22, (the Black Act,) and 11 Geo. I. st. 2, c. 48; and the same stat. repeals so much of the stat. 4 W. & M. c. 23, as "relates to the burning of any grig, ling, heath, furze, gorze, or fern," and so much of the stat. 28 Geo. II. c. 19, as relates to persons burning or destroying goss, furze, or fern, in forests or chases, are also repealed; and also the whole of the stat. 4 Geo. IV. c. 54, except that part which relates to threatening letters, *post*, **Threats**, Vol. V.

Repeal of acts.

Part of the above clause, which relates to setting fire to crops, appears to be new, and the punishment for setting fire to heath, &c. is increased.

Observations.

It was never doubted but that burning *one rick*, &c. was within the statute 22 & 23 Car. II. c. 7, though that statute has *ricks* in the plural. See *Hasel's case*, 1 *Leach*, 1.

The property in respect of which the offence is committed must come within the ordinary and established meaning of the words used in the statute, *ante*, 539. Where the defendant was committed on the 9 Geo. I. for setting fire to a parcel of *unthrashed* wheat, the court were of opinion, that as the statute had only made it felony *to set fire to a cock, mow, or stack of corn*, the warrant of commitment did not charge the defendant with a felony, and he was therefore admitted to bail. *R.* v. *Judd*, 2 *T. R.* 255; and see *Elsmore* v. *St. Briavells*, 8 *B. & Cres.* 461.

In *R.* v. *Turner and another*, *R. & M. C. C.* 241; 4 *C. & P.* 245, S. C. it was made a question, but not decided, whether a *haulm* stack was a stack of straw within the 7 & 8 Geo. IV. c. 30, s. 2, *ante*, 539.

(3.) Burning Mines.

As to this offence see *post*, **Coals**, Vol. I.; **Malicious Injuries to Property**, Vol. III. 7 & 8 Geo. IV. c. 30, s. 5, 6, &c.

(4.) Burning Ships, Stores, Magazines, &c.

As to this offence see *post*, **Ships, Stores**, Vol. V.

III. Indictment, Evidence, &c.

Indictment]—The day stated need not be the day proved. Where the indictment alleged the offence to have been committed in the night time, and it was proved to have been committed in the day time, the judges held the variance to be immaterial. *R.* v. *Minton*, 2 *East's P. C.* 1021.

Indictment.

With respect to the description of the building, it is sufficient to describe it according to the language used in the act on which the indictment is founded; 2 *East's P. C.* 1033.

There is no occasion to call the place a *dwellinghouse*, as in case of burglary, the term house alone will suffice; 1 *Hale*, 567; and although the premises set on fire form part of the mansion, being within the curtilage, it will be no variance to charge them as an outhouse in general terms; *R.* v. *North*, 2 *East's P. C.* 1033. So where the indictment described the

INDICTMENT, &c.

house in some of the counts as "a certain outhouse," in others, as "a certain house," and the evidence was of a burning of a school-room, separated from the dwellinghouse by a small passage, but the roof of one extending over the roof of the other; the judges are understood to have holden, that the evidence satisfied the description in both sets of counts; *R.* v. *Wister*, *R. & R.* 295; *ante*, 521, 522. So, where the indictment charged the burning of "a certain house" of the corporation of Liverpool, and the proof was of a burning of a gaol belonging to the corporation, the judges held it to be sufficient. *R.* v. *Donnovan*, 2 *W. Bl.* 682; *ante*, 540.

The parish in which the building is alleged to have been situated must be stated according to the fact.

It seems necessary to aver that the defendant "voluntarily (or wilfully) and maliciously" set fire, &c.; see 2 *East's P. C.* 1021. At all events it is necessary to aver that the defendant "unlawfully" set fire, &c. and stating that he did so feloniously, voluntarily, and maliciously, is not enough. *R.* v. *Turner*, *R. & M. C. C.* 239.

The name of the owner of the house must be stated in the same manner as in burglary; 2 *East's P. C.* 1034; and see *ante*, 529. It is therefore necessary to determine the party to whom the premises belong. This, however, is not so difficult an investigation as in the case of a burglarious entry, for it may be inferred, from the cases deciding that a party cannot, at common law, be guilty of arson by setting fire to houses in which he has an interest, what possession is sufficient in the party charged as the owner. When any doubt is entertained on this part of the subject, the difficulty may be obviated by the insertion of several counts to correspond with the evidence. See 3 *Chit. C. L.* 1126.

If the premises be described as in the possession of A. B., proof that they are in the possession of the tenants of A. B. will support the indictment. *R.* v. *Ball*, *R. & M. C. C.* 30.

If a man maliciously intending to burn the house of A., happen to burn the house of B., he may be indicted as having maliciously burned the house of B. 1 *Hawk.* c. 18, s. 18.

Where a parish pauper set fire to a house in which he was put to reside by the overseers, and the trustees, in whom the legal ownership was vested, were not known, it was holden, that it might be described as the house of the overseers, or of persons unknown. *R.* v. *Ricknan*, 2 *East's P. C.* 1034.

As the words of the statute must be strictly pursued, it will be essential, in laying the intent, not to omit the word, "thereby." *Anon.* 5 *Ex. St.* 334.

It is not necessary to aver that the property was *burnt*, the words of the act being only "set fire to." *R.* v. *Salmon*, *Russ. & Ry. C. C.* 26.

Evidence.

Evidence]—It was holden by six judges against five, that on the trial of an indictment on 43 Geo. III. c. 58, laying the intention to defraud the insurers, an unstamped policy of insurance could not be given in evidence. *R.* v. *Gelson*, 2 *Leach*, 1007; 1 *Taunt.* 95; *Russ. & Ry. C. C.* 138, S. C.

Where a house was robbed and burnt, the defendant's being found in possession of some of the goods which were in the house at the time it was burnt, was admitted as evidence tending to prove him guilty of the arson. *R.* v. *Rickman*, 2 *East*, 1035.

IV. Punishment for Servant carelessly Firing a House.

Punishment of a servant carelessly firing a house.

By stats. 6 Ann. c. 31, s. 3, and 14 Geo. III. c. 78, s. 84, if any servant of a party, through negligence or carelessness, shall fire, or cause to be fired, any dwellinghouse, or outhouse or houses, or other buildings, and such servant be thereof convicted on the oath of one witness before two justices, he shall forfeit 100*l.* to the churchwardens or overseers of the parish where

the fire shall happen, to be distributed by them amongst the sufferers, in such proportions as to the said churchwardens shall seem just; and in case of default or refusal to pay the same immediately on demand by the said churchwardens, such servant shall by warrant of two justices be committed (*a*) to the common gaol, or to some workhouse, or house of correction, as the justices shall think fit, for eighteen months there to be kept to hard labour. See *post*, Vol V. p. 427.

USING THREATS TO BURN.

See the stat. 5 Geo. IV. c. 18, *post*, tit. **Distress**, Vol. I.

V. Using threats to burn.

By the commission of the peace, any justice may cause to come before him all those who to any of the people concerning the firing of their houses have used threats, to find sufficient security for the peace or their good behaviour towards the King and his people; and if they shall refuse to find such security, may cause them to be safely kept in the King's prisons until they shall find security.

Threatening to burn a house.

The offence of sending letters, threatening to burn houses, &c. is provided for by the 4 Geo. IV. c. 54. See *post*, **Threats**, Vol. V.

VI. Forms.

INFORMATION for setting Fire to and Burning a Dwellinghouse on stat. 7 & 8 Geo. IV. c. 30, s. 2, (No. 1.)
WARRANT thereon, (No. 2.)
COMMITMENT on 7 & 8 Geo. IV. c. 30, s. 2, for setting Fire to a Building, (No. 3.)
The like, for setting Fire to a Church, (No. 4.)
COMMITMENT on 7 & 8 Geo. IV. c. 30, s. 17, for setting Fire to a Stack of Corn, &c. (No. 5.)
The like, for setting Fire to Crops, Plantations, &c. (No. 6.)
INDICTMENT for Arson at Common Law, (No. 7.)
INDICTMENT for Arson on 7 & 8 Geo. IV. c. 30, s. 2, for setting Fire to a Building, (No. 8.)
INDICTMENT on 7 & 8 Geo. IV. c. 30, s. 2, for setting Fire to a Party's own House, (No. 9.)
INDICTMENT on 7 & 8 Geo. IV. c. 30, s. 17, for setting Fire to a Stack of Hay, (No. 10.)
INDICTMENT on 7 & 8 Geo. IV. c. 30, s. 2, for setting Fire to a Church, (No. 11.)
The like, for setting Fire to a Place of Confinement in a Borough, (No. 12.)
COMMITMENT of a Servant for negligently setting Fire to a Dwellinghouse, under stats. 6 Ann. c. 31, s. 3, and 14 Geo. III. c. 78, s. 84, (No. 13.)

(No. 1.)

Information for setting fire to and burning a dwellinghouse, on stat. 7 & 8 Geo. 4, c. 30, s. 2.

County of } *BE it remembered, that on, &c. at, &c. A. B. of, &c. cometh before me*
to wit. } *J. P. Esquire, one of his Majesty's justices of the peace in and for the said county of and complaineth and maketh oath, that on, &c. a certain dwellinghouse,* [or *barn, &c.* according to the fact] *situate at the parish of in the said county, was, as he verily believes, wilfully, maliciously, and unlawfully set fire to,* [*and burnt,* according to the fact,] *and that he the said A. B. hath just cause to suspect, and doth suspect that one C. D. of in the said county,* [*labourer,*] *did unlawfully, maliciously, and feloniously set fire to* [*and burn,* according to the fact] *the said* [*dwellinghouse*]; *and thereupon the said A. B. prayeth the judgment of me in the premises, that my warrant may issue against the said C. D. to answer the premises.*

Sworn and exhibited before me, the day *A. B.*
and year first above mentioned. *J. P.*

(*a*) See form, (No. 13), *post*.

FORMS.

(No. 2.)

Warrant thereon.

County of } *To the Constable of the parish of in the said county.*
to wit. }

WHEREAS A. B. of [yeoman,] *hath this day made complaint on oath before me J. P. Esquire, one of his Majesty's justices of the peace in and for the said county, that* [state the offence as in the information.] *These are therefore to command you forthwith to apprehend and bring before me, or some other of his Majesty's justices of the peace, acting in and for the said county, the body of the said C. D. to answer the said complaint, and to be further dealt with according to law. Given under my hand and seal, &c.* J. P. (L. S.)

(No. 3.)

Commitment on 7 & 8 Geo. 4, c. 30, s. 2, for setting fire to a building.

[Commencement as usual, *ante*, p. 8, (No. 1.)] *on, &c. at, &c. in the said county, unlawfully, maliciously, and feloniously did set fire to a certain dwellinghouse* [according to the fact, see the words of the act, *ante*, 539,] *of A. B. there situate, with intent thereby then and there to injure the said A. B.* [or *to defraud a certain insurance company, called* [see form of indictment, *post*, (No. 8)]: *against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual to the end.]

(No. 4.)

The like for setting fire to a house.

[Commencement as usual, *ante*, p. 8, (No. 1.)] *on, &c. at, &c. in the said county, unlawfully, maliciously, and feloniously did set fire to a certain church there situate,* [or *to a certain chapel there situate*, or *to a certain chapel for the religious worship of persons dissenting from the united Church of England and Ireland there situate, and duly registered and recorded,* [see form of indictment, *post*, (No. 11,)] *against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual to the end.]

(N . 5.)

Commitment on 7 & 8 Geo. 4, c. 30, s. 17, for setting fire to a stack of corn, &c.

[Commencement as usual, *ante*, p. 8, (No. 1.)] *on, &c. at, &c. unlawfully, maliciously, and feloniously, did set fire to a certain stack of barley,* [*corn, grain, pulse, straw, hay, or wood*, according to the fact,] *of A. B. then and there being: against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual to the end.]

(No. 6.)

The like for setting fire to crops, plantations, &c.

[Commencement as usual, *ante*, p. 8, (No. 1.)] *on, &c. at, &c. unlawfully, maliciously, and feloniously, did set fire to a certain crop of barley, the property of C. D., then and there standing and growing,* [see the words of the act, *ante*, 540,] *against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual to the end.]

(No. 7.)

Indictment for arson at common law.

—THE jurors of our Lord the King upon their oath present, that C D. late of, &c. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on, &c. with force and arms, at, &c. aforesaid, feloniously, unlawfully, and maliciously, did set fire to and burn a certain [*dwellinghouse*] *of one A. B. there situate, against the peace of our said Lord the King his crown and dignity.* [If the house were not a dwellinghouse, but merely a building, which was parcel of the dwellinghouse, describe it accordingly.]

(No. 8.)

Indictment for arson on 7 & 8 Geo. 4, c. 30, s. 2, for setting fire to a building.

— THE jurors for our Lord the King upon their oath present, that J. S. late of, &c. to wit, on, &c. with force and arms, at, &c. aforesaid, unlawfully, maliciously, and feloniously, did set fire to a certain house [according to the fact, see the act, *ante*, 539,] *of J. N. there situate; against the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity.*

FORMS.

(No. 9.)

Indictment on 7 & 8 Geo. 4, c. 30, s. 2, for setting fire to a party's own house.

— *THE jurors for our Lord the King upon their oath present, that C. D. late of, &c. on, &c. with force and arms, &c. aforesaid, feloniously, wilfully, maliciously, and unlawfully, did set fire to a certain* [*dwellinghouse*] *there situate, then being in the possession of him the said C. D. with intent thereby to injure and defraud the* [*Royal Exchange*] *Insurance Company for the insurance of houses and goods from fire, then being a body corporate:* [*or A. B. and C. D. then being subjects of his said Majesty*]: *against the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity.*

(No. 10.)

Indictment on 7 & 8 Geo. 4, c. 30, s. 17, for setting fire to a stack of hay.

— *THE jurors for our Lord the King upon their oath present, that C. D. late of, &c. on, &c. with force and arms at, &c. a certain stack of hay of and belonging to one A. B. feloniously, unlawfully, wilfully, and maliciously, did set fire to, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his crown and dignity.*

(No. 11.)

Indictment on 7 & 8 Geo. 4, c. 30, s. 2, for setting fire to a church.

— *THE jurors for our Lord the King upon their oath present, that J. S. late of, &c. on, &c. with force and arms, at, &c. aforesaid, feloniously, wilfully, maliciously, and unlawfully, did set fire to a certain church there situate; contrary to the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity*

(No. 12,)

Indictment on 7 & 8 Geo. 4, c. 30, s. 2, for setting fire to a place of confinement in a borough.

— *THE jurors for our Lord the King upon their oath present, that C. D. late of, &c. being an evil disposed person, on, &c. with force and arms, at, &c. aforesaid, a certain building there situate and being, called the* [*Lower Cells,*] (*the same then and there being the prison of the borough of in the county aforesaid*) *then and there feloniously, unlawfully, wilfully, maliciously, and injuriously did set fire to, and the same building called the* [*Lower Cells*] *did by such firing then and there burn, consume, and destroy, against the form of the statute in such case made and provided, and against the peace of our Lord the King his crown and dignity.* Second count: *And the jurors, &c. do further present, that the said C. D. on the day and year aforesaid, with force and arms, at, &c. aforesaid, a certain building there situate and being, called the* [*Lower Cells*] *then and there feloniously, unlawfully, wilfully, maliciously, and injuriously, did set fire to, and the same building then and there feloniously, unlawfully, wickedly, wilfully, and injuriously, did, by such firing, burn, consume, and destroy, to the evil example of all others, against the form of the statute in such case made and provided, and against the peace of our Lord the King his crown and dignity.*

Second count.

(No. 13.)

Commitment of a servant for negligently setting fire to a dwellinghouse, under stats. 6 Anne, c. 31, s. 3, and 14 Geo. 3, c. 78, s. 84. (*a*)

County of } *To the Constable of and to the Keeper of the house of correction at*
} *in the .*

WHEREAS A. B. servant of C. D. of, &c. was on the day of the date hereof lawfully convicted before us, W. S. and S. P. Esquires, two of his Majesty's justices of the peace for the said county, upon the oath of E. F. of, &c. that he the said A. B. did, on the day of last, through negligence, set fire to, or cause to be fired, the dwellinghouse of the said C. D. situate at in the parish of in the said county, by reason whereof, and by force of the statutes in that case made and provided, he the said A. B. hath forfeited the sum of one hundred pounds: And whereas the churchwardens of the parish of where the said fire did happen, have made appear unto us upon oath, that immediately upon the said conviction they did duly demand of the said A. B. the sum of one hundred pounds, to be distributed by them as the law directs, but the said A. B. did refuse and neglect to pay the same: These are therefore to command you, in his Majesty's name, to convey the said A. B. to the house of correction at

(*a*) *Ante*, p. 542.

FORMS.

aforesaid, and deliver him to the keeper thereof, together with this precept; and you the said keeper are hereby commanded to receive the said A. B. into your custody, and him detain and keep in the said house of correction to hard labour, for the space of eighteen months next ensuing. Given under our hands and seals, &c.

Burning in the Hand of Felons. *See* Clergy, Benefit of, *post*, Vol. I.

Butcher.

[4 H. VII. c. 3; 2 & 3 Edw. VI. c. 15; 3 Car. c. 1.]

Conspiring to raise the price of victuals.

BY stat. 2 & 3 Edw. VI. c. 15, if any butchers shall conspire not to sell their victuals but at certain prices, every such person shall forfeit for the first offence 10*l.* to the King, and if not paid in six days he shall suffer 20 days' imprisonment, and shall only have bread and water for his sustenance; for the second offence 20*l.* in like manner, or the pillory; (*a*) and for the third offence 40*l.* or pillory, and the loss of an ear, and to be taken as an infamous man, and not to be credited in any matter of judgment; and the sessions or leet may determine the same. See also title Forestalling, Vol. II.

It is an offence at common law to conspire to raise the price of victuals. See *post*, Conspiracy, Vol. I.

Not to kill in a walled town.

By stat. 4 Hen. VII. c. 3, no butcher shall slay any beast within any walled town except Carlisle and Berwick, on pain of forfeiting for every ox 12*d.*, every cow and other beast 8*d.*, half to the King and half to him that will sue.

Selling unwholesome flesh.

A butcher that selleth swine's flesh measled, or flesh dead of the murrain, shall for the first time be grievously amerced; the second time suffer judgment of the pillory; (*a*) the third time to be imprisoned and make fine; and the fourth time forswear the town. Ordinance for bakers. 1 *Hawk. Stat.* 1, p. 181.

Not to kill or sell on the Lord's Day.

As to how far this would be an offence at common law, see the cases as to selling bad bread, &c. *ante*, 406, 407.

By stat. 3 Car. c. 1, if any butcher shall kill or sell any victual on the Lord's Day, he shall forfeit 6*s.* 8*d.*, one-third to the informer and two-thirds to the poor, on conviction before one justice, on his own view, or confession, or oath of two witnesses, to be levied by the constable or churchwarden. See *post*, Lord's Day, Vol. III.

An indictment against a butcher for selling meat on a Sunday should conclude against the form of the statute; but if the offender keep open shop, the usual method is to indict at the sessions for the nuisance. *R.* v. *Brotherton*, 1 *Stra.* 702; *post*, Nuisance, Vol. III.

See *post*, Cattle, Vol. I.

(*a*) This punishment of pillory is now abolished (except in cases of perjury, or subornation thereof,) by stat. 56 Geo. III. c. 138. See tit. Pillory, &c. Vol. V.

Butter and Cheese.

I. *Concerning the Packing, Weight, and Goodness of Butter*, 547.
[13 & 14 Car. II. c. 26; 4 Will. III. c. 7; 36 Geo. III. c. 86; 38 Geo. III. c. 73.]

II. *Concerning the Shipping of Butter and Cheese for London*, 549.
[4 Will. III. c. 7.]

I. Concerning the Packing, Weight, and Quality of Butter.

BY stat. 36 Geo. III. c. 86, s. 19, the 13 & 14 Car. II. c. 26, and so much of 4 Will. III. c. 7, as discharges persons from the effect of any part of 13 & 14 Car. II. for preventing frauds in the sellers of butter after the factor or buyer hath contracted for the same, are repealed; and new regulations are made respecting the packing, weight, and sale of butter, as follows:— Former acts repealed.

By sect. 1 it is enacted, that every cooper or other person who shall make any vessel for the packing of butter shall make the same of good and well-seasoned timber, and tight and not leaky, and shall groove in the heads and bottoms thereof; and every such vessel shall be a tub, firkin, or half firkin, and no other; and shall, when delivered by such cooper or person making the same, be of the weight and proportion and capable of containing the several quantities of butter hereinafter mentioned, viz. every tub shall weigh of itself, including the top and bottom, not less than 11lb. nor more than 15lb. avoirdupois weight, and neither such top nor bottom shall be more than five-eighths of an inch thick in any part thereof, and shall be capable of containing 84lb. average of butter, and not less; every firkin shall weigh of itself, including the top and bottom, not less than 7lb. nor more than 11lb., and neither the top nor bottom shall be more than four-eighths of an inch thick in any part, and shall be capable of containing not less than 56lb. of butter; and every half firkin shall weigh of itself, including the top and bottom, not less than 4lb. nor more than 6lb., and neither the top nor bottom shall be more than three-eighths of an inch thick in any part, and it shall be capable of containing not less than 28lb. of butter, on pain of forfeiture by the cooper or other person making the same of 10*s.* for every such vessel. (*a*) Regulations for making vessels for packing butter. Weight of the tub. Weight of the firkin. Of the half firkin.

Sect. 2. And every such maker, before such vessel shall go out of his possession, shall, on the outside of the bottom, with an iron, brand his christian name and surname at full length, in permanent and legible letters, together with the exact weight or tare thereof, on the like penalty. Name, place of abode, and weights to be put on such vessels.

And by stat. 38 Geo. III. c. 73, s. 1, every such maker shall moreover mark in like manner, in addition to his name, his place of abode or dwelling in the following manner, viz. if he dwell in a city or market town, then the name thereof; if in a village, township, liberty, hamlet, or other division of a parish, then the name of the parish wherein the same is situate; and if in an extra-parochial place, then the name of the next adjoining parish; on pain of forfeiting 10*s.* for every default therein. 38 Geo. 3, c. 73.

Sect. 2. And every factor or agent for buying or selling butter for others, who shall buy, sell, or offer to sale, or have in his custody for sale, or shall order, consign, forward, or send, any vessel containing butter for sale, which Factors buying or selling butter in vessels not legally marked.

(*a*) The avoirdupois weight is that by which the sale of butter is regulated, and a custom in a particular place that every pound of butter shall weigh eighteen ounces, is bad, being contrary to the express provision of the legislature, the object of which is to establish a uniformity of weights and measures. *Noble* v. *Durell*, 3 *T. R.* 271; 4 *T. R.* 314, 750; but it has never been decided that a custom to sell by a lump of a particular weight exceeding sixteen ounces is invalid in law. See *post*, **Weights and Measures**, Vol. V.

PACKING OF.

38 Geo. 3, c. 73.

shall not be made, and externally marked, and have the butter therein imprinted, according to the directions of this and the above act, shall forfeit 20*s.* for every such offence.

Or cheesemongers and others.

Sect. 3. And every cheesemonger or seller or dealer in butter on his own account, who shall offer for sale, or have in his possession for sale, any vessel containing such butter, which shall not be externally marked as aforesaid, shall forfeit 10*s.* for every such offence.

Directions for packing of butter. 36 Geo. 3, c. 86.

By stat. 36 Geo. III. c. 86, s. 3, and every dairyman, farmer, or seller of butter, or other person who shall pack any butter for sale, shall pack the same in vessels so made and marked as aforesaid and no other, and shall properly soak and season such vessel before such packing, and when so soaked and seasoned shall, on the bottom thereof on the inside, and on the top on the outside, with an iron, brand his christian and surname at full length in like letters, and also on the outside of the top, and on the bouge or body thereof, the true weight or tare of such empty vessel when so soaked and seasoned, and also his name in like manner on the bouge or body across two different staves at least, to prevent the same being taken out and changed; and shall distinctly and at full length imprint his christian and surname upon the top of the butter in such vessel when filled, on pain of forfeiting 5*l.* for every default thereof. (*a*)

Quantities to be packed in each vessel.

Sect. 4. And every dairyman, farmer, or seller of butter, or other person, packing butter for sale, shall (exclusive of the tare of such vessel), pack in every tub not less than 84lb., firkin, 56lb., and half firkin, 28lb., net, of good and merchantable butter; and no butter which is old or corrupt shall be mixed or packed up into any such vessel with that which is new and sound, nor shall any whey butter be packed or mixed with that which is made of cream, but every such vessel shall be of one sort and goodness throughout; and no butter shall be salted with any great salt, but with fine small salt, and not intermixed with more than is needful for its preservation; on pain of forfeiting 5*l.* for every offence.

Butter not to be mixed.

What salt to be used.

Practising fraud in the sale of butter.

Sect. 5. And if any change, alteration, fraud, or deceit, shall be used or practised, either in the vessel wherein butter is packed for sale as aforesaid, or in the butter itself, whether in quantity, quality, weight, or otherwise, or in any such brands or marks as aforesaid, or in the staves whereon the same shall be placed, or in any other manner howsoever after the packing thereof for sale as aforesaid; every person concerned therein shall forfeit 30*l.* for every such offence.

To deliver the full quantity.

Sect. 6. And every cheesemonger, dealer in butter, or other person, who shall sell any tub, firkin, or half firkin, shall deliver therein the full quantity aforesaid, and in default shall be liable to make satisfaction for what is wanting, and be liable to an action for recovery of such satisfaction, with costs.

Not to be re-packed for sale again.

Sect. 7. And no cheesemonger, dealer, or other person, shall re-pack for sale any butter in any such vessel as aforesaid, on pain of forfeiting 5*l.* for every tub, firkin, or half firkin so re-packed.

Foreign butter.

Sect. 8. Provided, that no person shall be liable to any of the penalties of this act for using any such vessel as aforesaid after the British butter packed therein hath been taken thereout, for the re-packing for sale any foreign butter, who shall first entirely cut out or efface the names of the original dairyman, farmer, or seller of butter, leaving the name and tare of the cooper, and the tare of the original dairyman, farmer, or seller thereon, and shall afterwards with an iron brand his name in words at length and the words *foreign butter* in permanent and legible letters, upon the bouge or body of every such vessel across two staves at the least, to denote that such butter is foreign butter.

Counterfeiting or forging marks.

Sect. 9. And if any person shall hereafter be convicted of counterfeiting or forging any of the names or marks of such owners, farmers, or dairymen as aforesaid, or any part thereof, or cause the same to be done, he shall for every offence forfeit 40*l.*

(*a*) See the form, 550, *post.*

PENALTIES.

36 Geo. 3, c. 86. Recovery and application of penalties.

By sect. 13, 14, and stat. 38 Geo. III. c. 73, s. 4, all penalties above *5l.* are to be recovered in the courts at Westminster; and all offences against this act, the mode of determining which is not hereinbefore prescribed, and where the penalty shall not exceed *5l.*, shall be heard and determined by one justice of the county, &c. or place where the offence shall be committed, or alleged to be committed, who on proof upon oath by one witness may levy such penalties by distress and sale of the offender's goods, (returning the overplus, after deducting the costs,) to be applied to the use of the informer; and for want of sufficient distress, or if such penalty be not forthwith paid, such offender shall be committed to the gaol or house of correction, without bail, for (not exceeding) three calendar months, nor less than twenty-eight days, unless such penalty and all reasonable charges be sooner paid.

Conviction.

Sect. 11. And the conviction may be drawn out in the following form, or to the like effect:

Form of.

County of } *BE it remembered, that on this day of A. O. is convicted* } *before J. P. one of his Majesty's justices of the peace for the said county of* [or, *for the riding or division of the said county of* or, *for the city, liberty, or town of* as the case may be,] *for that the said A. O. on* [time of committing the offence,] *at* [place of committing offence,] *did* [here state the offence against the act according to the fact,] *contrary to the form of the statute in that case made and provided; and the said J. P. doth adjudge him or her to pay and forfeit for the said offence the sum of . Given under my hand and seal the day and year first abovementioned.*

Which conviction shall be written on parchment, and transmitted to the next sessions to be there filed.

Appeal.

Sect. 11, 12. And if any person shall think himself aggrieved by the judgment of the said justice, he may appeal to the next sessions for the county or place where the offence shall be committed, or alleged to be committed, who, upon receiving such conviction drawn up as aforesaid, shall hear and determine the same, and may award costs to either party, as to them shall seem meet.

Conviction not to be quashed for want of form, nor removed by *certiorari*.

Sect. 13. And no such conviction or judgment shall be set aside by such sessions for want of form, if the material facts alleged therein be proved to their satisfaction, nor shall the same be removed by *certiorari* or other process into any other court. (*a*)

Vessels not exceeding 14lb.

Sect. 16. Provided, that nothing herein shall extend to the packing of butter in any pot or other vessel not capable of containing more than 14lb.

Limitation of actions.

Sect. 17. Provided also, that every information, prosecution, or suit, shall be commenced within four months after the offence committed.

II. Concerning the Shipping of Butter and Cheese for London.

No undue preference.

By stat. 4 Will. III. c. 7, s. 4, "every warehouse-keeper, weigher, searcher, or shipper of butter and cheese, shall receive all butter and cheese that shall be brought to him for the London cheesemongers, and ship the same without undue preference; and shall have for his pains *2s. 6d.* for every load; and if he shall make default, he shall, on conviction before one justice, on oath of one witness, or confession, forfeit for every firkin of butter *10s.* and for every weigh of cheese *5s.* half to the churchwardens and overseers for the use of the poor, and half to the informer, to be levied by the constable by distress and sale.

Book of entry.

Sect. 5. And he shall keep a book of entry of receiving and shipping the goods on pain of *2s. 6d.* for every firkin of butter and weigh of cheese, to

(*a*) In a case which occurred, A. D. 1777, it was holden, that an information *qui tam* upon the old act, 8 Geo. I. c. 27, for a fraud in weighing and packing butter, exhibited in the sheriff's court, was removable into the Court of King's Bench by writ of *habeas corpus cum causâ*. *Hartley* v. *Hooker*, *Cowp.* 523.

SHIPPING OF.

be levied and applied in like manner; and for want of distress, to be committed till paid.

4 Wil. 3, c. 7. Master of a ship refusing to take in.

Sect. 6. A master of a ship refusing to take in butter or cheese, before he is full laden, (s. 8, except it be a cheesemonger's own ship sent for his own goods,) shall forfeit for every firkin of butter refused 5*s.* and for every weigh of cheese 2*s.* 6*d.* to be levied and applied in like manner.

Appeal.

Sect. 10. Persons aggrieved by the determination of the justice may appeal to the next sessions, giving 20*l.* bond with one or more sureties to the party to pay costs (within a month after), if he is not relieved on his appeal.

Exception for Cheshire and Lancashire.

Sect. 9. But this act shall not extend to any warehouse in Cheshire or Lancashire.

York and New Malton.

There are special directions in stat. 8 Geo. I. c. 27, concerning the selling of butter in the city of York, and stat. 17 Geo. II. c. 8, concerning the same in New Malton.

Form.

Information on 26 Geo. 3, c. 86, for selling butter in a tub not marked with seller's name, &c.

BE it remembered, that on, &c. at, &c. A. B. of } *is the said county, [la-*
to wit. } *bourer], cometh before me, J. P. Esquire, one of his Majesty's justices of the peace in and for the said county, and on his oath giveth me, the said justice, to understand and be informed, that A. O. of in the said county, farmer and seller of butter, within four months now last past, that is to say, on, &c. at, &c. did pack for sale and sell to the said A. B. a quantity of butter, of the weight, to wit, of pounds, in a tub and vessel, whereon the christian and surname of the said A. O. was no where branded with iron, or otherwise marked on the outside, [as the case may be,] against the form of the statute in that case made and provided, whereby the said A. O. hath forfeited for his said offence the sum of 5l.; wherefore the said A. B. prayeth the judgment of me, the said justice, in the premises, and that the said A. O. may be summoned to appear before me, the said justice, to answer the same.*

Sworn and exhibited before me, *A. B.*

J. P.

Conviction.

The act gives a form of conviction, see *ante*, 549.

Buttons.

[13 & 14 Car. II. c. 13; 4 Wil. III. c. 10; 10 Wil. III. c. 2; 8 Ann. c. 6; 4 Geo. I. c. 7; 7 Geo. I. st. 1, c. 12; 36 Geo. III. c. 60.]

Foreign buttons.

FOREIGN BUTTONS]—BY stat. 13 & 14 Car. II. c. 13, s. 2; 4 Wil. III. c. 10, s. 2, no person shall sell or offer to sale, or import, any foreign bone, lace, cut work, embroidery, fringe, band strings, buttons, or needle-work, made of thread and silk, or either of them, or any foreign buttons whatsoever, on pain that he who shall offer them to sale shall forfeit the same and 50*l.*, and the importer shall forfeit the same and 100*l.* half to the King and half to him that shall sue.

Search for foreign buttons.

And by sect. 3 of both acts, on complaint and information given to a justice of the peace, at reasonable times, he shall issue his warrant to the constable to enter and search for such manufactures in the shops being open, or warehouses and dwellinghouses of such persons as shall be suspected, and to seize the same.

Wooden buttons.

WOODEN BUTTONS]—By stat. 10 Wil. III. c. 2, no person shall make, sell, or set on, any buttons made of wood only, and turned in imitation of other buttons, on pain of 40*s.* a dozen, half to the King and half to him that shall sue in any court of record.

CLOTH BUTTONS.

In *R.* v. *Roberts*, 1 *Ld. Raym.* 712, an information was exhibited against the defendant, for having made wooden buttons contrary to the statute. Upon trial, the jury found a special verdict, that all the button was of wood, but there was in it a shank of wire. And after argument, judgment was given for the King, namely, that this was a button of wood, notwithstanding the shank, which is no essential part of buttons; for buttons of silk and hair have no shanks.

Cloth buttons.

Cloth Buttons]—By the said act, 10 Will. III. c. 2, no person shall make, sell, or set on, any buttons made of cloth, serge, drugget, frize, camlet, or other stuffs of which clothes are usually made, on pain of 40*s.* a dozen, half to the King, and half to him that shall sue in any court of record. (*a*)

And by stat. 8 Ann. c. 6, no tailor or other person shall make, sell, set on, use, or bind on any clothes, any buttons or button holes, made of, or used, or bound with serge, drugget, frize, camlet, or other stuffs of which clothes are usually made; on pain of 5*l.* a dozen, half to the King and half to him that shall sue in any court of record; or on complaint to two justices, they may summon witnesses, and levy the penalty, and return the overplus, if any be; and if any person is aggrieved, he may appeal to the next sessions. (*a*)

But by this act no power is given to make distress. The next stat. is the 4 Geo. I. c. 7, whereby it is enacted as follows:—

No tailor or other person shall make, sell, set on, use, or bind on any clothes, any buttons or button-holes made of, or used, or bound with cloth, serge, drugget, frize, camlet, or any stuffs that clothes are usually made of (velvet excepted,) on pain of 40*s.* for every dozen of such buttons and button-holes, or in proportion for any lesser quantity, to be determined by one justice where the offence shall be discovered, or the offender shall inhabit, on oath of one witness, in three months after the offence committed; and to be distributed, (charges of conviction first deducted,) half to the informer and half to the poor of the parish or place where the offence shall be discovered; if not paid, (being lawfully demanded,) in fourteen days after conviction, the justice shall issue his warrant to the constable where the offender dwells, or can be found, to levy it by distress and sale; and where no sufficient distress can be found, he shall be committed to the common gaol of the county or place where he shall be found, to be kept to hard labour for three calendar months.

Sect. 6. Persons aggrieved may appeal to the sessions, giving sufficient notice; and the determination in such sessions shall be final by any order or warrant made by any justice upon any such conviction, and the sessions may allow costs to the party aggrieved.

Sect. 9. Tailors or other persons, causing their apprentices or servants to make such clothes, shall themselves be subject to the penalties in this act contained.

Sect. 8. All such clothes, made with such buttons and button-holes, *exposed to sale*, shall be forfeited and seized to the uses in this act, to be recovered and disposed of as the other penalties.

Using or wearing cloth buttons.

And by stat. 7 Geo. I. st. 1, c. 12, no person shall *use or wear* on any clothes, (velvet excepted,) any such buttons or button-holes, on pain of 40*s.* for every dozen of such buttons or button-holes, or in proportion for every lesser quantity of such buttons and button-holes, on conviction by confession or oath of one witness; (*b*) and any justice of the peace, where the offence shall be committed, or the offender shall inhabit, shall, on complaint or information on oath of any credible person, in one month after the offence, summon the party, and on his appearance or contempt, examine the matter, and on due proof by confession, or oath of one witness, convict the offender, and

(*a*) These statutes are still in force, but do not appear to be much attended to.
(*b*) See form, *post*, 555.

METAL BUTTONS.

on refusal to pay when demanded, at the time appointed by the justice, cause the forfeiture by his warrant to be levied by distress and sale; the said penalties to be half to him on whose oath the party shall be convicted, and half to the poor of the parish where the offence shall be committed. And persons aggrieved may appeal to the next quarter sessions, giving eight days' notice; and the judgment of the said sessions shall be final.

To him on whose oath the party shall be convicted]—This is almost the only instance where a share of the penalty is given in express words, in a popular action, to the party on whose oath any person is convicted; and the contrary doctrine seems generally to prevail, that the defendant shall not be condemned upon the sole testimony of the plaintiff, swearing for his own interest. It is certainly against the common law, that such a person should be a witness at all; and therefore his right to give evidence in his own cause, and the power to convict the defendant upon that sole evidence, must depend on the express words of some statute.

Metal buttons.

METAL BUTTONS]—The first and indeed the only act of parliament to regulate the manufacture of metal buttons, was passed in the year 1796, 36 Geo. III. c. 60. All the other statutes before mentioned were passed for employing and encouraging the consumption of raw silk and mohair yarn, see 7 Geo. I. st. 1, c. 12. At the time of passing the 36 Geo. III. the manufacture and sale of metal buttons had been for many years a great branch of trade in this kingdom, but the increase of the manufacture had been greatly impeded by the fraudulent practice of marking the buttons as "gilt" or "plated," which, in fact, were not so, to the great injury of the purchaser and of the fair trader. This statute was therefore passed to regulate the sale of metal buttons, but the 20th section enacts it shall not extend to certain buttons.

Ordering false marks on buttons, 36 Geo. 3, c. 60.

The first section of this statute, 36 Geo. III. c. 60, enacts, that no person who shall order or apply for any metal buttons from any manufacturer or maker of buttons shall direct the words *gilt* or *plated*, or any other word, letter, figure, mark, or device indicating the quality, to be printed, cast, stamped, or marked in or upon any part of such buttons, or any word, letter, figure, mark, or device, whether the same do or do not indicate the quality, to be printed, &c. or marked in or upon the underside of such buttons, unless such person do at the same time order such buttons to be gilt with gold or plated with silver respectively; and no person shall procure or purchase any metal buttons not being so gilt or plated, having the words gilt or plated, or any other word, &c. or device printed, &c. or marked thereon, or any word, &c. printed, &c. on the underside, whether the same do or do not indicate the quality, knowing the same not to be so gilt and plated as aforesaid; on pain of forfeiting in every such case such buttons, and also 5*l.* for any quantity not exceeding twelve dozen, and if above, after the rate of 1*l.* for every twelve dozen.

Procuring buttons with false marks.

No marks to be used but such as express the real quality.

Sect. 2. And no person shall print, cast, stamp, or mark, or cause to be so done, upon any part of any metal button, the words *gilt* or *plated*, or any other word, letter, figure, mark, or device, indicating the quality, or on the underside, whether the same do or do not indicate the quality, unless such buttons are before *bonâ fide* plated with silver, or afterwards gilt with gold, or destroyed before sold; and no person shall put or affix upon any such buttons having the words *gilt* or *plated*, or other words, &c. or device as aforesaid indicating the quality, on any part thereof, or on the underside, whether the same do or do not indicate the quality, any ornament whatsoever, unless those parts not covered thereby be *bonâ fide* plated or gilt before such ornament be put or affixed thereon. And no person shall put or pack, or cause to be put or packed for sale, upon any card, paper, or other substance, or sell or expose to sale, any metal buttons, not being gilt or plated as aforesaid, if the words *gilt* or *plated*, or any other word, &c. or device as aforesaid indicating the quality, be printed, &c. or marked thereon, or upon such card, (not being the pattern card,) paper, or other substance; or on the underside

Nor any buttons to be packed with false marks.

of such buttons, whether the same do or do not indicate the quality, knowing the same not to be so gilt or plated; on pain of forfeiting, in every such case, such buttons, and also 5*l.* for any quantity exceeding one dozen, and not exceeding twelve dozen; and if above twelve dozen, after the rate of 1*l.* for every twelve dozen.

36 Geo. 3, c. 60.

A conviction upon this clause, charging that the defendants did the act "unlawfully and fraudulently, contrary to the form of the statute," is bad, without expressly charging that they did it "knowingly; and such defect is not cured by a proviso in the statute, that no conviction for any offence in the act should be set aside for want of form, or through the mistake of any fact, circumstance, or otherwise, provided the *material* facts alleged were proved; for this in effect requires all material facts to be alleged, and knowledge is a material fact to constitute such an offence. *R.* v. *Jukes*, 8 *T. R.* 536.

No other than the words *gilt* or *plated* to be used.

Sect. 3. And no person shall print, &c. or mark, or cause so to be done, in or upon any metal button, any word, letter, figure, mark, or device indicating the quality thereof, except the words *gilt* or *plated;* or shall pack or cause to be packed for sale in or upon any card (except the pattern card), paper, or other substance, or parcel; or offer or expose to sale, or cause to be sold or exposed to sale any metal buttons, having any word, &c. or device indicating the quality thereof, other than the words *gilt* or *plated*, printed, &c. or marked thereon; on pain of forfeiting such buttons, together with 5*l.* for any quantity exceeding one dozen, and not exceeding twelve dozen; and if exceeding twelve dozen, after the rate of 1*l.* for every twelve dozen.

Except the words *double* and *treble* gilt.

Sect. 4. Provided, that nothing herein shall extend to inflict any fine, penalty, or punishment upon any person, who shall print, &c. or mark, or cause to be printed, &c. the words *double gilt* in or upon any metal buttons, or put, place, or pack for sale, in or upon any card (except the pattern card), paper, or other parcel, or expose to sale any such buttons, having the words *double gilt* thereon; provided continually from the time of gilding thereof gold shall remain put and equally spread upon the upper surface of the said buttons, exclusive of the edges, in the proportion of ten grains to such quantity of the said buttons, the upper surfaces of which, exclusive of the edges, shall be equal to the superficies of a circle twelve inches in diameter; or who shall print, &c. the words *treble gilt* in or upon any metal buttons, or put upon any card, &c. or expose to sale any metal buttons having the words *treble gilt* thereon, having fifteen grains to the like quantity of buttons as aforesaid, on the like surperficies as aforesaid; any thing herein-before said to the contrary notwithstanding.

Except the pattern card]—The defendant was convicted upon the above statute, for unlawfully and fraudulently placing for sale upon certain cards and papers divers dozens of metal buttons, marked with the words *double gilt* and *treble gilt*, the same not being so gilt within the meaning of the statute; but the conviction did not negative the exception introduced in the clause, that the buttons had not been exposed to sale in this instance *upon the pattern cards;* wherefore the court quashed the conviction. *R.* v. *Jukes*, 8 *T. R.* 542.

Penalty on making false bills of parcels, &c.

Sect. 5. And if any person shall make out, send, or deliver, for, with, or in relation to, any metal buttons, any list, bill of parcels, or invoice expressing therein any other than the real quality of such buttons, knowing the same, he shall forfeit 20*l.*

Penalty on mixing buttons of different qualities.

Sect. 6. No persons shall knowingly intermix, or cause to be intermixed, any metal button or buttons that shall not be *bonâ fide* gilt or plated, upon any card (except pattern cards), paper, or other substance, whereon or wherein any metal button or buttons so gilt or plated shall be put, nor intermix the same in any other manner, on pain of forfeiting such buttons, and also 5*l.* for any quantity exceeding one dozen, and not exceeding twelve dozen; if exceeding twelve dozen, 1*l.* for every twelve dozen.

What shall be deemed gilt and plated buttons.

Sect. 7. And for the better ascertaining what shall be deemed a gilt or plated button, no metal buttons shall be deemed gilt buttons unless continually, from the time of gilding thereof, gold shall remain equally spread upon the upper surface thereof, exclusive of the edges, in the proportion of

METAL BUTTONS.

36 Geo. 3, c. 60.

five grains to a superficies of a circle twelve inches in diameter; and no metal buttons shall be deemed to be plated, unless the superficies of the upper surface thereof be made of a plate of silver fixed upon copper, or a mixture thereof with other metals, previous to the same being rolled into sheets or fillets.

Recovery and application of penalties.

Sect. 8, 14, 15, and 16. One justice, where the offence is committed or the offender resides, may, by warrant, cause such metal buttons as shall be liable to forfeiture under this act to be seized, and to keep them in safe custody, for the purpose of producing the same in evidence upon any prosecution or action, and when no further necessary, such justices shall order such buttons to be destroyed. And two justices where any offender shall reside, or where any offence shall be committed, may hear and determine the same, who, on information or complaint, within three calendar months, shall summon the party accused and witnesses on each side, and examine into the facts, and on proof either by confession, or oath of one witness, shall give judgment for the pecuniary penalty with costs, to be allowed by such justices, and shall levy the same by distress, and cause sale thereof, if not redeemed within five days inclusive of the day of seizure; half to the informer or person suing and half to the poor, and for want of sufficient distress, shall commit such offender to gaol where the information shall be laid, for any time not exceeding three calendar months, unless such penalty and costs be sooner paid.

Appeal.

Sect. 9. If any person shall think himself aggrieved by the judgment of such justices, he may (on giving security with sufficient surety to the amount of such penalty and costs, together with such further costs as shall be awarded in case such judgment be affirmed,) appeal to the next sessions where such conviction shall be made, who may summon and examine witnesses, and hear and finally determine the same, and award costs as they shall think reasonable.

Mitigation.

Sect. 10. Provided that the said justices, and also such sessions, may mitigate any such penalty, so as not to reduce the same below one half; or where such penalties shall be less than 40*l.* below 20*l.*

Form of

Sect. 11 & 12. And the conviction may be in the following form (*mutatis mutandis*), as the case may be, which shall be effectual without stating the case, or the facts, or the evidence, in any particular manner.

Conviction.

BE it remembered, that on the day of , in the year of our Lord , at , in the county of , A. I. came before us J. P. and K. B., two of his Majesty's justices of the peace for the said county, [*city*, or *place*, as the case be,] *and informed us that A. O. of , on the day of now last past, at , in the said county* [*city*, or *place*, as the case may be,] [here set forth the fact for which the information is laid]: *Whereupon the said A. O., after being duly summoned to answer the said charge, appeared before us on the day of , at , in the said county* [*city*, or *place*,] *and having heard the charge contained in the said information, declared he was not guilty of the said offence* [or as the case may be, *did not appear before us pursuant to the said summons*]; [or *did neglect and refuse to make any defence against the said charge;*] *but the same being fully proved before us upon the oath of A. W., a credible witness,* [or as the case may be,] *acknowledged and voluntarily confessed the same to be true; and it manifestly appeared to us that the said A. O. is guilty of the offence charged upon him in the said information; we do therefore hereby convict him of the offence aforesaid, and do declare and adjudge that he the said A. O. hath forfeited the said buttons, together with the sum of of lawful money of Great Britain, for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given under our hands and seals the day of .*

And no such conviction shall be set aside for want of form, or through the mistake of any fact, circumstance, or other matter whatsoever, provided the material facts alleged in the conviction be proved to the satisfaction of the said court.

Witnesses not appearing.

Sect. 13. Witnesses not appearing, having been duly summoned, without reasonable excuse, to be allowed by such justices, or refusing to be examined on oath, shall forfeit 5*l.*

Inhabitants may be witnesses.

Sect. 17. Any person may be a witness notwithstanding his being an inhabitant of the parish or place where the offence shall be committed.

Sect. 18. And if any person liable to any of the penalties aforesaid shall, before information against him, discover to two justices the person by whose order he did the act which subjected him to such penalty, so as such person be convicted thereof, he shall not be liable to the penalty, but shall be entitled to a moiety of the penalty as other informers.

36 Geo. 3, c. 69.

Offenders discovering by whom employed, indemnified.

Sect. 19. Provided also, that if any maker of buttons, who shall have ordered any metal buttons to be gilt, shall before the burnishing thereof appear before two justices, and prove by one witness that he ordered the said buttons to be gilt in manner required by this act, and delivered gold sufficient for that purpose, or paid or contracted to pay a proper sum in that behalf, and shall afterwards prosecute such gilder or other person to conviction, he shall not be liable to any fine, forfeiture, penalty, or punishment, on account of the said buttons not being gilt with gold; any thing herein contained to the contrary notwithstanding.

Manufacturers not liable to penalties in certain cases.

Sect. 20. Provided also, that this act shall not extend to buttons made of gold, silver, tin, pewter, lead, or mixtures of tin and lead, or iron tinned, or of *Bath* or *white metal*, or any of these metals inlaid with steel, or buttons plated upon shells.

Buttons to which this act shall not extend.

Sect. 15. No information shall be exhibited, or action brought, unless within three calendar months after the offence committed.

Sect. 21. Every suit or action commenced against any person for what he may do in pursuance of this act shall be commenced within six calendar months.

Forms.

(No. 1.)

Information on 7 Geo. 1, stat. 1, c. 12, for wearing buttons bound with cloth.

County of } *BE it remembered, that on the day of , in the year of our Lord , at the town of , in the said county, A. B. of the town* } *to wit.* } *and parish of aforesaid, [yeoman,] in his proper person cometh before me, J. P. Esquire, one of his Majesty's justices of the peace in and for the said county, and being first duly sworn before me, the said justice, upon his corporal oath, as well for himself as for the poor of the said parish of , giveth me, the said justice, to understand and be informed, that A. O. of the parish of aforesaid, in the county aforesaid, [gentleman,] within one month now last past, to wit, on the day of , at the parish of aforesaid, in the county aforesaid, [one dozen of coat buttons bound with cloth,] then and there unlawfully and against the form of the statute did use and wear, [or as the case may be,] whereby the said A. O. for his offence aforesaid, hath forfeited the sum of 40s. of lawful money of Great Britain; and the said A. B. prayeth the judgment of me, the said justice, in the premises, and that the said A. O. may be summoned to appear before me, the said justice, to answer the same, and that such proceedings may thereupon be had as the statute in this behalf made and provided doth direct.* (Signed) *A. B.*

Exhibited before me on the oath of the said A. B. the informant the day and year first above written.

(No. 2.)

Conviction.

See form of conviction, *ante*, 554, and see the forms in Paley on Convictions.

Buying of Titles. (a)

I. *By the Common Law*, 556.

II. *By Statute*, 556.

[13 Edw. I. c. 49; 32 Hen. VIII. c. 9; 31 Eliz. c. 5.]

(a) The doctrines of maintenance, champerty, and buying of titles are become in a great measure obsolete as matter of criminal laws, and very seldom come into notice as affecting the validity of contracts. See 1 Chit. Col. Stat. 130, n.

BUYING OF TITLES.

I. By the Common Law.

By the common law.

IT seemeth to be a high offence at common law to buy or sell any doubtful title to lands known to be disputed, to the intent that the buyer may carry on the suit, which the seller doth not think it worth his while to do, and on that consideration sells his pretensions at an under rate: and it seemeth not to be material whether the title so sold be a good or bad one, or whether the seller were in possession or not, unless his possession were lawful and uncontested; for all practices of this kind are by all means to be discountenanced, as manifestly tending to oppression, by giving opportunities to great men to purchase the disputed titles of others, to the great grievance of the adverse parties, who may often be unable or discouraged to defend their titles against such powerful persons, which perhaps they might safely enough maintain against their proper adversary. 1 *Hawk.* c. 86, s. 1.

II. By Statute.

13 Edw. 1, c. 49. By stat. 13 Edw. I. c. 49, no person of the King's house shall buy any title whilst the thing is in dispute; on pain of both the buyer and seller being punished at the King's pleasure.

32 Hen. 8, c. 9. And by stat. 32 Hen. VIII. c. 9, s. 2, 6, none shall buy any pretenced right in any land, unless the seller hath been in possession of the same, or of the reversion or remainder thereof, or taken the rents and profits thereof, for one year next before; on pain that the seller shall forfeit the land, and the buyer the value, half to the King and half to him that shall sue within one year.

Pretenced Right]—But he who is in lawful possession may purchase the pretended title of any others.

One year before]—But no conveyance made by one who hath the uncontested possession and undisputed absolute propriety of lands, is in any way within the meaning of this statute. 1 *Hawk.* c. 86, s. 15.

By stat. 31 Eliz. c. 5, s. 4, the offence of buying of titles may be laid in any county at the pleasure of the informer.

31 Eliz. c. 5 For other matters relating to buying of titles, see **Maintenance**, Vol. III.

Cables. *See* **Cordage for Shipping**, Vol. I.

Calendar.

See **Almanac**, *ante*, 128.

By sheriff. THE sheriff is to make a calendar of the prisoners in his gaol, and deliver it to the justices of gaol delivery, stating the prisoners and the crime for which they are detained in custody. 2 *Hale*, 122; see **Gaols**, Vol. II.

By gaoler. On the determination of the quarter session, the gaoler is required, on the second day afterwards, to transmit by the post to one of his Majesty's principal secretaries of state a calendar, containing the names, the crimes, and the

sentences of every prisoner tried at such session, under penalty of 20*l.* if he shall neglect or refuse to transmit such calendar, or shall *wilfully* transmit a calendar containing any false or imperfect statement. 4 Geo. IV. c. 64, s. 20. CARDS AND DICE.

As to calendar and lunar months, see *post*, Time, Vol. V.

Calico. *See* Excise, Vol. II.

Cambrics. *See* Linen, Vol. III.

Canals. *See* Rivers, Vol. V.

Candles. *See* Excise, Vol. II.

Capias. *See ante*, Arrest; Process, Vol. V.

Caption of Indictment. *See* Indictment, Vol. III. p. 328.

Caption of Sessions. *See* Sessions, Vol. V.

Cards and Dice.

[9 Geo. IV. c. 18.]

BY the second section of the 9 Geo. IV. c. 18, the duties for cards and dice are:— Duties: 9 Geo. 4, c. 18.

"For and upon every license to be taken out annually by every maker of playing cards or dice in the United Kingdom, the sum of five shillings:

"And for and in respect of every pack of playing cards which shall be made fit for sale or use in the United Kingdom, the sum of one shilling:

"And for and in respect of every pair of dice which shall be made fit for sale or use in the United Kingdom, the sum of twenty shillings."

These duties and all other the regulations respecting are under the commissioners of the stamp duties.

The only provision of the act which relates peculiarly to the jurisdiction of magistrates is contained in the 19th section, which enacts, "that whenever there shall be cause to suspect that any person shall make or cause to be made any playing cards or dice in any house or place whatsoever in any part of the United Kingdom, without license duly obtained as by this act required, upon affidavit being made of such suspicion by any person before any justice of the peace for the county or place where such cards or dice shall be or shall be suspected to be making or made, it shall and may be lawful for any officer employed by and acting under the commissioners of stamps, in the day-time, and in the presence of a constable or other lawful officer of the peace (who is hereby required to be aiding and assisting therein), by warrant from such justice of the peace before whom such affidavit shall be made, to be directed to such officer of stamps as aforesaid, which warrant the said justice of the peace is hereby authorised and required to grant, to break open the door or any part of such house or place in which any such cards or dice shall so as aforesaid be suspected to be so made or making, and thereupon to enter into such house or place, and to seize all cards or dice which shall be therein Search warrant.

CARDS AND DICE.

9 Geo. 4, c. 18.

found made or begun to be made, and all the tools, materials, and utensils for making such cards or dice which shall be there found; and all such cards, dice, tools, materials, and utensils shall be seized and carried away, and shall be detained and lodged in any place appointed for that purpose by the said commissioners or their proper officer, and shall be absolutely forfeited, and shall and may be sold or destroyed by the direction and at the discretion of the said commissioners."

Forgery, &c. of.

With respect to the *forgery* of cards and dice the 35th section of the act enacts, "that if any person shall forge or counterfeit, or shall cause or procure to be forged or counterfeited, any type, die, seal, stamp, mark, plate, or device, or any part of any type, die, seal, stamp, mark, plate, or device, which shall be at any time provided, made, or used, by or under the authority of the commissioners of stamps in pursuance of this act; or shall counterfeit, or shall cause or procure to be counterfeited or resembled, the impression of any such type, die, seal, stamp, mark, plate, or device, or any part thereof, upon any playing card or dice, or upon any label, thread, or paper; or shall forge or counterfeit the name, handwriting, or signature of any sealing officer, or other officer of stamps, to or upon any wrapper, paper, or material in which any dice shall be actually enclosed; or shall forge or counterfeit, or shall cause or procure to be forged or counterfeited, any mark or name, or any part of any mark or name, directed to be used by the commissioners of stamps in pursuance of this act, in order to distinguish the maker of any such cards or dice respectively, and printed or marked on or affixed to or making part of the wrapper, label, or paper in which any playing cards or dice shall be actually enclosed, with intent to defraud his Majesty, his heirs or successors, of any of the duties at any time by law payable upon cards or dice; or shall utter, or sell or expose to sale, or part with for use or play, any card, die, ace of spades, label, wrapper, or few whatsoever, with such counterfeit seal, stamp, mark, device, impression, name, or signature, knowing the same to be counterfeit; or shall privately or fraudulently use any seal, stamp, mark, plate, device, or label at any time provided, made, or used by or under the authority of the commissioners of stamps in pursuance of this act, with intent to defraud his Majesty, his heirs and successors, of any of the duties at any time by law payable upon cards or dice; every person convicted of any such offence in due form of law shall be adjudged a felon, and *shall suffer* death."

But by 1 Will. IV. c. 66, the punishment of death for this offence is abolished, and the offender is subjected to transportation or imprisonment. See **Forgery**, Vol. II.

As to gaming, see **Gaming**, Vol. II.; **Disorderly House**, *post*, Vol. I.

Carnal Knowledge. *See* Rape, Vol. V.

Carriers.

IN prior editions of this work some law relating to the rights and liabilities of carriers, in a civil point of view, is loosely collected; but as this work is intended only for the use of justices of the peace and parish officers, and those who have to consult only the criminal branch of our laws, it is deemed fit to omit such matters as irrelevant.

An important act was passed during the last session, viz. 1 Will. IV. c. 68, protecting mail coach contractors, stage coach proprietors, and other common carriers for hire, against the loss of or injury to certain parcels or packages

delivered to them for conveyance or custody, the value and contents of which shall not be declared to them by the owners thereof.

Rates for Carriage and Porterage of Goods.

Rates for Carriage of Goods]—The stat. 7 & 8 Geo. IV. c. 39, after reciting the 24th section of 3 Will. & M. c. 12, and the 3d section of the stat. 21 Geo. II. c. 28, which empower magistrates at the quarter sessions to fix rates of carriage and impose penalties on persons taking other rates, (which enactments are set out in prior editions of this work, tit. Carriers,) enacts, "that the same shall be repealed," and also "any other powers or provisions in the said recited acts contained, which relate to the settling the rates of the carriage of goods."

Rates for carriage of goods. 7 & 8 Geo. 4, c. 30.

There is nothing unreasonable in a carrier requiring a greater sum, when he carries goods of greater value, for he is to be paid not only for his labour in carrying, but for the risk which he runs, which is greater in proportion to the value of the goods. I would not, however, have it understood that carriers are at liberty by law to charge whatever they please: a carrier is liable by law to carry every thing which is brought to him, for a *reasonable* sum to be paid for the same carriage, and not to extort what he will. *Per Lawrence, J. Harris* v. *Packwood*, 3 *Taunt.* 272.

London Porterage Act]—There are various regulations contained in the act of 39 Geo. III. c. lviii. as to the rates for porterage and the delivery of goods by carriers and innkeepers within London and Westminster, the borough of Southwark and places adjacent, which, though local, yet as they concern so large a portion of the magistracy and public, it is thought fit here to notice.

London Porterage Act, 39 Geo. 3, c. lviii.

The act is only cumulative in its provisions, and does not take away the modes of punishing offences (therein mentioned) which existed previously to the passing of the act, and therefore it was held in *R.* v. *Douglas*, 1 *Campb.* 212, that a person might be indicted on 30 Geo. II. c. 24, for obtaining by false pretences a larger sum than he was entitled to.

By the first section of the act, after reciting "whereas great exactions and abuses are daily practised in the porterage or delivery of boxes, baskets, packages, parcels, trusses, game, and other things, within the cities of London and Westminster, and the borough of Southwark, and the suburbs and liberties thereof respectively, and other parts contiguous thereto, brought by stage waggons, carts, public stage coaches, or carriages: and whereas the laws now in being are insufficient for the prevention of such exactions and abuses:" it is enacted, "that from and after the 5th day of July, 1799, no innkeeper, warehousekeeper, or other person, to whom any box, basket, package, parcel, truss, game, or other thing whatsoever, not exceeding fifty-six pounds weight, is brought by any stage waggon or cart, or any public stage coach or carriage, or any porter or other person employed by such innkeeper, warehousekeeper, or other person, in the porterage or delivery of any such box, basket, package, parcel, truss, game, or other thing within the cities of London and Westminster, and the borough of Southwark, and the suburbs and liberties thereof respectively, and other parts contiguous thereto, not exceeding the distance of half a mile from the end of the carriage pavement in the several streets and places within the said cities, borough, and liberties, shall ask or demand, or receive or take, in respect of such porterage or delivery, any greater rate or price than the several rates or prices herein-after mentioned; (that is to say,)

Rates for porterage of parcels not exceeding half a cwt.

"For any distance not exceeding a quarter of a mile, the sum of three pence:

"For any greater distance than a quarter of a mile, but not exceeding half a mile, the sum of four pence:

"For any greater distance than half a mile, but not exceeding one mile, the sum of six pence:

"For any greater distance than one mile, but not exceeding one mile and a half, the sum of eight pence:

"For any greater distance than one mile and a half, but not exceeding two miles, the sum of ten pence: and so in like manner the additional sum of three pence for every further distance not exceeding half a mile."

Penalty on taking more than the rates.

Sect. 2. "That if any porter or other person employed in the porterage or delivery of such boxes, baskets, packages, parcels, trusses, game, or other things as aforesaid, shall ask or demand, or receive or take, of and from any person or persons in respect of such porterage or delivery, any greater sum or sums than the rates or prices herein before fixed in that behalf, such porter or other persons shall for every such offence forfeit a sum not exceeding twenty shillings, nor less than five shillings."

Tickets.

Sect. 3. "That before any such box, basket, packet, package, parcel, truss, game, or other thing whatsoever is sent from the inn, warehouse, or other place to which the same is brought or conveyed, there shall be made out and given to the porter or other person employed in the delivery thereof, a card or ticket, whereon shall be distinctly printed, written, or marked the name and description of the inn, warehouse, or other place from whence the same is sent, and the sum due for the carriage thereof, and also the sum due for the porterage or delivery thereof, according to the rates and prices aforesaid, and the Christian name and surname of the porter or other person employed in such delivery, which card or ticket shall be delivered by the porter or other person employed as aforesaid, at the same time, and together with such box, basket, packet, package, parcel, truss, game, or other thing; and if any such box, basket, or other article shall be sent from any inn, warehouse, or other place without such card or ticket as aforesaid, every such innkeeper, warehousekeeper, or other person, shall for every such offence forfeit and pay any sum not exceeding forty shillings, nor less than five shillings; and any porter or other person employed in the delivery of any such box, basket, or other article, who shall not at the time of such delivery leave therewith such card or ticket aforesaid, or who shall wilfully alter, obliterate, or deface any thing written, or expressed thereon, shall for every such offence forfeit and pay the sum of forty shillings; and if any such porter or other person shall, upon the delivery of such box, basket, or other article, ask or demand, or take or receive any larger sum for the carriage of such article than is written or expressed as aforesaid, every such porter or other person shall for every such offence forfeit and pay the sum of twenty shillings."

Penalty on innkeeper, &c. not making out such, from 40s. to 5s. On porter not delivering or defacing same, 40s. On porter overcharging, 20s.

Parcels brought by coaches shall be delivered within six hours, &c. Penalty from 20s. to 10s.

Sect. 4. "That every box, basket, package, parcel, truss, game, or other thing, brought to any inn, warehouse, or other place, by any public stage coach or carriage, other than stage waggons, for the purpose of delivery within the limits aforesaid, (except where the same shall be directed to be left till called for,) shall be delivered according to the direction thereof within six hours after the arrival of any such box, basket, or other article at such inn, warehouse, or other place, unless such arrival shall be between the hours of four in the evening and seven in the morning, and in that case every such delivery shall be made within six hours after such hour in the morning, and in default thereof every innkeeper, warehousekeeper, or other person, to whose inn, warehouse, or other place such box, basket, or other article shall be brought as aforesaid, shall forfeit and pay for every such offence any sum not exceeding twenty shillings, nor less than ten shillings."

Parcels brought by waggons shall be delivered within 24 hours, on a like penalty.

Sect. 5. "That every box, basket, package, parcel, truss, game, or other thing brought to any inn, warehouse, or other place, by any public stage waggon for the purpose of delivery within the limits aforesaid, (except where the same shall be directed to be left till called for,) shall be delivered according to the direction thereof within twenty-four hours after the arrival of any such box, basket, or other article at such inn, warehouse, or other place, and in default thereof every innkeeper, warehousekeeper, or other person, to whose inn, warehouse, or other place such box, basket, or other article shall be brought as aforesaid, shall forfeit and pay for every such offence any sum not exceeding twenty shillings, nor less than ten shillings."

Parcels directed to be left till called for.

Sect. 6. "That every such box, basket, package, parcel, truss, game, or

other thing brought to such inn, warehouse, or other place as aforesaid, which shall be directed to be left till called for, shall, upon the demand of the person properly authorised to receive the same, be delivered to such person without any charge or demand whatsoever, other than what is justly due for the carriage thereof, and the additional sum of two pence for the warehouse room thereof; and if the same be not delivered to such person upon such demand, or any charge other than as aforesaid be made or received in respect thereof, every innkeeper, warehousekeeper, or other person, to whose inn, warehouse, or other place such box, basket, or other article shall be brought as aforesaid, shall forfeit and pay for every such offence or overcharge any sum not exceeding twenty shillings, nor less than ten shillings."

Warehouse room.

Sect. 7. "That if such box, basket, or other article so directed to be left till called for be not sent for from such inn, warehouse, or other place before the end of one week after the same is brought to such inn, warehouse or other place, it shall be lawful to and for such innkeeper, warehousekeeper, or other person to charge and receive the further sum of one penny for the warehouse room thereof, and so in like manner if the same be not sent for before the end of the second or any subsequent week to charge the further sum of one penny weekly."

Proviso for parcels not directed to be left till called for.

Sect. 8. "That if any such box, basket, or other article brought to such inn, warehouse, or other place as aforesaid, which is not directed to be left till called for, shall, before the same is sent for delivery from such inn, warehouse, or other place, be demanded by any person properly authorised to receive the same, such box, basket, or other article shall be thereupon delivered to such person so demanding the same; and it shall in such case be lawful to and for such innkeeper, warehousekeeper, or other person, to charge and take the sum justly due for the carriage thereof, and also the sum of two pence for the warehouse room thereof; but if the same be not delivered to such person upon such demand, or any charge other than as aforesaid be made or received in respect thereof, every innkeeper, warehousekeeper, or other person, to whose inn, warehouse, or other place such box, basket, or other article shall be brought as aforesaid, shall forfeit and pay for every such offence any sum not exceeding twenty shillings, nor less than ten shillings."

Misbehaviour of porters may be punished by one justice, by fine, from 20s. to 5s.

Sect. 9. "And, for the preventing the misbehaviour of porters or other persons employed in the porterage or delivery of such boxes, baskets, packages, parcels, trusses, game, or other things as aforesaid," it is further enacted, "that upon complaint made of any non-delivery, neglect, misconduct, or misbehaviour in such employment to any justice of the peace within whose jurisdiction the offence has been committed, or the offender shall be or reside, it shall and may be lawful to and for such justice of the peace to grant a warrant to bring before him the person against whom such complaint shall be made, and upon proof, made upon oath, (which oath such justice is hereby empowered to administer,) of any such non-delivery, neglect, misconduct, or misbehaviour of such porter or other person, to impose a fine or penalty upon such porter or other person not exceeding the sum of twenty shillings, nor less than five shillings."

Rates of porterage may be recovered before one justice, who may levy same, &c.

Sect. 10. "That if any person to whom such box, basket, package, parcel, truss, game, or other article as aforesaid shall be directed, shall, upon the delivery thereof, neglect or refuse to pay to the porter or other person employed to deliver the same the money justly due for the carriage thereof, and also due for the porterage or delivery thereof, according to the rates aforesaid, or for the warehouse room thereof, as the case may be, it shall and may be lawful to and for any justice of the peace within whose jurisdiction such neglect or refusal shall be made, or the person charged with such offence shall reside, upon complaint thereof made, to grant a warrant to bring before him the person against whom such complaint shall be made, and upon proof thereof, made upon oath, (which oath such justice is hereby empowered to administer,) to award reasonable satisfaction to the party grieved, for his damage and costs, and for his loss of time in recovering the same, and on non-payment of the sum so awarded, by warrant under his hand and seal, to levy the same by distress and sale of the goods and chattels of the offender,

CARRIERS.

rendering to such offender the overplus of such distress, if any there be, after deducting the charges of making the same."

39 Geo. 3, c. lviii. Informations shall be laid within 14 days.

Sect. 11. "That no person shall be prosecuted for any offence against this act, unless information of such offence be given to a justice of the peace within fourteen days next after the commission of such offence."

Not to authorise the employment of any porter contrary to the usage of the city of London.

Sect. 12. "That nothing in this act shall extend, or be construed to extend, to authorise the employment of any porter or other person in the porterage or delivery of parcels within the city of London contrary to the laws and usages of the said city."

Penalties may be recovered before one justice, &c.

Sect. 13. "And, for the speedy recovery of all and every the penalties and forfeitures which shall be incurred under this act," it is further enacted, "that it shall and may be lawful for any one or more justice or justices of the peace within whose jurisdiction any offence or offences against this act shall be committed, or the person charged with such offence shall reside, upon complaint or information to him or them made, to summon the party or parties accused, and also the witnesses on either side, to appear before him or them at a certain time or place in such summons to be specified, and upon the appearance of the party or parties accused, or in default of his, her, or their appearance according to such summons, (due proof being made of the service of such summons,) to proceed to hear and determine the matter in a summary way, and upon due proof made of the offence, either by the voluntary confession of the party or parties accused, or by the oath of one or more credible witness or witnesses, (which oath or oaths the said justice or justices is or are empowered to administer,) to convict the party or parties, and to award and adjudge the penalties imposed by this act to be paid by such offender or offenders, together with reasonable costs and charges attending such conviction, and upon non-payment of the sum so awarded, either immediately or at such time as the said justice or justices shall appoint, not exceeding seven days, such justice or justices before whom such conviction shall be had is or are hereby empowered and authorised to issue his or their warrant for apprehending such offender; and in case such offender shall escape or go out of the jurisdiction of such justice or justices, it shall and may be lawful for any other justice of the peace of the county or place where such offender shall be found, by indorsement of such warrant, to authorise the execution thereof within the jurisdiction of such justice, and the justice or justices who granted such warrant may, upon the offender being brought before him or them, commit such offender to some public prison or house of correction of the city, county, or place in which such offence shall have been committed, or such offender shall have resided, there to remain without bail or mainprise for any term not exceeding one calendar month, or less than fourteen days from the day of every such commitment, unless such offender shall sooner pay the sum to be mentioned in every such warrant of commitment."

Costs.

Warrant to apprehend.

Backing warrant.

Commitment.

Witnesses not attending shall forfeit from 40s. to 20s.

Sect. 14. "That if any person or persons shall be summoned as a witness or witnesses to give evidence before any such justice or justices of the peace touching any matter contained in this act, and shall have had a reasonable sum of money paid or tendered to him for his loss of time and expenses, and shall neglect or refuse to appear at the time and place for that purpose appointed, without a reasonable excuse for such his or their neglect or refusal, to be allowed of by such justice or justices, every such person shall forfeit or pay for every such offence any sum not exceeding forty shillings, nor less than twenty shillings, to be levied and paid in such manner and by such means as herein before directed with respect to other penalties; and if any person or persons summoned as a witness or witnesses to give evidence as aforesaid shall appear at the time and place for that purpose appointed, but shall refuse to answer any lawful questions such justice or justices may think proper to put to him, such justice or justices may commit every such person to some prison or house of correction of the city, county, or place within the jurisdiction of such justice of justices, for any time not exceeding fourteen days from the time of every such commitment."

Refusing to give evidence may be committed for 14 days.

Sect. 15. "That the justice or justices of the peace before whom any offender shall be convicted as aforesaid shall cause the said conviction to be

made out in the following form of words, or any form of words to the same effect; (that is to say,)

30 Geo. 3, c. lviii,

Form of conviction;

BE it remembered, that on this day of in the year of his to wit. Majesty King A. B. is convicted before me [or us] *one* [or *two*] *of his Majesty's justices of the peace for the city of London* [or *for the city and liberty of Westminster*, or *for the county of* [as the case may be,] *for that the said A. B. on the day of now last past, did, contrary to the statute in that case made and provided* [here state the offence against the act]; *and I* [or *we*] *do declare and adjudge, that the said A. B. hath forfeited the sum of of lawful money of Great Britain for the offence aforesaid. Given under my hand and seal,* [or *our hands and seals,*] *the day and year aforesaid.*

to be certified to the sessions.

And the said justice or justices before whom such conviction shall be had shall certify the same to the next general or quarter sessions of the peace to be holden for the city, county, liberty, or place wherein such conviction was had, to be filed and kept amongst the records of the said general or quarter sessions, and such conviction shall be good and valid in the law to all intents and purposes, and shall not be quashed, set aside, or judged void or insufficient for want of form only, and shall not be liable to be removed by *certiorari* into his Majesty's Court of King's Bench, but shall be deemed and taken to be final to all intents and purposes whatsoever."

Appeal to the quarter sessions.

Sect. 16. "That all and every person and persons who shall think him, her, or themselves aggrieved by the judgment or determination of any such justice or justices as aforesaid, may appeal to the justices of the peace for the city, liberty, county, or place where such judgment shall be given, at their then next general or general quarter sessions of the peace, unless such next general or general quarter sessions of the peace shall happen to be holden within six days next after any such conviction, and in such case such person or persons may appeal to the second general or general quarter sessions of the peace which shall be holden for any such city, liberty, county, or place next after any such conviction, but no such appeal shall be received, heard, or determined unless the appellant or appellants shall first enter into a recognizance with two sufficient sureties, before such justice or justices so convicting as aforesaid, in the sum of ten pounds each, to appear and prosecute every such appeal with effect; and the justices of the peace at such general or general quarter sessions of the peace are hereby authorised and required, on every such appeal being made, and on reasonable notice thereof given to the other party, finally to hear and determine the matter of every such appeal, and to make such order and to award such costs therein as they in their discretion shall see meet, and which said order and determination shall be final and conclusive to all parties, and no *certiorari* shall be allowed to remove any such proceedings or determination."

Penalties, half to the informer, half to the poor.

Sect. 17. "That one moiety of the penalties by this act imposed shall, when recovered, go and be paid to the person or persons who shall prosecute to conviction any such offender or offenders, and the other moiety to the poor of the parish in which the offence shall be committed."

Limitation of actions.

Sect. 18. "That no person shall be sued or prosecuted for any thing done in pursuance and in execution of this act after the expiration of six months from the time when the offence was committed, and every such suit or prosecution shall be brought in the city, county, or place where such offence shall have been committed, and not elsewhere; and every person so sued shall and may plead the general issue, (not guilty,) and may give this act and the special matter in evidence at any trial to be had thereupon; and if a verdict shall be found for the defendant or defendants, or if the plaintiff shall become nonsuit or discontinue his action after the defendant shall have appeared, or if judgment shall be given upon a demurrer against the plaintiff or plaintiffs, the defendant or defendants in every such action shall receive double costs, and have the like remedy for the same as defendants have in other cases for the recovery of their costs."

General issue.

Double costs.

Public act.

Sect. 19. "That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices and other persons whomsoever, without specially pleading the same."

Travelling on a Sunday.

Carrier travelling on Sundays.

By stat. 3 Car. I. c. 1, no carrier with any horse or horses, nor waggonman, carman, or wainman, with their respective carriages, shall, by themselves or any other, travel on the Lord's Day, on pain of 20*s.* on conviction in six months, before one justice, (or mayor,) on view or confession, or oath of two witnesses, to be levied by the constable or churchwardens by distress, to the use of the poor, except that the justice may reward the informer with any sum not exceeding a third part.

The driver of a *van* travelling to and from London and York is a carrier within the meaning of stat. 3 Car. I. and liable to be stopped and convicted in the penalty of 20*s.* for travelling on the Lord's Day. *Exparte Middleton*, 3 *B. & Cres.* 164; 4 *D. & R.* 824, S. C.

Stage coaches may travel on a Sunday. *Sandeman* v. *Breach*, 7 *B. & Cres.* 96.

See further and for forms, *post*, **Lord's Day**, Vol. III.

Carrying, &c. Game.

Carrying game.

As to this offence, see *post*, **Game**, Vol. II.

Painting Name, &c. on Cart.

His name, &c. to be put on his carriage.

By stat. 13 Geo. III. c. 78, s. 59, the owner of every waggon, wain, or cart, shall cause to be painted on some conspicuous part thereof his christian and surname and place of abode in large legible letters, and continue the same thereupon; and the owner of every common stage-waggon or cart, employed as travelling stages from town to town, shall, besides, paint Common Stage Waggon or Cart, (as the case may be,) on pain of forfeiting not exceeding 5*l.* nor less than 20*s.* See **Highways**, Vol. III. p. 64, and form, *id.* p. 106.

See also the 50 Geo. III. c. 48, s. 7, and 9 Geo. IV. c. 40, s. 14, as to stage coaches, *post*, **Stage Coaches**, Vol. V.

Larceny by or from Carrier.

Larceny by or from carrier.

It hath been holden that a carrier embezzling goods, which he has received to carry to a certain place, is not guilty of felony, because there was not a felonious *taking;* but is liable only to a civil action. 1 *Hawk.* c. 33, s. 3, 5.

But it hath been resolved that if a carrier *open a pack*, and *take out part of* the goods, *with intent to steal* it, he may be guilty of felony; in which case it may be said, not only that such possession of a part distinct from the whole was gained by wrong, and not delivered by the owner, but also that it was obtained basely, fraudulently and clandestinely, in hopes to prevent its being discovered at all, or fixed upon any one when discovered. 1 *Hawk.* c. 33, s. 5.

Also it seems clear that if a carrier, *after he has brought* the goods to the place appointed, take them away again secretly, with intent to steal them, he is guilty of felony, because the possession which he received from the owner being determined, his second taking is in all respects the same as if he were a mere stranger. 1 *Hawk.* c. 33, s. 5.

Also it hath been resolved if goods be delivered to a carrier, to be carried to a certain place, and he *carries them to another* place, and disposeth of them to his own use, that this is felony; because this declareth that his intention originally was not to take the goods upon the agreement and contract of the party, but only with a design of stealing them. *Kel.* 81, 82.

Where the prosecutor had sent forty sacks of wheat to the prisoner, a warehouseman and wharfinger, for safe custody, and the prisoner emptied several sacks of the wheat contained in them, which he sold, and then substituted for it other wheat of an inferior quality; it was doubted at first whether, as the prisoner had appropriated to his own use the whole of the wheat in each of the sacks which he had emptied, he could be deemed guilty of larceny; but upon the question being referred to the judges, they were unani-

mously of opinion that taking the whole of the wheat out of a sack was as much larceny as the taking of a part merely; and the prisoner had judgment accordingly. *R.* v. *Brazier*, *R. & R. C. C.* 337; *post*, Vol. III. p. 518, 528.

Upon an indictment against the captain of a ship for larceny, it appeared that the ship, laden with casks of butter, and bound from Waterford to Newhaven, put into Cowes on her way, through stress of weather; most of the casks were stowed in the hold, and battened down, but some were on deck; the prisoner had thirteen of them on deck landed at Cowes, pretending they were his own property; and when he arrived at Newhaven, he informed the consignees that these casks had been thrown overboard: the judges held that this was not larceny; but it seemed to be admitted at the trial, that if the prisoner had broken bulk by taking the thirteen casks from those which were battened down, he must have been convicted. *R.* v. *Edward Madox*, *Russ. & Ry.* 92; *post*, Vol. III. p. 528.

This rule as to carriers and other bailees, however, does not extend to their servants: if the servant of a carrier convert the property entrusted to him to his own use, he will be guilty of larceny, even in cases where a conversion by his master would be merely a breach of trust. Upon an indictment for stealing a quantity of barilla, it appeared that the prosecutors employed one Bryant, a master-carman, to cart some barilla for them from the London Docks, and Bryant sent Harding his carter for it; Harding, in collusion with others, whilst on his way from the docks with a cart-load of the barilla, allowed the others to take away the whole of it, together with the cart, horses, &c.: some doubt being entertained whether, as the barilla was delivered to Harding to carry, he could be deemed guilty of larceny in converting it to his use, the question was submitted to the judges; but they were unanimously of opinion that this was larceny in the servant, and that it was immaterial whether the barilla was stated to be the property of the prosecutors or of Bryant. *R.* v. *Harding and others*, *R. & R.* 125; and see further, *post*, Larceny, Vol. III. p. 528.

Carrier may indict for goods stolen as his own property.

Where goods are stolen from the carrier, he may prefer an indictment against the felon, as for his own goods; for though he has not the absolute property, yet he has such a possessory property that he may maintain an action of trespass against any one who takes them from him, and so may indict a thief for taking them; and the indictment will be good also, if it charge that the goods are the property of the real owner. *Kel.* 39.

Persons stealing his own goods from the carrier.

There is a special case, wherein it is said, that a man may commit larceny by stealing his own goods delivered to the carrier, with intent to make him answer for them; for the carrier had a special kind of property in the goods, in respect whereof, if a stranger had stolen them, he might have been indicted generally, as having stolen the said carrier's goods; and the injury is altogether as great, and the fraud as base, where they are taken away by the very owner. 1 *Hawk.* c. 34, s. 30.

Liability when robbed.

Where goods are delivered to a carrier, and he is robbed of them, he shall be charged and answer for them, by reason of the hire: this was at the common law, before the hundred was answerable over to him; because such robbery might be by consent and combination carried on in such a manner that no proof could be had of it. *Lane* v. *Cotton*, 1 *Salk.* 143.

And although it may be thought a hard case that a poor carrier who is robbed on the road, without any manner of default in him, should be answerable for all the goods he takes, yet the inconvenience would be far more intolerable if he were not so; for it would be in his power to combine with robbers, or to pretend a robbery, or some other accident, without a possibility of remedy to the party; and the law will not expose him to so great a temptation, but he must be honest at his peril. S. C. 12 *Mod.* 482. See the case of *Latham* v. *Stanbury*, 3 *Stark. C. N. P.* 143; *post*, Larceny, Vol. III.

Carts. *See* Highways, *and* Lord's Day, Vol. III.

Carts, Taxed. *See* Taxes, Vol. V.

Case. *See* Sessions, Vol. V. p. 480.

Casual Death. *See* Deodand, *post.*

Catholics. *See* Papists, Vol. V.

Cattle.

I. *Importation of Cattle into England*, 566.
[6 Geo. IV. c. 105.]
II. *Buying and selling &c. Cattle*, 566.
III. *Killing or Maiming Cattle*, 567.
[7 & 8 Geo. IV. c. 30, s. 16.]
IV. *Stealing of Cattle*, 569. See Larceny, Vol. III.
[7 & 8 Geo. IV. c. 29.]
V. *Ill-treatment of Cattle*, 569.
[3 Geo. IV. c. 71.]
VI. *Slaughtering Horses, and some particular Offences relating to them.* See Horses, Vol. III.

I. Importation of Cattle into England.

Importation of.

The stat. 9 Geo. III. c. 39, s. 10, relative to the import of foreign hides, is repealed by the 6 Geo. IV. c. 105. See *post*, Excise and Customs, Vol. II.

The 5 Geo. III. c. 43, s. 11, relative to the importation of cattle from the *Isle of Man*, and the 5 Geo. III. c. 10, made perpetual by the 16 Geo. III. c. 8, relative to the importation of cattle from *Ireland*, are repealed by the 6 Geo. IV. c. 105. See *post*, Excise and Customs, Vol. II.

By the sixth article of the union with Scotland, no Scots cattle carried into England shall be liable to any other duties than those to which cattle of England are liable.

II. Buying and Selling, &c. of Cattle.

None shall buy and sell in the same market.

By stats. 3 & 4 Edw. VI. c. 19, and 3 Car. c. 4, s. 7 & 8, no person shall buy any ox, steer, runt, cow, heifer, or calf, and sell the same again alive in the same market or fair, on pain of forfeiting double value, half to the king, and half to him who shall sue. And the said stat. 3 & 4 Edw. VI. c. 19, is not repealed by stat. 12 Geo. III. c. 71, which repeals the general forestal-

ling, ingrossing, and regrating act of 5 & 6 Edw. VI. c. 14, and other subsequent acts enforcing the same; but hath no reference to any preceding act. But query, if the statutes 3 & 4 Edw. VI. c. 19, and 3 Car. c. 4, s. 7 & 8, be not expired. See *Tyrwhitt & Tindal's Digest of Statutes*, title, *Cattle*.

Factor buying for himself.

By 31 Geo. II. c. 40, no salesman, broker, or factor, employed in buying cattle for others, shall buy for himself in *London*, or within the *Bills of Mortality*, on penalty of double the value of the cattle bought or sold.

Drovers not to drive on Sunday.

By 3 Car. I. c. 1, no drovers are to travel with cattle on Sundays, on penalty of 20*s*. See *post*, Lord's Day, Vol. III.

III. Killing or Maiming of Cattle.

Killing or maiming cattle.

The stat. 7 & 8 Geo. IV. c. 30, s. 16, enacts, "that if any person shall unlawfully and maliciously kill, maim, or wound any cattle, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned (*a*) for any term not exceeding four years; and if a male, to be once, twice, or thrice publicly or privately whipped, (if the court shall so think fit,) in addition to such imprisonment."

Punishment for.

General clauses.

See the *general clauses* affecting all the provisions of the act, *post*, Malicious Injuries to Property, Vol. III.

Alterations.

This provision is nearly a re-enactment of that part of the stat. 4 Geo. IV. c. 54, which relates to this offence, with an alteration of the term of imprisonment, and a change of the words "unlawfully and designedly," to "unlawfully and maliciously," and omitting the words after the word cattle, "whether from malice conceived against the owner or otherwise," though this latter provision is re-enacted in the 25th section of the act.

Repeal of acts.

The stat. 7 & 8 Geo. IV. c. 27, repeals the 37 Hen. VIII. c. 6; 22 & 23 Car. II. c. 7; 9 Geo. I. c. 22, (the Black Act); and also the whole of the stat. 4 Geo. IV. c. 54, except so far as relates to threatening letters.

Offence at common law.

It is no offence at common law to maim a horse. Thus an indictment at common law charged that the prisoner "on the 23d of May, 33 Geo. III. with force and arms at, &c. one black gelding of the value of 30*l*. of the goods and chattels of William Collyer, then and there being, then and there unlawfully did maim, to the great damage of Collyer, and against the peace," &c. But upon reference to the judges after conviction, they all held that the indictment contained no indictable offence; for if the case were not within the Black Act, the fact in itself was only a trespass; for that the words *vi et armis* did not imply force sufficient to support an indictment. *R.* v. *Ranger*, 2 *East's P. C.* 1074. This, however, is now remedied by the above act; and see *post*, 569, as to cruelty to cattle.

Malice.

Malice]—To bring a case within the 9 Geo. I. the offender must have been actuated by malice *against the owner* of the animal, and not merely against the animal itself. See *R.* v. *Pearce*, 2 *East's P. C.* 1072; 1 *Leach*, 527, S. C.; *R.* v. *Kean*, 2 *East's P. C.* 1073; 1 *Leach*, 539, n. S. C.; *R.* v. *Shepherd*, 1 *Leach*, 539; 2 *East's P. C.* 1073, S. C.

And malice against the servant or relative of the owner was not within the act, (*R.* v. *Austen*, *Russ. & Ry. C. C.* 490); nor was malice against a stranger. *Curtis* v. *Hundred of Godley*, 3 *B. & Cres.* 248; 5 *D. & R.* 73, S. C.

But this would be otherwise under the 7 & 8 Geo. IV. c. 30, the 25th section of which provides that the act shall apply to cases whether the offence were conceived against the owner of the property in respect of which it was committed *or otherwise*.

(*a*) Or imprisoned and kept to hard labour, sect. 27 of same act, *post*, Malicious Injuries to Property, Vol. III.

KILLING OR MAIMING OF CATTLE.

It is not necessary to give evidence of express malice, for this will be presumed till the contrary appears; 2 *East's P. C.* 1074; *ante*, 538. If it appear that the act was done purposely, the jury may thence presume that it was done maliciously. In *Dawson's case*, who was indicted for poisoning horses, in order to prevent them from running a race, defendant having betted against them, it was holden that this intent was sufficient to bring the case within the act, and defendant was convicted and executed. See 3 *Chit. C. L.* 1087, n.

If, however, it appear on the evidence that the defendant was a servant to the prosecutor, and, in irritation, because his master would not let him have another horse to drive in a team, he committed the injury on the horse which he desired to have exchanged, he will not be deemed within the act. 1 *Leach*, 539.

Nor will a man who maims cattle to prevent their trespassing on an inclosure, *id. in notis*; 2 *East's P. C.* 1073.

Nature of cattle.

Description of Cattle]—*Horses, mares,* and *colts,* as well as *oxen,* &c. are within the meaning of the act, (*Paty's case*, 2 *Bla. Rep.* 721; 2 *East's P. C.* 1074); so are *asses,* (*R.* v. *Whitney, R. & M. C. C.* 3); so are pigs, (*R.* v. *Chapple, R. & R. C. C.* 77.)

Nature of injury to.

Nature of Maim or Wound]—Unless the maim or wound were mortal, it was not felony within the statute of Car. II. 2 *East's P. C.* 1076. But it is otherwise under the present act.

J. Haywood was tried on an indictment on the Black Act, (9 Geo. I. c. 3, s. 2,) containing two counts; one for maliciously maiming, the other for maliciously wounding a gelding, against the statute, &c. It appeared that the prisoner had maliciously and with an intent to injure the prosecutor, driven a nail into the frog of the horse's foot, which had at the time rendered the horse useless to the owner; but at the trial the prosecutor said that the horse was likely to do well, and to be perfectly sound again in a short time. After conviction, judgment was respited upon a doubt whether as the horse was likely to recover, and as the wound was not a permanent injury, the offence were within the statute. In Michaelmas Term, 1801, all the judges held the conviction right. The words of the stat. 9 Geo. I. c. 22, are, "shall unlawfully and maliciously kill, maim, or *wound* any cattle," &c. which word "wound" appears to be used as contradistinguished from a permanent injury, such as maiming. *R* v. *Haywood*, 2 *East's P. C.* 1076; *R. & R. C. C.* 16, S. C.

Injuring a sheep by setting a dog at it, is not a maiming or wounding within the act. *R.* v. *Hughes*, 2 *C. & P. C. N. P.* 420; *R.* v. *Chalkley*, *R. & R. C. C.* 258.

Pouring acid into the eye of a mare, and thereby blinding her, is a maiming within the act. *R.* v. *Owens, R. & M. C. C.* 205.

Indictment.

INDICTMENT]—It is not necessary to aver that the animals are *cattle*, in order to bring them within the statute, (2 *Bla. Rep.* 733); but the indictment must state the species of cattle wounded or injured; to state that the prisoners wounded *certain cattle* is insufficient. *R.* v. *Chalkley, Russ. & Ry. C. C.* 258.

If the statement be, that he maimed certain cattle, *viz.* a mare, there must be evidence that the animal maimed is of the description specified. *Id.*

On an indictment for maliciously killing two sheep, the property in them may be laid to be in the agister. *R.* v. *Woodward*, 2 *East's P. C.* 653.

As to the other points on indictments in general, *post*, Indictment, Vol. III.

(No. 1.)

Commitment on 7 & 8 Geo. 4, c. 30, s. 16, for killing or maiming cattle.

Commencement as usual, *ante*, p. 8, (No. 1.)] *on, &c. at, &c. one brown* [*gelding,*] *the property of A. B. unlawfully, maliciously, and feloniously did kill,* [*maim,* or *wound,* according to the fact,] *against the form of the statute in such case made and provided. And you the said keeper,* &c. [as usual, as *ante*, p. 8, to the end.]

ILL-TREATMENT OF CATTLE.

(No. 2.)

Indictment for like offence.

—— *THE jurors for our Lord the King upon their oath present, that C. D. late of, &c. on, &c. with force and arms, at, &c. one* [*brown gelding,*] *of the price of* [*thirty*] *pounds, the property of A. B. then and there being, then and there unlawfully, maliciously, and feloniously did kill,* [*maim,* or *wound,* according to the fact,] *against the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity.* [Add other counts, as the case may require.]

IV. Stealing of Cattle.

This offence is provided for by the 7 & 8 Geo. IV. c. 29, s. 25. The 7 & 8 Geo. IV. c. 27, repeals the former acts relating thereto. It will be considered under title Larceny, *post*, Vol. III. and see *post*, Horses, Vol. III.

V. Ill-treatment of Cattle. *(a)*

Magistrates empowered to inflict a penalty on persons convicted of cruel treatment of cattle.

The stat. 3 Geo. IV. c. 71, intituled "An Act to prevent the cruel and improper treatment of cattle," sect. 1, after reciting that whereas it is expedient to prevent the cruel and improper treatment of horses, mares, geldings, mules, asses, cows, heifers, steers, oxen, sheep, and other cattle, enacts, "that if any person or persons shall wantonly and cruelly beat, abuse, or ill-treat any horse, mare, gelding, mule, ass, ox, cow, heifer, steer, sheep, or other cattle, and complaint on oath (*b*) thereof be made to any justice of the peace or other magistrate within whose jurisdiction such offence shall be committed, it shall be lawful for such justice of the peace or other magistrate to issue his summons or warrant, (*c*) at his discretion, to bring the party or parties so complained of before him, or any other justice of the peace or other magistrate of the county, city, or place within which such justice of the peace or other magistrate has jurisdiction, who shall examine upon oath any witness or witnesses who shall appear or be produced to give information touching such offence, (which oath the said justice of the peace or other magistrate is hereby authorised and required to administer); and if the party or parties accused shall be convicted (*d*) of any such offence, either by his, her, or their own confession, or upon such information as aforesaid, he, she, or they so convicted shall forfeit and pay any sum not exceeding *5l.* nor less than 10*s.* to his Majesty, his heirs, and successors; and if the person or persons so convicted shall refuse or not be able forthwith to pay the sum forfeited, every such offender shall, by warrant under the hand and seal of some justice or justices of the peace, or other magistrate within whose jurisdiction the person offending shall be convicted, be committed (*e*) to the house of correction or some other prison within the jurisdiction within which the offence shall have been committed, there to be kept without bail or mainprize for any time not exceeding three months."

Bull baiting.

Bull baiting is not punishable under the act, because bulls are not expressly mentioned therein. *Exparte Hill*, 3 *C. & P.* 225; 1 *Man. & Ryl. Mag. Ca.* 105, S. C.

No person to be punished unless complaint made within ten days after the offence.

Sect. 2. "That no person shall suffer any punishment for any offence committed against this act, unless the prosecution for the same be commenced *within ten days* after the offence shall be committed; and that when any person shall suffer imprisonment pursuant to this act, for any offence contrary

(*a*) See stat. 21 Geo. III. c. 67, for preventing the mischiefs that arise from driving cattle within London and Westminster, and bills of mortality.

(*b*) See form, (No. 1), *post*.

(*c*) See form, (No. 2), *post*.

(*d*) See form, (No. 3), *post*.

(*e*) See form, (No. 4), *post*.

ILL-TREATMENT OF CATTLE.

thereto, in default of payment of any penalty hereby imposed, such person shall not be liable afterwards to any such penalty."

3 Geo. 4, c. 71.

Proceedings not to be quashed for want of form.

Sect. 3. "That no order or proceedings to be made or had by or before any justice of the peace or other magistrate by virtue of this act shall be quashed or vacated for want of form, and that the order of such justice or other magistrate shall be final; and that no proceedings of any such justice or other magistrate in pursuance of this act shall be removable by *certiorari* or otherwise."

Sect. 4. "And for the more easy and speedy conviction of offenders under this act," it is enacted, "that all and every the justice and justices of the peace, or other magistrate or magistrates, before whom any person or persons shall be convicted of any offence against this act, shall and may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall happen; *viz.*

Form of conviction.

"BE it remembered, that on the day of in the year of our Lord A. B. is convicted before me, one of his Majesty's justices of the peace for [or *mayor or other magistrate of* as the case may be,] *either by his own confession, or on the oath of one or more credible witness or witnesses,* [as the case may be,] *by virtue of an act made in the third year of the reign of his Majesty King George the Fourth, intituled 'An Act to prevent the cruel and improper treatment of cattle,'* [specifying the offence, and time and place where the same was committed, as the case may be.] *Given under my hand and seal, the day and year above written."*

Justices to order compensation to persons vexatiously complained against.

Sect. 5. "That if on hearing any such complaint as is hereinbefore mentioned, the justice of the peace or other magistrate who shall hear the same shall be of opinion that such complaint was frivolous or vexatious, then and in every such case it shall be lawful for such justice of the peace or other magistrate to order, adjudge, and direct the person or persons making such complaint to pay to the party complained of, any sum of money not exceeding the sum of twenty shillings, as compensation for the trouble and expense to which such party may have been put by such complaint; such order or adjudgment to be final between the said parties, and the sum thereby ordered or adjudged to be paid and levied in manner as is hereinbefore provided for enforcing payment of the sums of money to be forfeited by the persons convicted of the offence hereinbefore mentioned."

Limitation of actions.

Sect. 6. "That if any action or suit shall be brought or commenced against any person or persons for any thing done in pursuance of this act, it shall be brought or commenced within six calendar months next after every such cause of action shall have accrued, and not afterwards, and shall be brought, laid, and tried in the county, city, or place in which such offence shall have been committed, and not elsewhere; and the defendant or defendants in such action or suit may plead the general issue, and give this act and the special matter in evidence at any trial or trials to be had thereon, and that the same was done in pursuance and by authority of this act; and if the same shall appear to have been so done, or if any such action or suit shall not be commenced within the time before limited, or shall be laid or brought in any other county, city, or place than where the offence shall have been committed, then and in any such case the jury or juries shall find for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuit, or shall discontinue his action or actions, or if judgment shall be given for the defendant or defendants therein, then and in any of the cases aforesaid such defendant or defendants shall have treble costs, and shall have such remedy for recovering the same as any defendant or defendants hath or may have for his, her, or their costs in any other cases by law."

(No. 1.)

Information on 3 Geo. 4, c. 71, for ill-treatment of a horse, &c.

County of } *THE information and complaint of A. I. of in the county of* } [*gentleman,*] *made on oath before me J. P. Esquire, one of his Majesty's justices of the peace in and for the said county, the day of, &c. at, &c. who on his oath says that A. O. of in the said county,* [*labourer,*] *within ten days next*

before the exhibiting of this information, to wit, on, &c. at, &c. in the said county, did wantonly and cruelly beat, abuse, and ill-treat a horse, [mare, gelding, mule, ass, ox, cow, heifer, steer, sheep, or other cattle, as the case may be,] *the property of contrary to the statute made in the third year of the reign of King George the Fourth, intituled "An Act to prevent the cruel and improper treatment of cattle," whereby he the said A. O. has forfeited the sum of* (a) *to his Majesty. Whereupon he the said A. I. prays the judgment of me the justice aforesaid in the premises.* A. I.

Before me, J. P.

(No. 2.)

Warrant of apprehension thereon. (b)

County of } *To A. B. the constable of in the said county of and others* } *whom this may concern.*

WHEREAS information and complaint upon oath have been made before me J. P. Esquire, one of his Majesty's justices of the peace in and for the said county, by A. I. of in the county aforesaid, [gentleman,] that within ten days next before, &c. [then set forth the offence as stated in the information verbatim]: *these are therefore to require you to apprehend the said A. O. and bring him before me at in the said county, on the day of instant, at the hour of in the noon, to answer unto the said information and complaint, and to be further dealt with according to law. Herein fail not. Given under my hand and seal the day of in the year of our Lord one thousand eight hundred and* J. P. (L. S.)

(No. 3.)

Conviction.

The 3 Geo. IV. c. 71, s. 4, *ante*, 570, gives the form of conviction.

(No. 4.)

Commitment thereon.

County of } *To the constable of in the said county, and to the keeper of the house* } *of correction at in the said county.*

WHEREAS A. O. of in the said county, [*labourer,*] *is convicted before me J. P. Esquire, one of his Majesty's justices of the peace in and for the said county, upon the oath of A. W. of in the county aforesaid,* [*gentleman,*] *a credible witness,* [or *upon his own confession,* as the case may be,] *for that the said A. O. on, &c. at, &c. in the said county, did* [here state the offence as stated in the conviction,] *whereby he the said A. O. has forfeited for his said offence the sum of* [*five pounds*] *to his Majesty, but which I have mitigated to* (c) *and which sum he the said A. O. refused to pay: these are therefore to require you the said constable to convey the said A. O. to the said house of correction at aforesaid, and deliver him to the said keeper thereof, together with this precept; and you the said keeper are hereby commanded to receive the said A. O. into your custody in the said house of correction, there to be kept without bail or mainprize for* (d) *unless the said sum so due to his Majesty shall be sooner paid. And for so doing this shall be your sufficient warrant. Given under my hand and seal the day of in the year of our Lord one thousand eight hundred and*

J. P.

Certificates of Justices and Proof by. *See* Evidence, Vol. II. p. 52; see also, *ante*, Attorney, p. 293; *post*, Physicians, *and* Parish Registers, Vol. V.

(a) Not exceeding 5*l.* nor less than 10*s.*

(b) In many cases a summons might be preferable in the first instance.

(c) Not less than 10*s.*

(d) Not exceeding three months.

Certiorari. (a)

I. *What it is, and use of*, 572.

II. *What Proceedings Removable by, and when taken away by Statute*, 572.

III. *At whose instance Grantable, and on what Grounds*, 574.

IV. *Time of Applying for Writ*, 576.

V. *How to be Granted and Allowed*, 578 to 581.

[5 W. & M. c. 11; 8 & 9 W. & M. c. 33; 5 Geo. II. c. 19; 13 Geo. III. c. 18.]

VI. *Form and Requisites of Writ*, 581.

VII. *Effect of Writ*, 582.

VIII. *Return to it*, 584.

IX. *Quashing it*, 585.

X. *Subsequent Proceedings*, 585.

XI. *Costs of*, 586 to 589.

XII. *Forms*, see List of, *post*, 590.

I. What it is.

Certiorari, what.

A *CERTIORARI* is an original writ, issuing out of the court of chancery or the King's Bench, directed in the King's name to the judges or officers of inferior courts, commanding them to *certify* or to return the records of a cause depending before them, to the end that the party may have the more sure and speedy justice before the King or such justices as he shall assign to determine the cause. 1 *Bac. Abr. Certiorari*, A.; *Com. Dig. Certiorari.*

What may be certified without a certiorari.

Also the justices of the peace may deliver or send into the King's Bench indictments found before them, or recognizances of the peace taken before them, or force recorded by them, without any *certiorari*. *Dalt.* c. 195.

Habeas Corpus.

If there be an indictment to be removed, and the defendant be in actual *custody*, it is usual to have an *habeas corpus* to remove the defendant, and a *certiorari* to remove the record, for without the former the defendant must continue in the same custody. 2 *Hale*, 210; 1 *Comp.* 283; 1 *Salk.* 149; *post*, Habeas Corpus, Vol. II.

Use of.

The use of a *certiorari* is for the superior court to consider and determine the validity of appeals, indictments, or presentments, and the proceedings thereon, and to quash or confirm them as there may be cause; or to try indictments or presentments where it is surmised that a partial or insufficient trial will probably be had in the court below; or to plead the King's pardon; or to issue process of outlawry against an offender in those cases where the process of the inferior court will not reach him. 4 *Bla. Com.* 321.

No writ of error lies on summary convictions, and therefore this writ of *certiorari* is the only mode by which such revision can be obtained at common law.

II. What Proceedings removable by, and when taken away by Statute.

Lies where writ of error lies not.

Except where a statute otherwise directs, (as in the case of stat. 30 Geo. II. c. 24,) a *certiorari* lies in all *judicial* proceedings in which a *writ of error does*

(a) As to the writ of *certiorari* in general, see 1 *Chit. Cr. L.* 371 to 402; 2 *Hawk.* c. 27; *Bac. Ab. Certiorari*; *Com. Dig. Certiorari.*

WHAT PROCEEDINGS REMOVABLE, &c.

not lie; and it is a consequence of all inferior jurisdictions erected by act of parliament to have their proceedings returnable in the King's Bench. 1 *Ld. Raym.* 469, 580; *R.* v. *Justices of Cashiobury*, 3 *D. & R.* 35.

And where not specially prohibited by statute.

And therefore a *certiorari* lies to justices of the peace, even in such cases which they are empowered by statute finally to hear and determine; and the superintendency of the Court of King's Bench is not taken away without express words. 2 *Hawk.* c. 27, s. 23.

For the *certiorari* being a beneficial writ for the subject, cannot be taken away without express words. If, therefore, a statute, authorising a summary conviction before a magistrate, give an appeal to the sessions, who are directed to hear and *finally* determine the matter, it does not take away the *certiorari*, even after such an appeal made and determined. *R.* v. *Jukes*, 8 *T. R.* 542.

Although the Conventicle Act, (22 C. II. c. 1,) enacted that "no other court whatsoever should intermeddle with any causes of appeal upon that act; but that they should be *finally* determined in the quarter sessions *only;* yet it was decided that the Court of King's Bench was not ousted of its right by *certiorari*. *R.* v. *Moreley*, 2 *Burr.* 1040.

Also it was there said, that the words abovementioned only meant, that the *facts should not be* re-examined. *Id.*

Also that where a statute does not expressly take away a *certiorari*, and direct that no *certiorari* shall issue, the court will grant one. *Id.*

Even where a statute takes away a *certiorari* it does not extend to the crown. *R.* v. *Anon.* 2 *Chit. Rep.* 136; 5 *T. R.* 542.

Where the indictment was framed on an offence created by a statute taking away the *certiorari* contained also counts for another offence as to which it was not taken away, the writ was held issuable and granted. *R.* v. *Saunders*, 5 *D. & R.* 611.

And where by the words of a statute the *certiorari* is taken away, but by its general tenor that is only done to give the option of appeal to the sessions, the right of proceeding by *certiorari* is only barred by the party adopting the method of appeal. *R.* v. *Eaton*, 2 *T. R.* 89; see *post*, 574.

What proceedings removable in general.

A *certiorari* does not lie to remove other than *judicial* acts, therefore it does not lie to remove a mere order of court or warrant of a magistrate. *R.* v. *Lloyd, Cald.* 309; *Say*, 6.

A poor rate cannot be removed by *certiorari*. *R.* v. *King*, 2 *T. R.* 235; *Dougl.* 116.

Or a recognizance. *Lofft*, 321.

All indictments and presentments are in general removable by this writ before they are tried. *R.* v. *Roupell, Coup.* 458, 369; *R.* v. *Wadley*, 4 *M. & S.* 508; *R.* v. *Hube*, 5 *T. R.* 542.

Difference between summary proceedings and indictments.

In the case of summary proceedings, orders, and convictions before magistrates, the proceedings may be removed by *certiorari* after judgment, because they can only be removed by *certiorari;* but where judgment has been given on an indictment, the record must be removed by writ of error. *R.* v. *Seton*, 7 *T. R.* 373; *R.* v. *Pennegoes*, 1 *B. & Cres.* 142; 2 *D. & R.* 209, S. C.; *post*, 577.

But for some special cause an indictment may be removed after conviction, as where the judge is doubtful what judgment to give. 2 *Hawk.* c. 27, s. 31, and see further, *post*, 576, as to the time when the application for the writ should be made.

A rule has obtained in the King's Bench not to grant a *certiorari* to remove orders of justices from which appeals lie to the sessions, before the matter be determined on such appeals, because it would take away that privilege; but if the time for appealing be expired, the objection no longer exists; (*Salk.* 147;) and this rule only extends to abridge the authority of the court in cases where the right of appeal is limited to a particular time, as to the *next* quarter session; but where there is no restriction as to time, the rule does not apply, for otherwise the order could never be removed. *Cald.* 172.

Various acts of parliament take away the right to the writ of *certiorari* in different cases. They will be found under the particular titles in this work,

AT WHOSE INSTANCE GRANTABLE.

as Cheat, Vol. I.; Game, Vol. II.; Highways, Vol. III.; Swearing, Tithes, Vol. V., &c.

It would be as well, however, here to notice a late decision. The Metropolitan Paving Act, 57 Geo. III. c. 29, s. 135, prevents the removal into superior courts of "any rate, proceeding, conviction, order, matter, or thing." It was held, that a case granted by the justices of sessions for the opinion of the court upon the affirmance of a conviction under the act, was a *thing* within the meaning of the act, and could not be removed by *certiorari*. *R.* v. *Middlesex*, 8 *D. & R.* 117; 4 *R. & R. M. C.* 41, S. C.

III. At whose instance Grantable, and on what Grounds.

Court bound to grant it at instance of prosecutor;

but discretionary as to defendant.

It hath been adjudged, that wherever a *certiorari* is by law grantable for an indictment, the court is bound of right to award it at the instance of the *prosecutor*, because every indictment is the suit of the King, and he has a prerogative of suing in what court he pleases. But it seems to be agreed that it is left to the discretion of the court either to grant or deny it at the prayer of the *defendant*. *R.* v. *Lewis and others*, 4 *Burr.* 2456; 2 *Hawk.* c. 27, s. 27. And where the King's name is only used by a *private prosecutor* a material distinction arises, for though the writ is usually awarded as a matter of course, even from the Old Bailey, it is in the power of the judges to refuse it or to award a *procedendo*, if cause be shown why it ought not to have been issued. See *Cases in King's Bench*, 38; 4 *Burr.* 2458; 2 *Burr.* 752.

On a motion to remove by *certiorari* a conviction by a justice on stat. 16 Geo. III. c. 30, (*a*) to prevent the stealing of deer, it was objected that no *certiorari* lay; for by the 23d section it is enacted that no conviction or judgment should be removed by *certiorari*. But the court were of opinion, that the result of the several provisions in the act was, that the defendant had an option either to remove the proceedings from before the convicting justice by *certiorari*, or to appeal to the sessions; that if he had adopted the latter mode, the *certiorari* would have been barred, but not in the former case. *Buller*, J. The language of the court has always been, that the King has a right to remove proceedings by *certiorari* of course; but that where a defendant makes an application of this sort, he must always lay a ground for it before the court. Lord *Mansfield*, C. J. has laid down this distinction again and again, that on the part of the crown it is a matter of course for the court to grant it, but not so on the part of the defendant. And *Buller*, J. on a subsequent day said, that the rule requiring the defendant to lay a ground before the court for granting a *certiorari* had obtained since the time of Car. II., and that it appeared that it was then held as clear law, that a *certiorari* ought not to be granted in vacation, but in open court, and upon a ground shown. *R.* v. *Eaton*, 2 *T. R.* 89.

If one party have the exclusive right of appealing, he may waive his privilege and at once remove the proceedings. *R.* v. *Harman*, 11 *Andr.* 343.

When the prosecutor applies for or consents to the defendant's application, it is generally granted as a matter of course. See *R.* v. *Stannard*, 4 *T. R.* 161, where the attorney-general moved for the defendant and the motion was granted as of course.

Where a person is by law the prosecutor of any case, he may authorise another to sue out a *certiorari* in his name. *R.* v. *Penderryn*, 2 *T. R.* 260.

Where there are several defendants, all should concur in the application on their or one of their behalves. *R.* v. *Hunt and others*, 2 *Chit. Rep.* 130.

What discretion used.

On indictments.

In the exercise of their discretion on prosecutions by indictment the Court of King's Bench seldom grant the writ of *certiorari* at the request of the defendant when the offence charged against him is serious, and particularly affecting the public.

(*a*) Now repealed by 7 & 8 Geo. IV. c. 27; see post, Game, Vol. II.; Larceny, Vol. III.

Thus they generally refuse to remove an indictment for perjury, forgery, or any heinous misdemeanor, because the delay tends to discourage if not wholly to defeat the prosecution. 2 *Hawk.* c. 27, s. 28; 1 *Sid.* 54; 2 *Stra.* 717; in murder, see 3 *D. & R.* 301.

So they are still more reluctant to grant these applications without the assent of the prosecutor when they are made to remove proceedings from a jurisdiction of superior eminence, as before justices of assize or gaol delivery, or from the Old Bailey, or from the Middlesex sessions, or any other court where any of the judges preside. *R.* v. *Duchess of Kingston*, *Cowp.* 283; 1 *Salk.* 144; 1 *Sess. Ca.* 314; *Burr.* 877, 1202; 1 *Ken. Rep.* 135; 1 *Chit. C. L.* 379.

But if it be shown that there is a probability of partiality or unfairness in the trial, the *certiorari* will in all cases be awarded. 2 *Stra.* 704; *R.* v. *Fowle*, 2 *Ld. Raym.* 1452.

As if the prosecutor's attorney be under-sheriff and attended the grand jury at the time of finding the bill, or the like, the writ will be granted. 2 *Stra.* 1068; 1 *Stra.* 580; 1 *Salk.* 150.

It is not sufficient ground for the issuing of a *certiorari* that prejudices existed against the defendant, unless there was some prejudice in the court below. *R.* v. *Matthews*, 1 *Chit. Rep.* 751, n.

If the prosecution appear to rest on slight foundation, or it be doubtful whether in point of law it be sustainable, and the defendant's general character be good; (1 *Stra.* 549; 1 *Salk.* 151;) or if the prosecution seem to originate in malice; (1 *Barn.* 141;) or where there has been vexatious delays and harassing proceedings, or by reason of the absence of the judges, or otherwise, a trial has not been obtained; (2 *Stra.* 1049; *Hardw.* 370; 1 *Chit. C. L.* 380;) the court will allow a *certiorari*.

Where the defendant was a public officer, and his personal attendance daily necessary, the court granted a *certiorari* to remove the indictment to the county where the defendant resided. 1 *Chit. Rep.* 571, n.

In case of a nuisance, where it is necessary to the defence to have a view of the premises, the court will allow him a *certiorari* for the purpose, upon affidavit that he cannot otherwise obtain it. 1 *Barn.* 214; 1 *Sess. Ca.* 180.

The court will not grant a *certiorari* on behalf of the defendant to remove an indictment from the sessions on an affidavit that it was an unusual proceeding, that he was advised that several matters of law of the greatest importance would arise upon the trial of the indictment, and that it was fit and proper it should be tried before persons learned in the law. *R.* v. *Harrison*, 1 *Chit. Rep.* 571.

On convictions and summary proceedings.

In the case of convictions and other *summary judicial proceedings*, the same degree of discretion will be used before granting a *certiorari* for the defendant or private prosecutor, and the court will not grant the writ unless it be shown that some injustice has been or will be done in the inferior jurisdictions. *R.* v. *Bass*, 5 *T. R.* 252. *Et per* Lord *Kenyon*—A *certiorari* is not to be granted *ex debito justitiæ*, but the application is made to the sound discretion of the court, which will not be well exercised, if they do not give an opportunity to the party applying for the writ to litigate any probable cause. *Et per Ashhurst*, J.—If it had appeared that the justices had exceeded their jurisdiction, the court would have granted a *certiorari* in order that the conviction might be quashed, even though no objection were made to the want of jurisdiction below. *Id.*

The court refused to grant a *certiorari* to remove a conviction under the 52 Geo. III. c. 93, for sporting without a certificate, on the ground that the jurisdiction does not appear on the face of the conviction without an affidavit negativing the jurisdiction. *R.* v. *Long*, 1 *M. & R.* 139.

In general a mere informality in a conviction ought not of itself to be the inducement for removing it, but that inducement ought to be some substantial defect in the justice and legality of the proceeding itself.

In a case after conviction for selling with other than the Winchester bushel a *certiorari* was allowed, on the ground of the vendee having been rejected as an incompetent witness. *R.* v. ——, 2 *Chit. Rep.* 137.

TIME OF APPLYING FOR WRIT.

Where an appeal against an order of removal is adjourned on the ground of the justices being equally divided, the Court of King's Bench will not grant a *certiorari* for the purpose of quashing the order of removal and the order of adjournment upon affidavits showing that the apparent equality of votes was occasioned by the vote of a magistrate who was a rated inhabitant of the respondent parish and had joined in making the order of removal, on the ground that the Court of King's Bench has no jurisdiction to review the order even if erroneous. *R.* v. *Uske*, 2 *M. & R.* 172; S.C. *nom. R.* v. *Monmouthshire*, 8 *B. & Cres.* 137, 304.

The court refused to grant a *certiorari* in the first instance to remove an order for the appointment of overseers for the purpose of having it quashed on a suggestion that the justices made the appointment from corrupt and improper motives, the propriety of the appointment being matter of appeal to the sessions. *R.* v. *Somersetshire*, 1 *D. & R.* 443.

IV. Time of applying for Writ.

On indictments.

On Indictments, &c.]—In prosecutions by indictments and informations in the Crown Office, the application for the writ of *certiorari* should regularly be made before issue joined. 2 *Hawk.* c. 27, s. 10.

In all cases the application should be made time enough for the trial to take place at the next holding of the court in which it is the object to have it heard. *R.* v. *Perkins*, 1 *Chit. C. L.* 2d edit. 381.

After conviction.

It seems agreed, that a *certiorari* shall never be granted to remove an indictment after conviction, unless for some special cause; as where the judge below is doubtful what judgment to give. 2 *Hawk.* c. 27, s. 31; *ante*, 573.

Before judgment.

In *R.* v. *Nicholls*, 2 *Stra.* 1227, an indictment was removed into the Court of King's Bench by *certiorari*, after conviction, and before judgment. Upon which a doubt arose what the court could do, the *certiorari* being brought before judgment: and this court not being apprised of the circumstances of the offence, could not tell what judgment to give: and in *Carth.* 6, it is said, they cannot give judgment. A rule therefore was made to show cause why the *certiorari* should not be quashed, so as to remit it back to the sessions; which was afterwards made absolute.

And in *R.* v. *Gwynne and others*, 2 *Burr.* 749, the court (on a defended motion) granted a *procedendo*, at the instance of the defendants, upon an indictment for an assault at the quarter sessions at Brecon, removed into the King's Bench by *certiorari*, because the *certiorari* had not issued till after the defendants had confessed the assault below; though the conviction was not after trial, and though several of the justices were sworn to be near relations of Mr. Gwynne, one of the defendants, namely, his father, two brothers, and an uncle.

In *R.* v. *D. Jackson*, 6 *T. R.* 145, the defendant had been convicted at the quarter sessions upon an indictment for extortion, and then removed the indictment between verdict and judgment, and obtained a rule, calling upon the prosecutor to show cause why judgment should not be arrested for some objections to the indictment. And Lord *Kenyon* said, that the removing of proceedings in this stage from inferior jurisdictions ought to be discouraged; that in cases where the punishment is discretionary, and this court should be of opinion, after hearing the case argued, that the judgment ought not to be arrested, a *procedendo* must be awarded, and the party sent back again to the inferior jurisdiction, to receive judgment; that he thought the court should adopt the same mode in this instance; and that the defendant might bring a writ of error after judgment, if the record were erroneous.

This decision seems to have been confined to cases in which the judgment was *discretionary*, but if the verdict should be at the Midsummer sessions, after Trinity term, and the defendant come in, as he must, to receive judgment at the ensuing Michaelmas sessions, and the judgment be not discretionary, but definite by law, it is manifest that it might be a vexatious case, if

a *certiorari* could not be issued between the verdict and judgment, inasmuch as it might happen, where imprisonment for a month or other certain period was the legal penalty, that before the *certiorari* could be sued out, the defendant might have suffered the greater portion of the judgment. *Observations of Mr. King, editor of the 22d edition of Burn's Justice.*

And in the above case of *R.* v. *Seton*, the *certiorari* which had issued before verdict was quashed, *quia improvidè emanavit.*

For purpose of new trial from sessions.

No *certiorari* will be granted to remove an indictment from sessions, for the purpose of having a new trial. *R.* v. *Oxford*, 13 *East*, 411. The defendants were indicted at the assizes, and found guilty of the non-repair of a public bridge. And afterwards a motion was made in the Court of King's Bench for a *certiorari* to remove thither the indictment and proceedings, for the purpose of moving for a new trial. But it was resolved *by the court*, that they had not the power of entering into the merits of verdicts, and granting new trials in proceedings before inferior jurisdictions; and they refused the *certiorari.*

After judgment at sessions.

The court will not grant a *certiorari* to remove an indictment from the quarter sessions after judgment has been pronounced in that court. *R.* v. *Pennegoes Machynlleth*, 1 *B. & C.* 142; 2 *D. & R.* 209; 3 *D. & R.* 388, S. C. In this case, a bill of indictment for not repairing a bridge had been found against the defendants at the quarter sessions for the county of Montgomery. At the trial a verdict was found for the crown, and judgment pronounced accordingly, that a fine be imposed upon the defendants. Sir *William Owen* now moved for a *certiorari* to remove the indictment into the King's Bench for the purpose of taking objections to it, and after stating that it was doubtful whether a *certiorari* ought to issue in this stage of the proceedings, he referred the court to *The Queen* v. *Dixon*, *ante*, 576; and *R.* v. *Oxfordshire*, *supra*, and *R.* v. *Nicholls*, *ante*, 576; where *Lee*, C. J. recognises the authority of *The Queen* v. *Dixon*, 1 *Salk.* 150; and he suggested that it would be hard upon the defendants to refuse this application, as the consequence would be, that they must have recourse to the more costly remedy of a writ of error. *Per Curiam.*—The defendants have thought proper to take the chance of succeeding at the sessions. They ought clearly to have applied for a *certiorari* before the trial, and it ought not to issue in this late stage of the proceedings. They can now avail themselves of objections to the indictment by writ of error only. Rule refused.

Where special verdict.

Where there has been a *special verdict*, even at the Old Bailey, it may be removed in order to be argued and more solemnly decided in the superior court. 2 *Ld. Raym.* 1574; 2 *Hawk.* c. 27, s. 31.

But in the case of *R.* v. *Nichols*, 13 *East*, 412, *(notis)*, which was the case of an indictment for a conspiracy, *Lee*, C. J. said, he knew no instance of a special verdict from Hicks's Hall removed into the King's Bench, and that if a conviction were removed thither by *certiorari*, the court would not give judgment upon it.

It seems, however, that this is only so where the fine is uncertain. *Id.*

Writ of error where application too late.

If the application be neglected until too late, the only course left to the party is a writ of error, under which, however, defects only apparent on the face of the indictment can be taken advantage of. See *post*, Error, Vol. II.

Summary proceedings, orders, &c.

On Summary Proceedings]—In the case of *summary proceedings*, orders, and convictions before magistrates, the proceedings may be removed by *certiorari* after judgment, because they can only be removed by *certiorari*. *R.* v. *Seton*, 7 *T. R.* 373.

A rule was made in the Court of King's Bench, E. 1 Anne, *Reg. Generalis*, that no *certiorari* should be granted to remove orders of justices, from which the law has given an appeal to the sessions, before the matter be determined on the appeal, because it hinders the privilege of appealing; and if any order be removed before appeal, it shall be sent down again; but if the time of appeal be expired, the case is not within the rule. By *Holt*, C. J. But afterwards, M. 4 Anne, in the case of *Shellington*, it was held that ad-

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vantage must be taken of this rule upon the motion to file the order; for that after it is filed, it is too late. 1 *Salk.* 147.

But in the case of the borough of Warwick, (2 *Str.* 991,) there was an appeal from a poor-rate, and the sessions made an order that the churchwardens should produce the books at an adjourned day; before which a *certiorari* was brought to remove that order: and it was held to lie, though the appeal was depending, else the order must be obeyed before the validity of it can be determined. It was also held that an appointment of overseers may be removed before an appeal to the sessions; for the rule laid down in 1 *Salk.* 147, extends only to the case where there is a limited time for appealing, as to the *next* quarter sessions; but the statute of 43 Eliz. c. 2, is not so restrained, and, consequently, it can never be said that the time for appealing is out; and if the appeal from an appointment is lodged, there can be no *certiorari* till the sessions have made a determination; and a *certiorari* brought, pending such appeal, shall be superseded.

V. How to be granted and allowed.

(1) On indictments or presentments. In term time.

(1.) On Indictments or Presentments]—By stats. 5 W. & M. c. 11, s. 2, and 8 & 9 W. & M. c. 33, it is enacted, that in *term time* no writ of *certiorari* whatsoever, at the prosecution of any *party indicted*, shall be granted out of the King's Bench, to remove any indictment or presentment of *trespass or misdemeanor*, before a trial had, from before the *justices in sessions;* unless such *certiorari* shall be granted or awarded upon *motion of counsel*, and by *rule of court* made for the granting thereof.

In vacation.

But by stat. 5 W. & M. c. 11, s. 4, in the *vacation*, writs of *certiorari* may be granted by any justice of the King's Bench; whose name shall be indorsed on the writ, and also the name of the person at whose instance it is granted.

Practice.

These acts do not extend to applications for *certiorari* by *prosecutors*, and the proceedings to be taken by them remain as at common law. 2 *Hawk.* c. 27, s. 52.

In term.

During *term time* the writ is granted by the court on motion by counsel, as a matter of course when applied for by the prosecutor, but when moved for by the defendant, it must be made in open court founded on an affidavit stating the grounds for the application. See form of an affidavit, *post*, (No. 1.)

No affidavit is necessary where the Attorney General applies for the defendant. 4 *Burr.* 2458; 4 *T. R.* 161; *ante*, 574; *sed vid. R.* v. *Burgess*, 1 *Ken. Rep.* 531.

The affidavit should be entitled only "In the King's Bench," and not in the name of the prosecutor in the court below. 1 *B. & Cres.* 267; *sed vid.* 2 *Stra.* 704.

Corroborating affidavits may be read after a rule has been granted, but not affidavits containing new matter. *R.* v. *Berkley*, 1 *Ken.* 81.

In vacation.

In *vacation* a *fiat* for a *certiorari* may be obtained from any one of the judges of the Court of King's Bench, on laying a proper affidavit before him at his chambers, if the application be made by the defendant.

The judge's signature must be placed to the *fiat*. 3 *Salk.* 80.

The clerk in court, on the authority of such signature, makes out the writ and delivers it to the person applying for it, together with the recognizance to be entered into. *Hand's Prac.* 38.

Recognizance, &c.

Recognizance]—To prevent the improper removal of indictments and presentments for crimes less than felonies from the *general or quarter* sessions, the 5 W. & M. c. 11, s. 2, enacts, "that all the parties indicted, prosecuting such *certiorari*, (*id. est*, a *certiorari* applied for by the defendant, indicted at sessions for a trespass or misdemeanor, *supra*,) before the allowance thereof, shall find two sufficient manucaptors, who shall enter into a recognizance before one or more justices of the peace of the county or place, in the sum of 20*l.* with condition at the return of such writ to appear and plead to the said indictment or presentment in the said Court of King's Bench, and at

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his and their own costs and charges to cause and procure the issue that shall be joined upon the said indictment or presentment, or any plea relating thereunto, to be tried at the next assizes to be held for the county wherein the said indictment or presentment was found, after such *certiorari* shall be returnable, if not in the cities of London, Westminster, or county of Middlesex; and if in the said cities or county, then to cause or procure it to be tried the next term after, wherein such *certiorari* shall be granted, or at the sitting after the said term, if the Court of King's Bench shall not appoint any other time for the trial thereof; and if any other time shall be appointed by the court, then at such other time, and to give due notice of such trial to the prosecutor, or his clerk in court; and that the said recognizance and recognizances, taken as aforesaid, shall be certified into the said Court of King's Bench, with the said *certiorari* and indictment, to be there filed, and the name of the prosecutor (if he be the party grieved or injured) or some public officer, to be indorsed on the back of the said indictment, and if the person prosecuting such *certiorari*, being the defendant, shall not, before allowance thereof, procure such manucaptors to be bound in a recognizance as aforesaid, the justices of the peace may and shall proceed to trial of the said indictment at the said sessions, notwithstanding such writ of *certiorari* so delivered."

Recognizance to be given for trying issue at the next assizes.

Recognizance to be certified.

Defendant not procuring manucaptors, justices to proceed.

The like provisions are enacted by the 5 W. & M. c. 11, s. 5, concerning the removal of indictments by *certiorari* within the counties of Chester, Lancaster, and Durham.

These provisions only extend to writs of *certiorari* on indictments at the sessions. 3 *Burr.* 2462; 2 *Stra.* 1165.

If the bail be not found before the justices or the judge as thus prescribed, the *certiorari* ought not to be allowed. 1 *Salk.* 149; *Com. Dig. Certiorari*, B.

If the persons offering to be sureties appear to be worth 20*l.* the justices cannot refuse them. 2 *Hawk.* c. 27, s. 50.

If several persons be included in the same indictment, and some of them find sureties, and the others not, it is said that the proceedings as to the first will be valid. 2 *Hawk.* c. 27, s. 50; *Com. Dig. Certiorari*, B; but this seems questionable, see *Keat* v. *Goldstein*, 7 *B. & Cres.* 525; 1 *M. & R.* 305, S. C.

It seems that a married woman need not enter into the recognizance. 2 *Hale*, 213.

(2.) ON CONVICTIONS OR SUMMARY PROCEEDINGS]—For the preventing of delays and expenses by *certioraries* on convictions and summary proceedings, by stat. 13 Geo. II. c. 18, s. 5, it is enacted, "that no writ of *certiorari* shall be granted, issued forth, or allowed, to remove any *conviction, judgment, order, or other proceedings* had or made by or before any justice or justices of the peace of any county, city, borough, town corporate or liberty, or the respective general or quarter sessions thereof, unless such *certiorari* be moved or applied for within *six calendar months* next after such conviction, judgment, order or other proceedings shall be so had or made, and unless it be duly proved upon oath, that the said party or parties suing forth the same, hath or have given *six days' notice thereof in writing* to the justice or justices, or to two of them, (if so many there be,) by and before whom such conviction, judgment, order or other proceedings shall be so had or made, to the end that such justice or justices, or the parties therein concerned, may show cause, if he or they shall so think fit, against the issuing or granting such *certiorari*."

On convictions and summary proceedings.

Within what time and on what notice to be granted.

A notice to remove an order of justices by *certiorari* must state the name of the party applying for the writ. *R.* v. *Lancashire*, 4 *B. & A.* 289. *Et per curiam.*—"The notice should be given by the party suing out the writ, and that circumstance should appear upon the face of the notice itself, for the object of it, stated by the statute, is to enable the justices to show cause against the granting the *certiorari*, and they may show for cause that the party suing out the writ was a stranger to the county, and not interested in the order. The justices therefore ought to have their attention called to the name of the party by the notice itself."

Notice of, &c.

The six calendar months limited for the application must be computed from the date of the conviction. *R.* v. *Boughey*, 4 *T. R.* 281.

ON CONVICTIONS, &c.

A *certiorari* to remove an order of sessions subject to a case to be stated, must be applied for within six calendar months after the order made, and not within six months after settling the case. In strictness, cases ought to be settled *sedente curiâ*. *R.* v. *Sussex*, 1 *M. & S.* 631, 734; *R.* v. *Kaye*, 1 *D. & R.* 436; and so as to an order of sessions, *Loft.* 544.

In the case of *R.* v. *Glamorganshire*, 5 *T. R.* 279, it was determined that before any application for a *certiorari* to remove proceedings before justices of the peace, six days' notice thereof in writing must be given to the magistrates previous to the application for the rule to show cause why such *certiorari* should not be granted.

But a *certiorari* to remove an *indictment* from the sessions may be sued out by the prosecutor without giving the six days' previous notice required by the statute, in the case of removing "convictions, judgments, orders, and other (summary) proceedings." *R.* v. *Battams and others*, 1 *East*, 298.

In support of the motion there must be an affidavit of the service of the six days' notice, which should not be entitled in any cause. *Exp. Nokro*, 1 *B. & Cres.* 267.

The circumstance of an order of sessions having been made subject to a case for the opinion of the Court of King's Bench, will not dispense with the six days' notice. *R.* v. *Sussex*, 4 *M. & S.* 631.

Sessions on appeal may rectify defects of form in judgments or orders of justices. 5 Geo. 2, c. 10.

By stat. 5 Geo. II. c. 19, s. 1, after reciting that "whereas in many cases where his Majesty's justices of the peace by law are empowered to give or make judgments or orders, great expenses have been occasioned by reason that such judgments or orders have, on appeals to the justices of the peace at their respective general or quarter sessions, been quashed or set aside upon exceptions or objections to the form or forms of the proceedings, without hearing or examining the truth and merits of the matter in question between the parties concerned; therefore to prevent the same for the future, it is enacted, "that after the 24th day of June, 1732, upon all appeals to be made to the justices of the peace at their respective general or quarter sessions to be holden for any county, riding, city, liberty or precinct, within that part of Great Britain called England, against judgments or orders given or made by any justices of the peace as aforesaid, such justices so assembled at any general or quarter sessions shall and they are hereby required from time to time, within their respective jurisdictions, upon all and every such appeals so made to them, to cause any defect or defects of form that shall be found in any such original judgments or orders, to be rectified and amended without any cost or charge to the parties concerned, and after such amendment made shall proceed to hear, examine and consider the truth and merits of all matters concerning such original judgments or orders, and likewise to examine all witnesses upon oath, and hear all other proofs relating thereto, and to make such determinations thereupon as by law they should or ought to have done, in case there had not been such defect or want of form in the original proceeding; any law, usage, or custom to the contrary notwithstanding."

Giving security to prosecute with effect a *certiorari* to remove such judgment or order.

Sect. 2. "And whereas divers writs of *certiorari* have been procured to remove such judgments or orders into his Majesty's Court of King's Bench at Westminster, in hopes thereby to discourage and weary out the parties concerned in such judgments or orders by great delays and expenses; be it therefore enacted, "that no *certiorari* shall be allowed to remove any such judgment or order, unless the party or parties prosecuting such *certiorari*, before the allowance thereof, shall enter into a recognizance with sufficient sureties before one or more justices of the peace of the county or place, or before the justices at their general quarter sessions or general sessions where such judgment or order shall have been given or made, or before any one of his Majesty's justices of the said Court of King's Bench, in the sum of 50*l.* with condition to prosecute the same at his or their own costs and charges with effect, without any wilful or affected delay, and to pay the party or parties, in whose favour and for whose benefit such judgment or order was given or made, within one month after the said judgment or order shall be confirmed, their full costs and charges, to be taxed according to the course of the court where such judgments or orders shall be confirmed; and in case

the party or parties prosecuting such *certiorari* shall not enter into such recognizance, or shall not perform the conditions aforesaid, it shall and may be lawful for the said justices to proceed and make such further order or orders for the benefit of the party or parties for whom such judgment shall be given, in such manner as if no *certiorari* had been granted."

Recognizance to be certified.

Sect. 3. "That the recognizance and recognizances to be taken as aforesaid shall be certified into the Court of King's Bench at Westminster, and there filed with the *certiorari* and order or judgment removed thereby; and if the said order or judgment shall be confirmed by the said court, the persons entitled to such costs for the recovery thereof, within ten days after demand made of the person or persons who ought to pay the said costs, upon oath made of the making such demand and refusal of payment thereof, shall have an attachment granted against him or them by the said court for such contempt, and the said recognizance so given, upon the allowing of such *certiorari*, shall not be discharged, until the costs shall be paid and the order so confirmed shall be complied with and obeyed."

Costs.

Attachment.

It should seem from the wording of the first section of this act, and the words "*such* judgment or order," in sect. 2 of the same, that this only applies to cases where an *appeal* is given. *Vide* note to *R.* v. *Dunn*, 8 *T. R.* 218.

The act only enables justices to amend in matters of *form* not of substance. *R.* v. *Cluberton*, 8 *T. R.* 181.

Recognizance.

Recognizance]—This statute requiring the party removing a conviction by a magistrate into King's Bench, to enter into a recognizance with two sureties in 50*l.* conditioned to prosecute the writ with effect, &c. is not complied with by the party and his sureties entering into a recognizance in 25*l.* each, but it must be in the entire sum of 50*l.* *R.* v. *Dunn*, 8 *T. R.* 217.

The two sureties must be in addition to the party suing out the *certiorari*. *R.* v. *Boughey*, 4 *T. R.* 281.

If a *certiorari* be regularly issued, the court will not proceed upon it till it has been regularly returned. And the party suing out the writ has no right to call upon the magistrate to allow and return it, until he has entered into a proper recognizance as the statute requires. *R.* v. *Dunn*, 8 *T. R.* 219.

Where one has been committed, and appealed to the sessions, a *certiorari* cannot issue pending the appeal; but only when that has been determined. *R.* v. *Sparrow and another*, 2 *T. R.* 196, n. [The case was of a commitment for vagrancy, and an appeal against the same.]

VI. Form and Requisites of Writ.

Form and requisite of writ. (*a*)

The writ must not materially vary in its description of the record which it is intended to remove. 2 *Hawk.* c. 27, s. 75. If, therefore, it profess to remove an indictment only, it will not be effectual to remove the whole record after conviction. *Id.* 2 *Ld. Raym.* 971.

And even more formal objections have sometimes been holden to be material. *Cro. Jac.* 254; 1 *Sid.* 448; 1 *Roll.* 754; *Hale*, 214; 1 *Salk.* 145. Thus if it describe the indictment to be taken before seven justices, when the proceeding itself mentions eight; *Cro. Jac.* 254; and see other instances, 1 *Chit. C. L.* 387.

A material variance in the names or additions will also prejudice, as if the wrong name be inserted. 1 *Salk.* 264; *Cro. Jac.* 633; 2 *Hawk.* c. 27, s. 81.

But if the mistake be only in the spelling, and the sound remains unaltered, it will not be material. *Cro. Eliz.* 172; 2 *Hawk.* c. 27, s. 81.

If more defendants be named than appear on the record, the variance will be fatal. 1 *Stra.* 116; 2 *Hawk.* c. 27, s. 81.

(*a*) See in general, 1 *Chit. C. L.* 387 to 390; 2 *Hawk.* c. 27.

FORM AND REQUISITES OF WRIT.

Where it is intended to remove the record after verdict, it must be expressly framed for that purpose, or it will be invalid. 2 *Ld. Raym.* 938, 971; 13 *East*, 417.

The defendant must have a day given him in the superior court when an indictment after verdict is removed by this writ. 2 *Ld. Raym.* 971; 2 *Hawk.* c. 27, s. 81.

Direction of.

The writ ought to be *directed* to the judge or magistrates of the inferior court, before whom the proceedings were originally taken. 3 *Keb.* 13; 2 *Hawk.* c. 27, s. 38.

In some cases, however, it may be directed to the proper officer known to have the actual custody of the record. *Dyer*, 163; 2 *Hawk.* c. 27, s. 38.

If the person who ought to certify the record, as a justice of the peace, &c. happen to die while it remains in his custody, the *certiorari* may be directed to his personal representatives, who must certify. 2 *Keb.* 750; 2 *Hawk.* c. 27, s. 39.

It may be directed to a justice of assize to certify a record of assize taken before his companion in his absence. 2 *Hawk.* c. 27, s. 39.

When the *certiorari* is intended to remove an indictment or recognizance from the sessions, it is directed either to the justices generally, or to some of them in particular, and not to the *custos rotulorum;* though it seems that it may be returned by him, especially if he style himself a justice of the peace. 2 *Hawk.* c. 27, s. 40.

And a *certiorari* to remove an order made by two justices, may be directed to the sessions, and by them returned to the superior jurisdiction. 1 *Stra.* 470.

If by mistake it be directed to the wrong person, it has been holden that no other party can take any advantage of the error, if after the proceedings are duly returned by the parties to whom it was directed. 4 *T. R.* 499.

Signature of judge.

The writ must, when it removes any recognizance, or when the defendant is in actual custody, be signed by the chief justice, or, in his absence, by one of the judges of the court from whence it is awarded. 1 & 2 *Ph. & M.* c. 13, s. 7. But in other cases there is no necessity for the judge to sign the writ, but only the fiat by which it is ordered to issue. 2 *Hawk.* c. 27, s. 37.

If it be taken out in vacation and tested, as it may be, of the preceding term, the fiat must be signed some time before the essoin day of the subsequent term, or the whole will be irregular. 1 *Salk.* 150; 2 *Hawk.* c. 27, s. 37.

Delivery of writ.

This writ should be delivered to the chairman of the sessions in open court, or other chief judge of the court, though if it appear that it any how came to the knowledge of the justices or judges, it must be obeyed by them. 2 *Hawk.* c. 27, s. 57; 1 *East*, 299. In practice it is delivered to the clerk of the peace, or clerk of assize. 1 *Chit. C. L.* 390.

VII. Effect of the Writ.

Removes all between teste and return.

The effect of the writ is to remove all proceedings of the nature described therein, which have taken place between the teste and return, although the proceedings originated after the teste. The justices below are bound to obey the writ after production of it, and notice to them in fact of such production when sitting in their judicial capacity; and after that, all further proceedings before them on the matter are erroneous, and *coram non judice*. *R.* v. *Battams*, 1 *East*, 298; 1 *Salk.* 148; 2 *Hawk.* c. 27, s. 57.

Subsequent proceedings void.

Except where the jury is sworn.

But it hath been adjudged, that if a *certiorari* for the removal of an indictment before justices of the peace be not delivered before the jury be sworn for the trial of it, the justices may proceed. 2 *Hawk.* c. 27, s. 62; 1 *Salk.* 144.

And after judgment.

And the justices may set a fine to complete their judgment after a *certiorari* delivered. 2 *Ld. Raym.* 1515.

EFFECT OF THE WRIT.

It operates as a *supersedeas* only from the time of its being actually delivered, and not from the time of its being issued; 7 *T. R.* 373; and it will altogether lose its effect if not delivered before its return. *Id.*

Or where not delivered.

It cannot operate as a *supersedeas* until the defendant has complied with the directions of the statutes, *ante*, 578, 580. 2 *Hawk.* c. 27, s. 59.

Or where forms not complied with.

It is however said, that if a *supersedeas* come out of a superior court to the justices, they ought to surcease, although the *supersedeas* be awarded against law; for they are not to dispute the command of a superior court, which is a warrant to them. *Cromp.* 129.

Case where it is awarded against law.

If an indictment be removed after issue by *certiorari*, and afterwards remanded, the inferior courts may proceed to trial upon it in the same way as if the writ had never been awarded. 2 *Hawk.* c. 27, s. 61.

Where indictment remanded.

But if they go on after the due delivery of the writ, where such conduct is illegal, they may be punished by attachment for contempt of the superior jurisdiction. *Id.* s. 62; 1 *Salk.* 148.

Attachment for proceeding.

A *certiorari* removes the record itself out of the inferior court; and, therefore, if it remove the record against a principal, the accessary cannot there be tried. 2 *Hawk.* c. 29, s. 54.

Removes the record itself.

If the defendant be convicted of a capital offence, the person of the defendant must be removed by *habeas corpus*, in order to be present in court, if he will move in arrest of judgment. And herein the case of a conviction differs from that of a special verdict; where the presumption of innocence may be supposed to continue, and therefore the personal presence of the defendant in that case is not necessary at the argument of it. *R.* v. *Spragg*, 2 *Burr.* 930; *ante*, 577.

When the person of the defendant shall be removed.

It hath been holden that a *certiorari* for the removal of a recognizance for the good behaviour, or an appearance at sessions, will supersede the obligation of it; but this would be highly inconvenient, and the contrary seems to be supported by the better authority. 2 *Hawk.* c. 27, s. 65.

How far it supersedes a recognizance.

A *certiorari* removing an indictment from the Old Bailey to the King's Bench, will discharge a recognizance if a prisoner have been admitted to bail on a charge of perjury. *R.* v. *Richardson*, 2 *Leach, C. C.* 560. But it is otherwise if the prisoner be in actual custody. *Id.*

In the case of *R.* v. *Reason*, 6 *T. R.* 375, it was determined that if justices acquit a defendant against whom an information is laid before them for a penalty, this court cannot reverse the judgment, though the justices state (on the return of a *certiorari*) evidence, which *primâ facie* is sufficient to convict, and no contradictory or explanatory evidence. And the court said, that the evidence given was entirely and exclusively for the consideration of the justices below, who were placed in the situation of a jury; and as they had acquitted the defendant, this court could not substitute themselves in the place of the justices acting as jurymen, and convict him; that they could not judge of the credit due to the witnesses whom they did not hear examined; that they could only look to the form of the conviction, and see that the party, if convicted, had been convicted by legal evidence; and they must consider on this return that the magistrates had determined on the facts, and not on the law of the cases as distinguished from the facts.

The court cannot judge of evidence given in courts below.

Touching the distinction between a conviction removed by *certiorari* and one brought before a court upon an appeal; on an appeal the whole case is gone into, and evidence is to be given to support the conviction; but when the conviction is removed by *certiorari*, the facts cannot be made the subject of inquiry. *R.* v. *Jukes*, 8 *T. R.* 542.

In a late case where the sessions on an appeal quashed a conviction on the 39 & 40 Geo. III. c. 106, s. 4, for a defect in form without hearing the merits, and their order was removed by *certiorari* into King's Bench; that court being of opinion that there was no defect in the form, quashed the order, and sent back the case to the sessions to enter continuances and hear the appeal on the merits. *R.* v. *Ridgway*, 5 *B. & A.* 527; 1 *D. & R.* 132, S. C.; see also the case of *R.* v. *Eaton*, *ante*, 1 *T. R.* 89, *ante*, 574.

RETURN TO THE WRIT.

VIII. Return to the Writ.

What to be returned.

The *certiorari* may be sometimes to remove and send up the record itself, and sometimes only the tenor of the record (as the words therein be,) and it must be obeyed accordingly; *Dalt.* c. 195; 2 *Hawk.* c. 27, s. 76; if the return do not show the writ has been obeyed, it will be defective.

A return of the tenor of an indictment from London, is good by the Charter of London. 1 *Keb.* 252.

Whenever the purport of the writ is not to proceed upon the record to be removed, but only to try an issue of *nul tiel record*, it is sufficient to certify the tenor of the record, whatever the language of the writ may be. 3 *Keb.* 13; 2 *Hawk.* c. 27, s. 71.

If any thing be inserted in the return by way of explanation or otherwise, which is not commanded, it will not vitiate, but be rejected as surplusage. 2 *Salk.* 493; *Bac. Abr. Certiorari*, H.

Who to make return.

The return should be made by the party to whom it is directed; a return by the deputy of that party, or any other person, will not do. 2 *Salk.* 479; 2 *Hawk.* c. 27, s. 66.

And although the *custos rotulorum* keep the records, yet must the justices to whom it is directed return the *certiorari;* and, therefore, if it be directed to the justices of the peace, and the clerk of the peace only return it, nothing is thereby removed. *Id.* s. 71.

Upon a *certiorari* to remove an indictment of a riot, or forcible entry, or the like, the return must have these words, *as also to hear and determine divers felonies, &c.* according to the commission; for if the return mention only that they are justices of the peace without such words, the return is insufficient. *Dalt.* c. 195.

Form of return.

The proper mode of making the return seems to be to indorse on the back of the writ, "the execution of this writ appears in a certain schedule hereunto annexed," and then to send the schedule on a distinct piece of parchment, annex it to the record of the indictment, and transmit them together to the superior jurisdiction; 1 *Saund.* 134; and the words "humbly certify," &c. are unnecessary and improper. *Carth.* 223.

The schedule must be made on parchment, for it will be quashed if on paper. 1 *Barnard.* 113.

A copy of the record will not do. 4 *B. & Cres.* 401; 6 *D. & R.* 497, S.C.

If the words "the jurors of our Lord the King upon their oath present," be omitted, the return will be invalid. *Carth.* 223.

The return must be under the seal of the inferior court, to whom it is directed; and if they have no proper seal, under any other seal they may think fit to employ. *Cro. Eliz.* 821; 2 *Hawk.* c. 27, s. 65, 70.

A return to a *certiorari* was sent back to the justices by the court to be amended, because they did not put their seals to it, or describes themselves as justices of London. *R.* v. *Kenyon*, 6 *B. & Cres.* 640.

The return and the recognizance, (if any,) should, when ready, be transmitted to the Crown Office of the Court of King's Bench.

Amendment of.

If the return be defective, the court will, by a side-bar rule, allow an amendment thereof. 4 *East*, 175, n; 1 *Saund.* 249, n.

Enforcing return.

The return may be enforced by a side-bar rule, commanding a return after six days' notice; but if this side-bar rule be obtained without sufficient ground, the defendant may move to have that rule discharged. 1 *East*, 299.

After this side-bar rule and notice, in general the inferior jurisdiction are bound to make return, even though it should appear that the writ was improperly granted. 1 *East*, 306; 5 *T. R.* 543.

A clerk of the peace cannot refuse to transmit the records in his custody on account of the fees due to him, for he has no lien upon them to justify his detainer; 1 *Leach*, 201; for his fees his remedy is by action; for his charges of bringing the defendant up, the defendant may be remanded. 1 *Stra.* 308; 2 *Stra.* 1262.

If the return be still withheld, an *alias*, then a *pluries*, or a *causum nobis significes*, will be awarded, and then an attachment. *Cromp.* 116; *Fitz. N.B.* 245. QUASHING THE WRIT.

If the person to whom a *certiorari* is directed do make a false return, yet the court will not stay filing it on affidavit of its being false, except in public cases, as in cases of commissioners of sewers, or for not repairing highways, or for some such special causes; because the remedy for a false return is either an action on the case at the suit of the party grieved, or an information at the suit of the King. *Dalt.* c. 195; see **Justices**, Vol. III. p. 484. False return.

IX. Quashing the Writ.

If the writ be misdirected or otherwise has been improperly granted, if returned, it will be quashed, upon cause being shown to the jurisdiction from whence it was awarded. 7 *T. R.* 373. Quashing the writ.

If not returned the court will grant *supersedeas*.

After a rule for a *certiorari* had been made absolute, and the return thereto filed, it appeared that the writ had issued *improvide*, the court ordered it to be superseded, and the return taken off the file. *R.* v. *Wakefield*, 1 *Burr.* 489; 2 *Ken.* 164, S. C.

When the record is not removed in consequence of an error in the return, the court will either quash the writ and order a new one; 1 *Salk.* 147; 2 *Hawk.* c. 27, s. 82; or they will allow the court below to proceed and take such order for the defendant's appearance before either tribunal as the circumstances of the case may require. 2 *Hawk.* c. 27, s. 82. Or if the court think they issued the writ improperly, they may order it to be superseded, and the return taken off the file. 1 *Burr.* 488; 2 *Hawk.* c. 27, s. 63.

When the writ is returned to the crown office, the prosecutor's clerk in court makes out a *venire* for the defendant to appear; upon which the solicitor gets him *summoned* by the sheriff, and upon the return of it, the defendant usually appears, when he is entitled to an imparlance to the following term: but if he does not then appear, the prosecutor's clerk in court, upon the production of the sheriff's return to the *venire*, makes out a *distringas*, upon which 40*s.* issues are levied on the defendant's effects; and if there is no appearance on the return of that, on the affidavit of the writ having issued and being returned as above, the court will award an *alias;* and after that a *pluries*, &c., enlarging the issues on every writ until the defendant appears, when they will compel him to pay the costs of the writs of *distringas* out of the issues levied. But if the sheriff returns the *venire non est inventus*, then, upon the production of such return, the clerk in court makes out a *capias* for the sheriff to take the defendant into custody, which he will do; whereupon the defendant, to procure his enlargement, must enter an appearance, upon which he will be discharged by *supersedeas*. If the defendant be taken on a warrant, which a judge may grant on the return of the *venire*, the defendant must then put in bail before he is discharged. *Hand. Prac.* 42, 3; 1 *Chit. C. L.* 396, 7.

X. Subsequent Proceedings.

After the return has been made and the indictment removed at the instance of the defendant, if the bail in the recognizance are exceptionable, the prosecutor's solicitor may compel the defendant to add sufficient bail, by taking out and serving on the defendant's clerk in court a *judge's summons* for a *procedendo*, unless better bail be put in. *Hand. Prac.* 39. Subsequent proceedings in superior court.

If the defendant do not find sureties, then, upon the attendance of the summons, the judge will order the *procedendo* to issue, and by which the indictment and proceedings will be sent back to the court in which the prosecution was begun. *Id.*

COSTS.

And if the indictment were removed after issue joined, the inferior court is to proceed to trial as if no *certiorari* had been issued. 2 *Hawk.* c. 27, s. 61.

After the defendants have been admitted to bail, the court will not, on affidavit of aggravating facts, increase the bail. 2 *Chit. Rep.* 109.

The prosecutor may compel the defendant to proceed to trial according to his recognizance, by taking out and serving on his clerk in court a side-bar rule, to estreat the recognizance, unless he appears and pleads within the term, and proceeds to trial at the sitting of *nisi prius* after the term, if in town; and in the country, at the next assizes. *Hand. Prac.* 40. And unless the prosecutor, by obtaining and serving the usual rules, compels the defendant to proceed to trial, the recognizance will not be considered as forfeited. 2 *Hawk.* c. 27, s. 54. See 5 *B. & A.* 728.

When the recognizance has been forfeited, the court will not hear any motion to quash the indictment or *certiorari*. 2 *Hawk.* c. 27, s. 55.

All the subsequent process is the same as if the cause had originally been commenced in the court to which the *certiorari* has removed it. *Hand. Prac.* 40, 43, 49.

The notice of the motion for the judgment of the court, when obtained against defendant, is given to the bail as well as to the defendant. *Hand. Prac.* 43, 44.

XI. Costs, as to.

Costs.

Officers and others prosecuting to have costs on conviction.

By 5 & 6 Will. & M. c. 11, s. 3, if the defendant prosecuting the writ of *certiorari* be convicted of the offence for which he was indicted, then the court of K. B. shall give reasonable costs to the prosecutor, if he be the party grieved or injured, or be a justice, constable, or other civil officer, who prosecutes on account of any thing that concerned him as officer, to be taxed according to the course of the said court, who shall, for recovery thereof, within ten days after demand and refusal of payment, on oath, have attachment awarded; and the recognizance not to be discharged till the costs are paid.

This statute is a remedial one; see *post*, 589, n.

Offence.

Offence]—The act extends to the costs of the prosecution of an offence, whether it be a nonfeasance or a malfeasance. 3 *M. & S.* 471; *post*, 588.

What costs allowed.

Reasonable Costs]—The master of the crown office, in taxing the costs, ought only to consider those which are subsequent to the *certiorari*. 2 *Hawk.* c. 27, s. 56.

The costs of conveying a defendant to gaol, in execution of his sentence, are reasonable costs within the statute. *R.* v. *Gilbie*, 5 *M. & S.* 520. The defendant was indicted for a misdemeanor at the Northumberland quarter sessions, and removed the indictment by *certiorari* into the King's Bench, and was afterwards found guilty, and sentenced to two years' imprisonment in the gaol for that county, in execution of which sentence he was conveyed thither at the prosecutor's expense. This expense was allowed to the prosecutor by the master, on taxing the costs. A rule *nisi* having been obtained for the master to review his taxation, it was argued, on showing cause, that this allowance was warranted by stat. 5 & 6 Will. & M. c. 11, s. 3, which enacts, "that if the defendant prosecuting the *certiorari* be convicted of the offence for which he was indicted, the court of K. B. shall give *reasonable costs* to the prosecutor. And it was urged, that if the indictment had been left with the sessions, this expense would not have been incurred, because the defendant would have been on the spot; wherefore it was by the defendant's own act, who removed the indictment, that the cost was incurred, and it is a part of the reasonable costs. The prosecutor, in discharge of his duty, had a right to see that the sentence of the court was executed. In support of the rule it was urged, that the statute Will. & M. did not contemplate costs such as the present, nor, indeed, any costs after judgment. And as to the

defendant being the occasion of this expense, the sentence might as well have been to the prison of this court as to the county gaol. The place, therefore, of imprisonment was the act of the court. The recognizance of the defendant extends to the costs of the trial, and not of execution. The cases *R.* v. *Cholsey*, 2 *Cowp.* 726, and *Q.* v. *Sumers*, 1 *Salk.* 55, were cited. Lord *Ellenborough*, C. J. "Under the terms of the recognizance the defendant was bound to pay all reasonable costs. These costs, if not immediately occasioned by the *certiorari*, were certainly incurred in consequence of it. If the indictment had remained below, no such expense would have been incurred. The defendant's own act, therefore, may be said to have occasioned the expense. It is reasonable that the defendant should bear the expense for which no other fund is provided." *Et per Bayley*, J. It is a part of the prosecution to carry it to is legal conclusion. *Per curiam.* Rule discharged. COSTS.

The prosecutor cannot have the costs of a special jury. 1 *Esp.* 229.

The amount of the costs to be taxed is not limited by the recognizance, which is only a further security for them, and the court will not discharge the recognizance till the taxed costs are paid to the prosecutor. *R.* v. *Teal*, 13 *East*, 4.

If the court, on the certificate of the King's coroner, have given to the prosecutor one-third of the fine, they will order that sum to be deducted from the amount of the taxation. 4 *Burr.* 2125. But the payment of the fine does not discharge the recognizance for the costs. 2 *Hawk.* c. 27, s. 53.

In *R.* v. *Bertrum*, 8 *East*, 269, the defendant was indicted for perjury, and the indictment was removed from the sessions to the King's Bench by *certiorari*. The prosecutor gave notice of trial to the defendant, but on the day of trial withdrew the record without having countermanded the notice in due time. And it was held by the court that he must pay the costs of the trial as in other cases. And see 2 *Chit. Rep.* 159; *R.* v. *Johnson*, *R. & M. C. C.* 173; *R.* v. *Watton*, 4 *C. & P.* 229.

Where a prosecutor having removed an indictment by *certiorari*, gave notice of trial for the assizes, and brought down the record and withdrew it after it had been entered for trial, it was considered that the judge at the assizes could not order the prosecutor to pay the defendant the costs of the day; but that the motion must be made in the court of King's Bench. *R.* v. *Watton*, 4 *C. & P.* 229.

In *R.* v. *Tremaine*, 5 *B. & Cres.* 761; 8 *D. & R.* 590, 684, S. C.; where a true bill for perjury was found, and the judge at the assizes having refused to try it on account of manifest imperfections in the record, a new bill was preferred, whereupon the defendant was found guilty, but a new trial granted, and then the prosecutor, instead of taking down the old record, again preferred a new indictment for the same offence, and removed it into K. B. by *certiorari*, the court refused to stay the proceedings upon that indictment, until the prosecutor paid the costs of the former proceedings.

If the defendant forfeit his recognizance under the statute, by not going to trial at the time specified, it will not be discharged on the application of the bail, until the costs of not proceeding to trial have been paid, notwithstanding the defendant was afterwards acquitted and taken in execution for the amount of the taxation. 3 *Burr.* 1461; 15 *East*, 572.

Party grieved]—The act does not apply to persons *intended* to be aggrieved, but only to those who have suffered actual injury. *R.* v. *Ingleton*, 1 *Wils.* 139. The defendant was indicted for attempting to set fire to the house of one Easton in York, and the indictment also charged that the defendant solicited Mason, one of the prosecutors, to help to set fire to the house. Mason and one Glenton informed the mayor of York of this, who bound Mason and Glenton over to prosecute the defendant. The said defendant removed the indictment by *certiorari* into the court of K. B., and was thereupon convicted and fined. On payment of the fine, it was moved that the recognizance should be discharged. Unto which it was objected that the defendant was obliged to pay the costs of the prosecutors. But by the Who a party grieved.

COSTS.

court—"This case is not within the act; for the act extends only to officers and persons really injured, which neither Glenton nor Mason are, for there was no damage done to the house, but only intended to be done, nor are either of them officers." And the recognizance was discharged.

Who a party grieved.

In *R.* v. *Smith*, 1 *Burr.* 54, it was moved that before the recognizance should be discharged the prosecutor should have his costs. The objection was that no name of any person, as being the party grieved or injured, or a public civil officer, was indorsed upon the indictment. But by the court, it is enough, if it be proved that the prosecutor was such officer, and here it is proved by affidavit. And it was ruled that the prosecutor should have his costs, before the recognizance should be discharged.

Persons dwelling near to a steam-engine, the smoke of which affected themselves, their furniture, and dwellinghouses, and was very offensive and injurious, have been held parties grieved within the statute, and entitled to their costs under it, upon the removal by *certiorari* from the sessions into the King's Bench, of an indictment presented by them for the nuisance. *R.* v. *Dewsnap*, 16 *East*, 194. And Lord *Ellenborough* there observed, "that although a nuisance may be public, yet there may be a special grievance arising out of the common cause of injury, which presses more upon particular individuals than upon others not so immediately within the influence of it."

The prosecutor of an indictment for stopping up an ancient and common footway, which he had used for some years, and had since been obliged to take a more circuitous route, was held to be a *party grieved* within the meaning of stat. 5 & 6 W. & M. c. 11, s. 3. *R.* v. *Williamson*, 7 *T. R.* 32.

And in another case, several persons were held entitled to costs under stat. 5 W. & M. c. 11, as prosecutors of an indictment removed by *certiorari* for not repairing a highway, one as constable of the manor within which the highway lay, the others as parties grieved, they having used the way for many years in passing and repassing from their homes to the next market town, and being obliged by reason of the want of repair to take a more circuitous route. *R.* v. *Taunton St. Mary*, 3 *M. & S.* 465.

In another case, however, where the prosecutor of an indictment for obstructing a highway did not apply for the costs until after the defendant's recognizance had been discharged, and until two years after judgment, and it did not appear that he had ever used the highway before it was stopped, and whilst it was stopped declared he did not care about it, the court held that he was not entitled to costs, although the prosecution was at his expense. The court thought he was not a party grieved; that there ought to have been some special and peculiar injury accruing to him from the obstruction, besides that which affects all the subjects in common with him. *R.* v. *Incledon*, 1 *M. & S.* 268. See also *Miles* v. *Rose*, 4 *M. & S.* 101.

Where the expenses of an indictment for a misdemeanor are defrayed by subscription, and the nominal prosecutors incur no expense, they are not entitled to costs under the act. *R.* v. *Cook*, 1 *Man. & Ryl.* 526.

In the same case it was made a question, whether the near relations of a person whose body has been disinterred for the purposes of dissection are parties grieved within the act. *Id.*

Public officers.

Public Officers]—The costs thus given by the statute of Will. to persons acting in public capacities can only be claimed by them when they prosecute for some offence which actually comes within their own peculiar cognizance, and not a public grievance, with which they think fit to interfere.

Justices of peace.

A justice prosecuting a gaoler for an escape is not entitled to costs. *R.* v. *Sharpness*, 2 *T. R.* 47. The prosecutor, a justice of the peace, had indicted the defendant, who was the keeper of the gaol at St. Alban's, for suffering a prisoner to escape, who had been committed by him for felony; upon which indictment the defendant had been convicted. And it was contended that the prosecutor was entitled to costs under the 5 & 6 W. & M. c. 11, s. 3, as being a *public officer* prosecuting for the benefit of the public. *Ashhurst*, J. "It appears to me, the defendant ought not to be charged with the costs; this is not one of those instances mentioned in the 3d section of the act,

COSTS.

which only extends to those officers who prosecute or present *ex officio*, or where the prosecution is carried on by the party aggrieved. If a justice were to *present* a road, and the same were afterwards turned into an indictment, there the justice would be entitled to costs; or if a justice were to indict a constable or other inferior officer for disobeying his *order*, in such case also he would be entitled to his costs: but this is not a prosecution carried on by him as a magistrate, for any other person might have indicted the defendant; the offence in this case was such as concerned the general justice of the realm." *Buller*, J.—" From a review of all the cases in a MS. note book, it appears that the prosecutor is not entitled to his costs: this book does not indeed include a case from Basingstoke, which came before this court a few years ago, but there I understand the prosecution was carried on by the clerk of the peace, whose duty it was to draw up all presentments of constables in form of indictments; and it was there determined that the prosecutor was entitled to costs. But here I cannot say it was the duty of the prosecutor as a justice of the peace to prosecute this defendant; the case originally came before him in the character of a magistrate on the complaint of some other person, and if the justice chose to take the prosecution out of private hands and to conduct it himself, he cannot be said to prosecute as a magistrate, but like any other individual. The court has always construed this act of parliament as strictly as possible; (*a*) there was one case indeed on this statute, (*R.* v. *Goter*, M. 16 Geo. III.) the law of which I doubt, where it was held, that a person who was injured and was really the prosecutrix, was not entitled to costs, because her name did not appear on the back of the indictment, although it was well known she was the real prosecutrix; but I believe that case has been since overruled. (See *R.* v. *Smith*, *ante*, 588.) In another case, afterwards, the question was whether the prosecutor were entitled to the costs of a trial at bar; and it was determined that he was not, because the statute only extended to small offences. These cases show that the court has always put a strict construction on this act."(*a*) Rule absolute.

Clerk of the peace.

In *R.* v. *Kettleworth*, 5 *T. R.* 33, it was held that a justice of the peace, who *indicted* a road out of repair, was entitled to costs after a removal of the indictment by *certiorari* if the defendant be convicted. " If the verdict had been for the defendant, (Lord *Kenyon*, C. J. said,) and it had appeared that the prosecution was vexatious, the attorney might have been compelled to disclose his real client."

See the case of *R.* v. *Taunton St. Mary*, 3 *M. & S.* 465, *ante*, 588, as to a constable's right to costs of *certiorari*.

Conviction necessary.

The terms in the act " *if the Defendant prosecuting such Writ of* CERTIORARI *be convicted*," mean convicted by a *judgment;* in a case, therefore, where the judgment was arrested, the court held that the defendant not having been found guilty of any offence which the law recognizes as such, (and therefore not considered as guilty persons,) ought not to be mulcted with costs for having removed a bad indictment from an inferior jurisdiction into the King's Bench. *R.* v. *Turner and others*, 15 *East*, 570.

Recovery of costs in case of death.

Death]—If a defendant remove an indictment into the King's Bench by *certiorari*, giving the usual recognizance under stat. 5 & 6 W. & M. c. 11, and be found guilty, and die before the day in bank, his bail are liable to pay the costs. *R.* v. *Turner*, 3 *B. & C.* 160; 4 *D. & R.* 816, S. C.

The sum when duly ascertained by the master becomes a vested debt, and if the prosecutor die before it is paid his personal representatives may recover it. 1 *T. R.* 104; 15 *East*, 573.

(*a*) But this seems incorrect. The act is considered a remedial law. See per Lord *Ellenborough*, C. J. in *R.* v. *Taunton St. Mary*, 3 *M. & S.* 465; and per Lord *Kenyon*, C. J. in *R.* v. *Kettleworth*, 5 *T. R.* 33.

FORMS.

XII. Forms, *List of.*

Affidavit by Defendant for a Certiorari to remove an Indictment for not repairing a Highway, (No. 1.)
Recognizance to appear and plead to an Indictment, (No. 2.)
Notice of Bail after removal of Indictment into the King's Bench, (No. 3.)
Certiorari to Justices of Assize to remove an Indictment from Assizes at instance of Prosecutor, (No. 4.)
Certiorari to remove an Indictment from the Quarter Sessions into the King's Bench and its return, (No. 5.)
Return from a Session, (No. 6.)
Notice of intended Motion for Certiorari to remove a Conviction, &c. (No. 7.)
Writ of Certiorari to two committing Justices to certify information, examination, and deposition, upon which Prisoner was committed, (No. 8.)
Certiorari to two Justices of the Peace to remove a Conviction into the King's Bench, (No. 9.)
Return of Order of Sessions confirming Conviction, (No. 10.)
Return from a single Justice, (No. 11.)

(No. 1.)

Affidavit by defendant for certiorari to remove an indictment from sessions, for not repairing a highway.(a)

In the King's Bench.

A. B. of, &c. [gentleman,] maketh oath and saith, that at the last general quarter sessions of the peace holden in and for the county of S. a bill of indictment was preferred and found against the inhabitants of the parish of C. in the said county, for a nuisance in not repairing a certain common King's highway, leading from M. in the said county of S. towards and unto the town of B. in the county aforesaid, from the entrance into a lane called D. at a place called D. opposite to J. F.'s house, containing in length one quarter of a mile, and in breadth fifteen feet, extending from thence in a western direction as far as N. bridge, in which said indictment it is alleged that the inhabitants of the parish of C. aforesaid ought to repair and amend the same common King's highway, when and so often as it shall be necessary; and the deponent saith, that the right or title to repair said highway will come in question upon the trial of the said indictment as this deponent is advised and verily believes; and the determination of the said indictment may materially affect other parishes similarly circumstanced, by reason of the inclosures lately made in that part of the country, under and by virtue of an act of parliament passed in the thirty-seventh year of his present Majesty's reign, intituled, "An Act," &c. and this deponent further saith he is advised and believes that it will be proper to have the said indictment tried by a special jury, and absolutely necessary that the jury before whom the said indictment is tried should, previous to the trial thereof, view the said highway, which the defendants cannot have the benefit of at the sessions.

(No. 2.)

Recognizance to appear and plead to an indictment in King's Bench.

BE it remembered, that at the [general quarter] session of the peace of our to wit. Sovereign Lord William the Fourth, now King of Great Britain, and so forth, held at in and for the said for our said Lord the King, on to wit, the day of in the year of the reign of our said Sovereign Lord the King, and in the year of our Lord before T. W. Esquire, &c. [names of justices,] justices of our said Lord the King, assigned to keep the peace of our said Lord the King in and for the said county of and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, W. S. late of the parish of in the said county of [Esquire,] W. B. late of, &c. [Gentleman,] and W. P. late of the same place, [Merchant,] come in their own proper persons before us the justices aforesaid, and in open court, severally acknowledged themselves to owe and stand indebted to our Sovereign Lord the now King in the several sums following, that is to say, the said W. S. in the sum of 100l. [query as to the sum,] of lawful money of Great Britain, and the said W. B. and W. P. in the sum of 50l. each, of like lawful money, on condition that if the above bounden W. S. shall appear in his Majesty's Court of King's Bench, at Westminster, in the county of Middlesex, on the first day of next term, and shall plead to all and singular indictments against him for certain nuisances, trespasses, offences, and misdemeanors, whereof he stands

(a) This form is given merely to show the nature of the affidavit required. See *ante*, 578.

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indicted, and at his own proper costs and charges shall cause and procure the issue or issues that shall be joined thereon to be tried in the same term, or at the next assizes to be holden for the said county of if the said court shall not appoint any other time for the trial thereof, or if any other time shall be appointed by the said court for such trial, then at such other time, and shall give due notice of such trial to the prosecutor of such indictment or indictments, or to his clerk in court, and shall appear from day to day in the said court, and shall not depart therefrom until discharged by the said court, then this recognizance to be void, or else to remain in full force.

By the Court.

Taken in court the day and year aforesaid.

A. B. clerk of the peace for the said county.

(No. 3.)

Notice of bail after removal of indictment into King's Bench.

In the King's Bench. *The King against A. B. on the prosecution of G. H.*

SIR,

TAKE notice, that the above-named defendant will put in bail in this cause before the honourable Mr. Justice [Bayley,] at his chambers in [Serjeants' Inn, Chancery Lane,] to-morrow, at o'clock in the forenoon, for his appearance in this honourable court in next term, then and there to answer and plead to the indictment you preferred against him at the last [general quarter] session of the peace of the county of and which you have since removed into this honourable court; the names of the bail are C. D. of, &c. [gentleman,] and E. F. of, &c. [merchant.] Dated this day of A. D.

Your's, &c.

J. J. attorney for the above-named defendant.

To Mr. K. L. attorney for the prosecution.

(No. 4.)

Certiorari to justices of assize to remove an indictment from assizes, at instance of prosecutor.

WILLIAM the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to our justices assigned to hold our assizes in and for our county of and to every of them greeting. We being willing, for certain reasons, that all and singular indictments of whatsoever trespasses, contempts, and misdemeanors, whereof C. D. is indicted before you (as is said,) be determined before us and not elsewhere, do command you and every of you, that you or one of you do send under your seals, or the seal of one of you, before us, on [the morrow of All Souls,] wheresoever we shall then be in England, all and singular the said indictments, with all things touching the same, by whatsoever name the said C. D. is called in the same, together with this our writ, that we may further cause to be done therein what of right and according to the law and custom of England we shall see fit to be done. Witness, Charles Lord Tenterden, at Westminster, the day of in the year of our reign.

KENYON.

Indorsed, "At the instance of the prosecutor."

(No. 5.)

Certiorari to remove an indictment from the quarter sessions into the Court of King's Bench, and its return.

WILLIAM the Fourth, by the grace of God, of Great Britain and Ireland King, Defender of the Faith, and so forth, to the keepers of our peace and to our justices, to hear and determine divers felonies, trespasses, and other misdemeanors committed within our county of and to every of them, greeting. We being willing, for certain reasons, that all and singular indictments of whatsoever trespasses, contempts and assaults, whereof G. A. and M. O. [gentlemen,] are indicted before you, (as it is said,) be determined before us and not elsewhere, do command you and every of you, that you or one of you do send, under your seals, or the seal of one of you, before us, on [the morrow of All Souls,] wheresoever we shall then be in England, all and singular the said indictments, with all things touching the same, by whatsoever the name the said G. A. and M. O. are therein called, together with this our writ, that we may further cause to be done thereon what of right and according to the law and custom of England we shall see fit to be done. Witness, Charles Lord T. at Westminster, the nineteenth day of November, in the year of our reign.

By the Court.

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(No. 6.)

Return from a session.

The return to a *certiorari* for removing *an indictment* may be made in the following manner, on a distinct piece of parchment.

First, on the back of the writ write the following words:

The execution of this writ appears in a certain schedule hereunto annexed.

BE it remembered, that at the general quarter session of the peace of our to wit. Sovereign Lord the King, held at in and for the said county of on Wednesday, in the first week after the close of [*Easter,*] *that is to say, the day of in the year of the reign of our Sovereign William the Fourth, King of the United Kingdom of Great Britain, &c. before A. B., C. D., E. F., and others their fellows, justices of our said Lord the King, assigned to keep the peace of our said Lord the King within the said county of and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, upon the oath of W. J., B. J., &c.* [here insert the names of the jurors by whom the bill was found,] *good and lawful men of the county aforesaid, then and there sworn and charged to inquire for our said Lord the King, and the body of the said county, it is presented in manner and form as appears in a certain indictment annexed to this schedule.*

P. Q. Clerk of the Peace for the said County.

(No. 7.)

Notice of intended motion of *certiorari* to remove a conviction, &c.(a)

To A. B. Esquire, one of his Majesty's Justices of the Peace in and for the [or as the case may be].

WHEREAS you did on the day of in the year of our Lord take the examinations of and and upon such examinations as aforesaid, [or as the case may be,] *did issue your order,* [or *did convict, &c.* as the case may be.] *And whereas it appears that* [here state the objections to the order, conviction, or other proceeding], *and moreover that the said order,* [*conviction,* or other proceeding,] *was irregular and illegal, wherefore the said being resolved to seek a remedy for the injury which he* [or *they*] *has* [or *have*] *received and sustained by means of the said order* [or *conviction* or other proceeding]; *I do hereby, on the behalf of the said according to the form of the statute in that case made and provided, give you notice that his Majesty's Court of King's Bench will, in six days from the time of your being served with this notice, or as soon after as counsel can be heard, be moved on behalf of the said for a writ of* certiorari *to issue out of the said court, and to be directed to* [the proper officer of the quarter session of the peace, if it be a record of session, or otherwise to the justice in whose possession it ought to be], *for the removal of the record of, &c.* [as the case may be] *into his Majesty's said Court of King's Bench. Dated, &c.*

P. Q. Attorney for the said

(No. 8.)

Writ of *certiorari* to two committing justices, to certify information, examination, and depositions, upon which prisoner was committed.

WILLIAM the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to C. D. and E. F. Esquires, two of our justices assigned to keep our peace in and for our county of and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within our said county, and to every of them greeting. We being willing, for certain reasons, that all and singular informations, examinations, and depositions taken by and remaining with you, or either of you, in a certain case of felony or suspicion of felony charged against A. B. and for which you or one of you have committed the said A. B. to the prison of as it is said, be sent by you before us, do command you and every of you, that you or one of you do send us, immediately after the receipt of this our writ, all and singular the said informations, examinations, and depositions, with all things touching the same, as fully and perfectly as they have been taken before you and now remaining in your custody, by whatsoever name the said A. B. is called in the same, together with this writ, that we may further cause to be done therein what of right and according to the law and custom of England we shall see fit to be done. At Westminster, the day of in the year of our reign

By the court, [or as the case may be].

Witness, Charles Lord Tenterden.

(a) See *ante*, 579.

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(No. 9.)

Certiorari to two justices of the peace to remove a conviction into King's Bench.

WILLIAM the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith. To [A. B., Knight, Mayor of the city of York,] and [J. L., Knight,] two of our justices assigned to keep our peace in and for our said city [or county], and also to hear and determine divers felonies, trespasses, and other misdeeds committed within our said city [or county], and to every of them greeting. We being willing for certain causes, that all and singular records of conviction, of whatsoever trespasses and contempts against the form of the statute, intituled, "An Act, &c." whereof C. D. is convicted by you (as it is said), be sent by you before us, do command you, that you send, or one of you do send, all and singular the records of conviction aforesaid, with all things touching the same, by whatsoever name the said C. D. may be named therein, before us, under your seals or the seal of one of you, on [the morrow of All Souls,] wheresoever we shall then be in England, together with this our writ, that we may further cause to be done thereon that which of right and according to the law and custom of our realm of England we shall see fit to be done. Witness, Charles Lord Tenterden, at Westminster, the day of in the year of our reign.

(No. 10.)

Return of order of sessions confirming conviction.

At the general quarter sessions of the peace of our Lord the King, held at in and for the said county, on in the first week after the close of Easter, to wit, on the day of in the year of our Lord and in the year of the reign of our Sovereign Lord William the Fourth, before M. N., O. P., &c. justices of our said Lord the King, assigned to keep the peace of our said Lord the King in and for the county of and also to hear and determine divers felonious trespasses and other misdemeanors committed within the said county.

WHEREAS by a conviction or judgment bearing date the day of in the year under the hands and seals of, &c. thereby setting forth, &c. [set out the whole of the conviction in the third person and in the past tense.] *And whereas the said C. D.* [the person convicted] *did appeal against the said conviction or judgment to the then next and now last court of general quarter sessions of the peace, held at in and for the said county of on Tuesday, the day of January, in the year, &c. when the said appeal was ordered to be continued to this present sessions, and of which said order of continuance the said A. B. [the prosecutor] had ten days' notice previous to this present sessions. Now upon hearing the said appeal, and what hath been alleged and proved on each party's behalf, and full debate and consideration had in the premises, it is ordered by this court that the first mentioned conviction or judgment shall be and is hereby confirmed and made absolute. And it is further ordered by this court, that the said C. D. upon sight of this order, or a copy thereof left with him, pay to the said A. B. the sum of towards the costs and charges in the law by him the said C. D. reasonably expended in and about the defence of the said appeal.(a)*

Adjournment.

Confirmed.

Award of costs where the sessions are required by the statute to award costs on appeal.

By the Court.

(No. 11.)

Return from a single justice.

County of } I, A. B. one of the keepers of the peace and justices of our Lord the King, assigned to keep the peace within the said and also to hear to wit. } and determine divers felonies, trespasses, and misdemeanors in the same committed, by virtue of this writ to me delivered, do under my seal return unto his Majesty, in his Court of King's Bench, the of which mention is made in the same writ, together with all matters touching the same. In witness whereof, I, the said have to these presents set my seal.

Given at in the said county, the day of in the year of the reign of

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(a) The whole of the conviction, as returned by the magistrate, is directed to be here set out, but no more than the substance need be set out.

Challenge to Fight. (a)

Offence of.

WE have already seen that the attempt or incitement to commit felony is in itself a misdemeanor, and so is the send ng a challege to fight, or the giving language which tends to the same end, or the acts of posting and opprobrious expressions, which have the tendency to a breach of the peace, and they are indictable as misdemeanors at common law; *ante*, 292. 6 *East*, 464; 3 *Inst.* 157; *Com. Dig. Battle*, (B.); 1 *Hawk.* c. 63, s. 3; 3 *East*, 581.

Mere words, which though they may produce a challenge, do not directly tend to that issue, as calling a man a liar, are not necessarily criminal; 2 *Ld. Raym.* 1031; 6 *East*, 471; though it is probable they would be so, if it could be shown they were meant to provoke a challenge. And the same words, if written, might probably form the subject of an indictment or action for a libel. 6 *East*, 471.

The 9 Ann. c. 14, s. 8, so far as it relates to the forfeiture and punishment of persons assaulting and beating, or challenging or provoking to fight, any other person, on account of money won at play, is repealed by 9 Geo. IV. c. 31.

Criminal information.

A challenge is one of those offences for which a criminal information will be granted by the court of King's Bench, though this will not be done where the party applying has first incited the proposal; 1 *Burr.* 316; and on this occasion the original letters need not be produced, but copies of them will suffice, if sufficiently verified as correct. 1 *Burr.* 402. See **Information**, Vol. III.

Indictment.

The indictment in most respects resembles that for sending a threatening letter. See *post*, **Threats**, Vol. V.

The *venue* may be either in the county where the challenge is concocted or where it is received. 2 *Campb.* 506.

Punishment.

The *punishment* is fine and imprisonment, or both, as in other cases of misdemeanor. It is in the discretion of the court. 3 *East*, 584; *post*, **Judgment**, Vol. III.; **Misdemeanor**, Vol. III.

Duelling.

As to duelling, see *post*, **Duelling**, Vol. I.; **Homicide**, Vol. III.

Forms.

(No. 1.)

Commitment for sending a challenge.

[Commencement as usual, as *ante*, p. 8]: *on, &c. at, &c. wickedly, wilfully, and maliciously did compose, write, send, and deliver, to one A. B., a certain letter and paper writing containing a challenge to fight a duel with and against him the said C. D. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 2.)

Commitment for provoking a man to send a challenge.

[Commencement as usual, as *ante*, p. 8]: *on, &c. at, &c. wickedly, wilfully, and maliciously did speak, declare, say, and publish to and in the presence and hearing of one A. B., certain provoking, malicious, and scandalous words, with intent to instigate, excite, and provoke the said A. B. to fight a duel with and against him the said C. D. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 3.)

Indictment for sending a challenge to fight a duel. (b)

—— *THE jurors for our Lord the King upon their oath present, that C. D. late of, &c. being a person of a turbulent and quarrelsome temper and disposition, and contriving and intending not only to vex, injure, and disquiet one A. B., and to do the said A. B. some grievous bodily harm, but also to provoke, instigate, and excite*

(a) See this offence fully considered by Grose, J. in passing sentence on Rice, on criminal information for sending a challenge. 3 *East*, 581.

(b) See various other forms, 3 Chit. C. L. 848.

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the said A. B. to break the peace and to fight a duel with and against the said C. D. in, &c., with force and arms, at, &c. wickedly, wilfully, and maliciously did compose, write, send, and deliver, and cause and procure to be composed, written, sent, and delivered unto the said A. B. a certain letter and paper writing containing a challenge to fight a duel with and against the said C. D., and which said letter and paper writing is as follows, that is to say:* [set out the letter *verbatim*, with *innuendoes*, if necessary] *to the great damage, scandal, and disgrace of the said A. B., and against the peace of our said Lord the King his crown and dignity.*

Second count thereon.

And the jurors aforesaid upon their oath aforesaid do further present, that the said C. D., contriving and intending as aforesaid, afterwards, to wit, on the day and year aforesaid, with force and arms, at the parish aforesaid in the county aforesaid, wickedly, wilfully, and maliciously did provoke, instigate, excite, and challenge the said A. B. to fight a duel with and against him the said C. D. to the great damage of the said A. B., and against the peace of our said Lord the King his crown and dignity. [If no duel was fought alter the second count, stating merely the attempt to provoke, &c.]

(No. 4.)

Indictment for provoking a man to send a challenge.

[Commence as in the form (No. 3) to the *, and then thus]: *wickedly, wilfully, and maliciously did speak, declare, say, and publish to, and in the presence and hearing of, the said A. B. these words following, that is to say:* [here set out the words used,] *with intent to instigate, excite, and provoke the said A. B. to challenge him the said C. D. to fight a duel with and against him the said A. B., to the great damage of the said A. B., and against the peace of our said Lord the King his crown and dignity.*

Challenge of Jurors. *See* **Jurors**, Vol. III. p. 426 to 432.

Champerty. *See* **Maintenance**, Vol. III.

Chancery Proceedings. *Proof of. See post,* **Evidence**, Vol. II. p. 45.

Chance-medley. *See* **Homicide**, Vol. III. p. 243.

Chapel. *See post,* **Church**, Vol. I.

Character. *Evidence as to. See post,* **Evidence**, Vol. II. p. 87; **Rape**, Vol. V.

Charges. *See post,* **Costs**, Vol. I.

Charitable Donations. (*a*)

[52 Geo. III. c. 102.]

52 Geo. 3, c. 102.

THE stat. 52 Geo. III. c. 102, for registering and securing of charitable donations, after reciting that "whereas charitable donations have been given for the benefit of poor and other persons in England and Wales to a very

(*a*) The 52 Geo. III. c. 101, relates to charitable trusts.

PROVISIONS AS TO.

52 Geo. 3, c. 102. Deeds, &c. respecting charitable donations already founded to be registered.

considerable amount, and many of the aforesaid donations appear to have been lost, and others, from the neglect of payment and the inattention of those persons who ought to superintend them, are in danger of being lost, or rendered very difficult to be preserved," enacts, "that a memorial or statement of the real and personal estate, and of the gross annual income, investment, and the general and particular objects of all and every charity and charities, and charitable donations, for the benefit of any poor or other persons in any place in England and Wales, which shall have been founded, established, made, benefited, increased, or secured, together with the names of the respective founders of or benefactors thereto, where known, and also of the person or persons in whose custody, possession, or controul, the deeds, wills, and other instruments whereby such charities or charitable donations shall have been founded, established, made, benefited, increased, or secured, may be, and also of the names of the then trustee or trustees, feoffee or feoffees, possessor or possessors, of such real or personal estate, shall, from and after six calendar months after the passing of this act, be registered by such person or persons who shall then be the trustee or trustees, feoffee or feoffees, possessor or possessors thereof, or some or one of such persons, in manner and in the form contained in the schedule to this act annexed, in the office of the clerk of the peace of the county, or city or town, being a county of itself, within which such poor or other persons shall be; and such memorial or statement shall be signed by such person or persons causing the same to be registered and left in the said office of such clerk of the peace, who shall forthwith transmit a duplicate or copy of the same unto the Enrolment Office of the High Court of Chancery."

The like of charitable donations which may hereafter be founded.

Sect. 2. "That wherever any such charity or charitable donations shall be founded, established, made or benefited, increased or secured, by any deed, will, or other instrument hereafter to be made or executed by any person or persons, that then a like memorial or statement, according to the directions hereinbefore contained, shall be registered, and left and transmitted as aforesaid, by such person or persons as are hereinbefore mentioned, within twelve months after the decease of such person or persons by whom any such will, deed or deeds, or other instrument shall have been made or executed."

Clerks of the peace to provide proper books wherein registries shall be made.

Sect. 3. "That for the purpose of such registries of such memorials or statements, the clerk of the peace for the time being of each and every county or city or town, being a county of itself, or riding within England and Wales, shall, as there shall be occasion, provide proper books of parchment or vellum, wherein such registers shall be made and entered; and every such original memorial or statement, and every such book provided as aforesaid, shall be carefully kept and preserved for public use and inspection in the office to which it shall belong, together with a correct index, to be made from time to time by such clerk of the peace, of such charities and charitable donations, distinguishing each by the name of the original or first donor or founder thereof, where known, or the appellation or title most generally used for such charity or charitable donations."

Notice to be given in the London Gazette, if persons to be benefited shall not be wholly within one county.

Sect. 4. "That in case the persons to be benefited by any such charity or charitable donations as aforesaid shall not be wholly within any one county, then and in such case such clerk of the peace of the county where any such charity or charitable donation shall be registered, shall forthwith notify in the London Gazette the name or title thereof, according to the appellation or title used in the index aforesaid, and the names of the several places wherein the objects of such charity or charitable donations shall be, and the particular or general objects thereof, and also the name of the county wherein such memorial or statement shall have been registered."

If donations shall not be registered, a petition may be presented to the Lord Chancellor, &c. complaining thereof.

Sect. 5. "That if any such charity or charitable donation shall not be duly memorialized, stated, and registered according to the provisions of this act, it shall and may be lawful for any two persons or more, interested in such charity or charitable donations, to present a petition to the Lord Chancellor, Lord Keeper or Lords Commissioners for the custody of the great seal, or Master of the Rolls for the time being, or the Court of Exchequer, complaining thereof; and they are hereby required to hear such petition in a summary

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52 Geo. 3, c. 102.

way, and upon affidavits, or such other evidence as shall be produced upon such hearing, to determine the same, and to make such order therein, and with respect to the costs of such application and proceedings, as to him or them shall seem fit, and which order shall be final and conclusive."

No proceedings to decide any right or title.

Sect. 6. "That no proceedings under the provisions hereinbefore mentioned shall extend or be construed to extend to decide any right or title as to the property that shall be so registered, or as to the persons who shall be entitled, or claim to be entitled, to the benefit thereof, or any interest therein."

Clerk of the peace to make searches, and give copies of registers.

Sect. 7. "That all and every clerk of the peace of the several counties and ridings in England and Wales, shall, as often as required, make searches concerning all memorials and statements directed by this act to be entered in his or their office as aforesaid, and shall also give copies of the same under his hand, if required by any person whatsoever, who shall tender or be willing to pay him the sum or sums hereinafter directed to be allowed to him for such copies of such memorials or statements as aforesaid."

Allowance to clerk of the peace,

Sect. 8. "That every such clerk of the peace shall be allowed for the registering every such memorial or statement as is by this act directed, the sum of four shillings, and no more, in case the same do not exceed four hundred words; but if such memorial or statement shall exceed four hundred words, then after the rate and proportion of one shilling an hundred for all the words contained in such entry, and the like fees for the like number of words contained in every copy of any entry given out of the said register, and no more; and for every notification in the London Gazette, the costs of such notification, and the further sum of ten shillings for drawing and inserting the same, and transmitting the duplicate or copy hereinbefore mentioned unto the Enrolment Office of the High Court of Chancery, and no more."

and to the person inserting notification in the Gazette.

Further time to be allowed to register memorial where difficulties occur in preparing the same.

Sect. 9. "That where any difficulty shall occur in making and preparing such memorial or statement as aforesaid, so as to render it necessary to employ any longer time than is allowed by the provisions of this act for registering such memorial or statement as hereinbefore is mentioned, it shall and may be lawful for the Court of Quarter Sessions for the county, or city or town, being a county of itself, wherein such memorial or statement is intended to be registered, to allow, on application made to them, and on examination of the circumstances, such further time, not exceeding six calendar months, as to such court shall seem necessary to be given for the purpose of duly registering such memorial or statement as hereinbefore is mentioned."

Costs attending the preparing memorials to be allowed.

Sect. 10. "That it shall and may be lawful for the Court of Quarter Sessions of the county, or city or town, being a county of itself, wherein such statement or memorial shall have been registered, to allow such reasonable costs and charges attending the preparing and registering, notifying and transmitting such memorial or statement, with reference to the income of the charity or charitable donation, to such person or persons causing the same to be registered, as such court shall think fit; and it shall and may be lawful for such person or persons who shall have caused such memorial or statement to be registered, to deduct out of the income, funds, rents, and profits in his or their hands of such charity or charitable donation so by him or them memorialized and stated and registered, the sum and sums so allowed, and no more: provided always, that the said Court of Quarter Sessions shall not allow any sum whatever for and in respect of such costs and charges, unless it shall be stated to them upon the declaration in writing of the person or persons applying for such allowance, and signed by him or them, that such memorial or statement is to the best of his, her, or their knowledge and belief true in every respect, and that it doth contain to the best of his, her, or their knowledge and belief, a true and full account of the real and personal estate, annual gross income, investment, and the particular or general objects of the charity or charitable donation of which such memorial or statement shall have been registered, together with the names of the respective donors or benefactors thereto, where known, and also of the person or persons in whose custody, possession or controul, the deeds, wills, and other instruments hereinbefore mentioned, shall at such time be, and also the names of the trustee or trustees, feoffee or feoffees, possessor or possessors of such

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real and personal estate: provided always, that none of the provisions hereinbefore contained shall be construed to extend to any charity or charitable donation not issuing out of or secured upon any lands, tenements, or hereditaments, or directed by the founder or donor thereof to be secured thereon, or to be permanently invested in government or any public stocks or funds, nor to any charitable donation whatsoever, which by the direction of the donor thereof, or by the lawful rules of any charitable institution whatsoever, may be wholly or in part expended in and about the charitable purposes for which the same may have been given, at the discretion of the governors, directors, managers, or the trustee or trustees of such charitable institution at any time whatsoever."

52 Geo. 3, c. 102. Not to extend to any donation not secured upon lands; nor to charitable institutions.

Act not to extend to any royal foundations, nor to certain institutions:

Sect. 11. "That nothing in this act shall be construed to extend to any hospital, school, or other charitable institution whatsoever, which shall have been founded, improved, or regulated by or under the authority of the King's Most Excellent Majesty, or any of his royal predecessors, or of any special act of parliament thereunto particularly relating; nor to any charitable donation under the superintendence of any such hospital, school, or institution, nor to the governors of the corporation of the charity for the relief of poor widows and children of clergymen, nor to any friendly society, the rules whereof shall have been confirmed according to the provisions of the act or acts for the encouragement and relief of friendly societies; nor to either of the Universities of Oxford or Cambridge, nor to any college or hall thereto belonging, nor to any charitable bequest, devise, gift, or foundation whatsoever belonging thereto, or under the controul, direction, superintendence, or management of the said Universities or either of them, or any college or hall therein respectively; nor to the Radcliffe Infirmary within the University of Oxford; nor to the colleges of Westminster, Eton, or Winchester, or any of them; nor to any cathedral or collegiate church within England and Wales; nor to the Charter House; nor to the corporation of the Trinity House of Deptford Strond; nor to any funds applicable to charitable purposes for the benefit of any persons of the Jewish nation."

Nor to charitable institutions of Quakers.

Sect. 12. "That nothing in this act contained shall extend to any charitable foundation or donation which shall have been or shall be given to and for the benefit of any person or persons of the society of people called Quakers, and which shall be under the superintendence and controul of persons of that persuasion."

Nor to charitable foundations, the accounts of which are directed to be passed in the court of chancery, &c.

Sect. 13. "That nothing in this act contained shall extend to any charity or charitable donation or foundation, the accounts of the income and expenditure whereof shall have been directed to be annually passed in the High Court of Chancery, nor to any charity or charitable donation or foundation, the annual gross income whereof shall not exceed forty shillings, and of which the trustee or trustees, feoffee or feoffees, possessor or possessors, some or one of them, shall within six months after the passing of this act deposit in the hands of the minister of the parish wherein any of the objects of the charity, charitable donation, or foundation, shall be, a written memorial or statement in like form as in the schedule hereunto annexed is contained, and which by such minister shall be forthwith deposited in the parish chest."

Divers charities may be stated in the memorial.

Sect. 14. "That where any body corporate, guild, or fratenity, shall be entrusted with the possession or distribution of divers charities or charitable donations or foundations, or of the rents and profits thereof, that in such cases all such charities, charitable donations and foundations, may be registered and stated in one and the same memorial."

Saving clause.

Sect. 15. "Saving always to the King's Most Excellent Majesty, and to all other persons, such power of superintending and regulating charities and charitable establishments, and the property and funds thereof, as they respectively had before the making of this act."

SCHEDULE to which this Act refers.

52 Geo. 3, c. 102.

A MEMORIAL or statement in pursuance of an Act for the registering and securing of charitable donations; whereby it is declared by the undersigned [state the

name or names of the persons who sign the memorial or statement] *that the real or personal estate* [state this as the case may be] *of the* [state the title, or appellation of the charity or charitable donation] *consists of* [state this as the case may be; and if real estate, whether it be in lands, tenements, or hereditaments, and of what tenure, and where the same are situate, or whether of any charge or incumbrance on any lands, tenements, or hereditaments, and where situate: and if personal estate, describe the nature of it, and how secured] *and the gross annual income arising therefrom amounts to* [state the sum] *and the objects of which charity or charitable foundation are* [state the general or particular objects of the charity] *and which charity or charitable foundation was, according to the best of my* [or *our*, as the case may be] *knowledge and belief, founded by* [state by whom; and if benefited, increased, or secured by any other person, state the same and by whom] *and the deeds, wills, and other instruments* [state this as the case may be; and if no deeds, wills, or other instruments exist, state the same] *are, to the best of my* [or *our*, as the case may be] *knowledge and belief, in the custody, possession, or controul* [state this as the case may be] *of* [state the name of the body corporate or natural person] *and the trustees, feoffees, or possessors* [state this as the case may be] *of the said real and personal estate* [state this as the case may be] *are, to the best of my* [or *our*, as the case may be] *knowledge and belief* [state the name of the body corporate or natural person, as the case may be]. *(Signed)* *A. B.*
C. D.
E. F.

Trustee or trustees, feoffees, possessor or possessors of the real or personal estate [as the case may be] *of the charity or charitable donation hereby memorialized and registered.*

Cheat.

OF cheats punishable by public prosecution there are two kinds.

I. *By the Common Law*, 599.

II. *By Statutes*, 602.

[50 Geo. III. c. 59; 7 & 8 Geo. IV. c. 29, s. 53.]

III. *Indictment for*, 605.

IV. *Forms*, 606.

I. By the Common Law.

Cheats by the common law described.

Hawkins lays it down that "cheats, which are punishable by the common law, may in general be described to be deceitful practices, in defrauding or endeavouring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty; as by playing with false dice; or by causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written; or by persuading a woman to execute writings to another, as her trustee, upon an intended marriage, which in truth contained no such thing, but only a warrant of attorney to confess a judgment; or by suppressing a will; and such like." 1 *Hawk.* c. 71, s. 1.

But this general doctrine would include a variety of injuries for which the party's only remedy would be by action on the case, and not by indictment; and it is now settled that at common law no mere fraud, not amounting to *felony*, is an indictable offence, unless it affects the crown or the *public*.

False message not indictable as a cheat.

Thus the deceitful receiving of money from one man to the use of another, upon a false pretence of having a message and order to that purpose, is not punishable at common law by a criminal prosecution, because it is accompanied with no manner of artful contrivance, but only depends on a bare naked lie; and it is said to be needless to provide severe laws for such mischiefs, against which common prudence and caution may be a sufficient security. 1 *Hawk.* c. 71, s. 2; 2 *East's P. C.* 818.

CHEATS AT COMMON LAW.

In a case where a party obtained money of another, by pretending to come by the command of a third person to demand a debt or the like in his name, showing no voucher or token for his authority; it was holden not indictable, for it was the party's own fault to trust him. And, by the Court, "We are not to indict one man for making a fool of another: let him bring his action." R. v. *Jones*, 2 *Ld. Raym.* 1013; 1 *Salk.* 379; 6 *Mod.* 105, S. C.

Counterfeit pass.

A person for a counterfeit pass was adjudged to the pillory, and fined. *Dalt.* c. 32.

Miller changing corn.

On an indictment against the defendant, a miller, for changing corn, and returning bad corn instead of it, it was considered maintainable; for being a cheat in the way of trade, it is deemed an offence against the *public*. *R.* v. *Wood*, 1 *Sess. Ca.* 217.

But in a later case, it was held not indictable for a miller receiving good barley to grind at his mill, to deliver a musty and unwholesome mixture of oat and barley meal, different from the produce of the barley: and Lord *Ellenborough*, C. J., there said, "The allegation that the quantity (of meal) delivered was musty and unwholesome, if it had alleged that the defendant delivered it as an article for the food of man, might possibly have sustained the indictment: but I cannot say that its being musty and unwholesome necessarily and *ex vi termini* imports that it was for the food of man, and it is not stated that it was to be used for the sustentation of man, only that it was a mixture of oat and barley meal. As to the other point, that this is not an indictable offence, because it respects a matter transacted in the course of trade, and where no tokens were exhibited by which the party acquired any greater degree of credit; if the case had been that this miller was owner of a soke mill, to which the inhabitants of the vicinage were bound to resort in order to get their corn ground, and that the miller, observing the confidence of this his situation, had made it a colour for practising a fraud, this might have presented a different aspect; but as it is, it seems no more than the case of a common tradesman who is guilty of a fraud in a matter of trade or dealing." *R.* v. *Haynes*, 4 *M. & S.* 214; *ante*, 406.

Falsely pretending to discharge soldiers.

A person, falsely pretending that he had power to discharge soldiers, took money of a soldier to discharge him, and being indicted for the same, the court held the indictment to be good. *Serlestead's case*, 1 *Latch.* 202.

A minor pretending to be of age.

As there are frauds which may be relieved civilly, and not punished criminally, (with the complaints whereof the courts of equity do generally abound); so there are other frauds, which in a special case may not be helped civilly, and yet shall be punished criminally: thus if a minor go about the town, and pretending to be of age, defraud many persons by taking credit for considerable quantities of goods, and then insist on his nonage; the persons injured cannot recover the value of their goods, but they may indict and punish him for a *common cheat*. *Barl.* 100.

Cheating at a race.

And in the case of *Q.* v. *Orbell* it was holden to be an indictable offence to get a person to lay money on a race, and to prevail with the party to run booty; for though the cheat was private in this particular, yet it was *public* in its consequences. 6 *Mod.* 42. *Sed query.* The parties might at all events have been indicted for a conspiracy.

So where two effected a cheat, by means of the one pretending to be a merchant and the other a broker, and as such bartering pretended wine for hats, they were convicted. *R.* v. *Macarthy & Fordenborough*, 2 *Ld. Raym.* 1179. But the ground of that judgment was that it was a conspiracy. 2 *East's P. C.* 824.

Selling short measure.

Finally, the distinction which, as it seemeth, will solve almost all cases of this kind, was taken in the case of *R.* v. *Wheatley*, 1 *Bla. Rep.* 273; 2 *Burr.* 1125, S. C. The defendant was indicted and convicted for selling beer short of the due and just measure, to wit, sixteen gallons as and for eighteen. Upon a motion in arrest of judgment, it was said by the court, this is only an inconvenience and injury to a private person, arising from that private person's own negligence and carelessness in not measuring the liquor upon receiving it, to see whether it held the just measure or not. "Offences that are indictable must be such as affect the *public*, as if a man use false weights and measures, and sell by them to all or to many of his customers, or use

CHEATS AT COMMON LAW.

them in the general course of his dealing: so if there be any conspiracy to cheat; for these are deceptions that common care and prudence are not sufficient to guard against. These are much more than private injuries; they are *public offences.*" But in the present case it is a mere *private* imposition or deception. No false weights or measures are used; no conspiracy; only an imposition upon the person he was dealing with, in delivering him a less quantity instead of a greater; which the other carelessly accepted. It is only a non-performance of his contract; for which non-performance the other may bring his action. So the selling an unsound horse for a sound one is not indictable. The buyer should be more upon his guard: and the distinction which was laid down, as proper to be attended to in all cases of this kind is this; that in such impositions or deceits where common prudence may guard persons against their suffering from them, the offence is not indictable; but where false weights and measures are used, or false tokens produced, or such methods taken to cheat and deceive, as people cannot by any ordinary care or prudence be guarded against, there it is an offence indictable.

A mere imposition is not indictable as a cheat.

The general rule.

If therefore a person sell by false weights, though only to one person, it is an indictable offence; but if, without false weights, he sells to many persons a less quantity than he pretends to sell, he is not indictable. *R.* v. *Young*, 3 *T. R.* 104.

False weights.

An indictment at common law charged the defendant with deceitfully intending, by divers crafty means and subtle devices, to obtain possession of certain lottery tickets, the property af A., pretending that he wanted to purchase them, and delivered to A. a fictitious order for the payment of money, purporting to be a draft upon a banker for the amount, which he knew he had no authority to draw, and would not be paid; by which he obtained the tickets, and defrauded the prosecutor of the value. It was objected in arrest of judgment that the defendant was not charged with having used any false token to accomplish the deceit; for that the banker's check drawn by the defendant himself, entitled him to no more credit than his bare assertion that the money would be paid. And the objection was held good, and the judgment arrested. *R.* v. *Lara*, 6 *T. R.* 565.

Drawing false cheques.

But in another case, on an indictment on the repealed stat. 30 Geo. II. c. 24, where it appeared that the prisoner had obtained property by giving a draft on his banker and pretending he had cash there to pay it, *Bayley*, J. (before whom the prisoner was tried) said that this point had been recently before the judges, and that they were all of opinion that it is an indictable offence fraudulently to obtain goods by giving in payment a cheque upon a banker with whom the party keeps no cash, and which he knows will not be paid. *R.* v. *Jackson*, 3 *Campb.* 370.

So in *R.* v. *Gibbs*, 1 *East*, 185, Ld. *Kenyon* again held that an indictment for a cheat at common law cannot be maintained unless some false token be made use of: a mere false affirmation is not sufficient. 2 *East's P. C.* 818.

A false affirmation is not enough.

All frauds affecting the crown and the public at large are indictable, though arising out of a particular transaction or contract with the party. 2 *East's P. C.* 821.

Frauds upon the crown or public.

Therefore an indictment lies for wilfully, deceitfully and maliciously supplying prisoners of war with unwholesome food, not fit to be eaten by man. *Treve's case*, 2 *East's P. C.* 821.

So obtaining the king's bounty for enlisting as a soldier by an apprentice, reclaimable by his master, is an indictable offence at common law. In such case, the indenture of apprenticeship must be proved by one of the two subscribing witnesses, in order to warrant the conviction. *R.* v. *Jones*, Coventry Lent Assizes, 1777; 2 *East's P. C.* 822; 1 *Leach*, 174.

Enlistment by an apprentice.

Some of the above offences are punishable not only by fine and imprisonment, but further with other infamous punishment; as in *Leeson's* case, who was three times set on the pillory (*a*) for cheating with false dice. *Cro. Jac.*

Punishment.

(*a*) Abolished by stat. 56 Geo. III. c. 138, except in cases of perjury or subornation of perjury. See title Perjury, &c. Vol. V.

CHEATS BY STATUTE.

497. Others are punishable by fine and imprisonment only, at the discretion of the judges, which is regulated by the circumstances of each particular case. 1 *Hawk.* c. 71, s. 3.

II. By Statute.

By statute.

The stat. 7 and 8 Geo. IV. c. 29, s. 53, after reciting that "whereas a failure of justice frequently arises from the subtle distinction between larceny and fraud," enacts "that if any person shall by *any false pretence* obtain from any other person any chattel, money, or valuable security, (*a*) with *intent to cheat or defraud* any person of the same, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to suffer such other punishment, by fine or imprisonment, (*b*) or by both, as the court shall award: provided always that if, upon the trial of any person indicted for such misdemeanor, it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted of such misdemeanor; and no such indictment shall be removable by *certiorari*; (*c*) and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts." See the general clauses affecting all the provisions of this act, *post*, Larceny, Vol. III. 550 to 556.

Misdemeanor.

Transportation or fine and imprisonment.

Not to merge in felony.

No *certiorari*.

Not to be twice tried.

Repeal of acts.

The 7 and 8 Geo. IV. c. 27, wholly repeals the stat. 33 Hen. VIII. c. 1, (respecting privy tokens, &c.) and the stat. 52 Geo. III. c. 64; and also repeals so much of the stat. 30 Geo. II. c. 24, "as relates to obtaining by false pretence or pretences, any property as therein mentioned;" and so much of the stat. 3 Geo. IV. c. 114, (the act as to Hard Labour,) as relates to this offence.

Alterations.

The latter part of the 7 and 8 Geo. IV. c. 29, s. 53, enacting that the offence of felony shall not merge in the misdemeanor if it appear there was a felony, is new and very important; for before the act, if it appeared the offence amounted to larceny, defendant was acquitted, and very nice questions arise as to what amounted to larceny where false pretences are used. 2 *East's P. C.* 689; *R.* v. *Adams*, *R. & R. C. C.* 225.

What a false pretence.

What a False Pretence within the Act]—There may be a sufficient false pretence within the act by the acts and conduct of the party, without any verbal representations of a false and fraudulent nature. The fact of uttering a counterfeit note as a genuine note is tantamount to a representation that it was so. *R.* v. *Freeth*, *R. & R. C. C.* 127; *R.* v. *Story*, *id.* 81. See 3 *C. & P.* 420.

If a person obtain goods from another upon giving him in payment his check upon a banker, with whom in fact he has no account, this, (though not indictable as a fraud at common law, (*R.* v. *Lara*, 6 *T. R.* 565, *ante*, 601,) is a false pretence within the act. *R.* v. *Jackson*, 3 *Campb.* 370.

But obtaining credit in account from the party's own banker, by drawing a bill on a person on whom the party has no right to draw, and which has no chance of being paid, is not within the above act, though the banker pays money for him in consequence thereof to an extent he would not otherwise have done. *R.* v. *Wavell*, *R. & M. C. C.* 224.

It will not avail the defendants that the pretence consists in a false representation of something to take place at a *future* time, as that a bet had been laid that a certain pedestrian feat would be performed, for it is equally within the intention of the statute. *R.* v. *Young and others*, 3 *T. R.* 98.

(*a*) As to what is such valuable security, see sect. 5 of the act, *post*, Larceny, Vol. III. p. 551.

(*b*) As to hard labour or solitary confinement, see sect. 4 of the act, *post*, Larceny, Vol. III. p. 552.

(*c*) Where counts are joined for a conspiracy, at common law, to obtain goods by false pretences, the *certiorari* is not taken away. *R.* v. *Saunders*, 5 *D. & R.* 611.

CHEATS BY STATUTE.

So if a man be authorised to inspect and pay a number of journeymen, and to draw on the clerk of the masters for the amount of the sums earned, and he delivers in a false account, and draws on the clerk for the amount in such false account, he will be guilty under the statute; as he would never have obtained the credit unless he had delivered his fictitious estimate. *R.* v. *Wickell*, 2 *East*, *P. C.* 830. What a false pretence.

And if a carrier obtains money by pretending to have delivered goods and to have lost the receipt given him by the person to whom they were directed, he may be indicted for the statutable offence. *R.* v. *Airey*, 2 *East's Rep.* 30.

R. v. *Count Villeneuve*, 1778, cited in 3 *T. R.* 98, which was tried before *Morton*, C. J., of Chester, and *Buller*, J., at Chester. The defendant applied to Sir T. Broughton, telling him that he was instructed by the Duke de Lauzun to take some horses from Ireland to London, and that he had been detained so long by contrary winds that his money was spent. Sir T. Broughton was thereupon induced to advance some money to him. But it afterwards appearing that the whole story was a fiction, the defendant was tried for a cheat on the stat. 30 Geo. II. and convicted. The judgment was affirmed.

If a person procuring a tradesman to sell him goods as for ready money, direct him to send his servant with them to his lodgings, and then deliver fabricated bills in payment, retaining the goods, though he cannot be prosecuted for felony in stealing them, he may be found guilty of obtaining them by false pretences. 2 *Leach*, 614.

It seems that obtaining money from the county treasurer by a forged order, purporting to be signed by a magistrate, for payment of expenses of conveying vagrants, is an offence within the act. *R.* v. *Rushworth*, *Russ. & Ry. C. C.* 317; 1 *Stark. C. N. P.* 396, S. C.

But a pretence that the party *will do* an act he did not mean to do, as a pretence that he will pay for goods on delivery, is not a false pretence within the act. *R.* v. *Goodhall*, *id.* 461; *R.* v. *Clifford*, *in K. B.* 1824.

If one professes to sell an interest in property and receives the purchase money, the vendee taking the usual covenant for title, and it turns out that the vendor had in fact previously sold his interest in the property to a third person, this is not sufficient to support an indictment for obtaining money by false pretences. *R.* v. *Coddrington*, 1 *C. & P.* 661.

If a man assume the name of another to whom money is required to be paid by a genuine instrument, this is not within the act. *R.* v. *Story*, *Russ. & Ry. C. C.* 81.

An indictment does not lie for a deceitful misrepresentation and warranty of a horse. *R.* v. *Pywell*, 1 *Stark. C. N. P.* 402.

Where the defendants were charged with obtaining money by colour and pretence of their being collectors of the property tax, and it appeared in evidence that they had in fact been appointed collectors by the commissioners, though in an informal manner: this was holden not to be a *false* pretence within the meaning of the act. *R.* v. *Dobson*, 7 *East*, 218.

Obtaining the Property]—A person endeavouring by a counterfeit letter to defraud another of goods, and being apprehended on suspicion of such fraud before he hath got the goods into his possession, seems not to be within this statute. *R.* v. *Brian*, 2 *Sess. Ca.* 27. See *Russ. & Ry. C. C.* 107, n.; *R.* v. *Phillips*, 6 *East*, 464. Obtaining the property.

The Property obtained]—The statute in the 5th section defines what shall be deemed a *valuable security* within the meaning of the act. See the section, *post*, LARCENY, Vol. III. p. 551. Nature of property.

Where a prisoner by false pretence obtained a check on a banker on *unstamped* paper, payable to D. F. J., and not payable to *bearer*, this was held not a valuable security, as it would have been a breach of the law for the banker to pay it. *R.* v. *Yates*, 1828; *Carr. C. L.* 333; *R. & M. C. C.* 170, S. C.

The Intent]—The pretence must be only for the purpose of obtaining the property. A pretence to a parish officer as an excuse for not working, that Intent.

CHEATS BY STATUTE.

the party has not clothes, when he really has, though it induce the officer to give him clothes, is not obtaining goods by false pretences within the act. *R.* v. *Wakeling, Russ. & Ry. C. C. R.* 504.

The intent may be implied sufficiently from the facts of the case. See *ante*, 538.

Certiorari.

Certiorari]—The statute expressly takes away the right to a *certiorari*; however, where counts are joined on this act with counts for a conspiracy at common law, to obtain goods by false pretences, the *certiorari* is not taken away. *R.* v. *Saunders*, 5 *D. & R.* 611. See *ante*, Certiorari, p. 512.

Other statutes.

OTHER STATUTES RELATING TO]—There are several enactments respecting particular persons and things, which make the obtaining of property under a particular species of fraud a larceny, and which will be found considered, *post*, Larceny, Vol. III. And amongst these are frauds of agents, servants, lodgers, manufacturers, and persons employed in public offices. As to the offence of personating bail, see *ante*, 309; personating soldiers or seamen, *post*, Military Law, Vol. III.; Seamen, Vol. V.

Any person embezzling or fraudulently applying money issued to them for the public services to be adjudged guilty of a misdemeanor, and punished by transportation, &c.

The stat. 50 Geo. III. c. 59, for the more effectually preventing the embezzlement of money or securities for money belonging to the public, by any collector, receiver, or other person entrusted with the receipt, care, or management thereof, enacts, "that if any person or persons to whom any money or securities for money shall be issued for public services, shall from and after the passing of this act embezzle such money, or in any manner fraudulently apply the same to his own use or benefit, or for any purpose whatever except for public services, every such person so offending, and being thereof duly convicted according to law, in any part of the United Kingdom, shall be adjudged guilty of a misdemeanor, and shall be sentenced to be transported beyond the sea, or to receive such other punishment as may by law be inflicted on persons guilty of misdemeanors, and as the court before which such offenders may be tried and convicted shall adjudge."

Any officer, collector, &c. entrusted with the receipt or management of the public revenues, and furnishing false statements, to be adjudged guilty of a misdemeanor.

Sect. 2. "That if any such officer, collector or receiver so entrusted with the receipt, custody or management of any part of the public revenues, shall knowingly furnish false statements or returns of the sums of money collected by him or entrusted to his care, or of the balances of money in his hands or under his controul, such officer, collector or receiver so offending, and being thereof convicted, shall be adjudged guilty of a misdemeanor, and shall be adjudged to suffer the punishment of fine and imprisonment, at the discretion of the court, and be rendered for ever incapable of holding or enjoying any office under the crown."

Soldiers making certain false statements at the time of their enlisting, to be punished as for obtaining money by false pretences.

The Annual Mutiny Act usually enacts, that any person who shall knowingly, wilfully, and designedly, make any false representation of any particular contained in the oaths marked (A.) and (B.), and certificates marked (C.) and (D.), (*a*) in the schedule to this act respectively contained and annexed, (oaths and certificates after enlistment,) before the justice of the peace or magistrate, at the time of his attestation, for the purposes of obtaining, and shall obtain, any enlisting money, or any bounty for entering into his Majesty's service, or any other money, shall be deemed guilty of obtaining money under false pretences, if in England, within the true intent and meaning of the stat. 7 & 8 Geo. IV. c. 29; and the production of such certificate and proof of the handwriting of the justice of the peace giving such certificate, shall be sufficient evidence of such party having represented the several particulars contained in the oath sworn by him and specified in the certificate of the justice at the time of his being attested; and that proof by the oath of one or more credible witness or witnesses, that the person so prosecuted hath freely and voluntarily declared or acknowledged, that, at the time of his enlistment, he belonged to the militia, or to any regiment in his Majesty's service, or to his Majesty's navy or marines, shall be deemed and taken as evidence of the fact so by him declared or acknowledged, without production of any roll or other document to prove the same.

Evidence.

(*a*) See forms, *post*, Military Law, Vol. III.

III. Indictment for.

Form of]—As to the venue in general, see *post*, **Indictment**, Vol. III. p. 330 to 333. The venue should be laid in the county where the money was obtained, and not where the false pretences were used. *R.* v. *Burdett*, 4 *Barn. & Ald.* 179. Form of.

Several defendants may be included in the same indictment, if they were all jointly concerned in the false pretence used; see 3 *T. R.* 98. So several charges may be included in the same indictment. *Id.*

It is necessary to set forth the false pretences employed by the defendant as they will appear at the trial. *R.* v. *Mason*, 2 *T. R.* 581; 1 *Campb.* 495; *R.* v. *Munox*, 1 *Sess. Ca.* 201; 2 *Stra.* 1127. False pretences.

In *R.* v. *Mason*, 2 *T. R.* 581, the defendant was indicted for obtaining money by *false pretences;* and on his trial at the sessions at Worcester he was convicted, and received sentence of transportation for seven years. The defendant brought a writ of error, and assigned for error that it did not appear by the indictment what the particular and specific false pretenses were, by which he obtained the money. *Buller*, J. The question is not a new one: I remember a case when I was at the bar, and I argued it on the analogy to the case in *Strange* for obtaining a note by false tokens, which entirely governs this. That was a case on the stat. 33 Hen. VIII. c. 1, which makes it an offence to obtain money or goods by false tokens. The stat. 30 Geo. II. c. 24, only enlarges the description of the offence in the statute of Hen. VIII. Both statutes are made *in pari materiâ;* and whatever has been determined in the construction of one of them is a sound rule of construction for the other. The judgment was arrested in the case in *Strange;* because the indictment did not specify the *false tokens:* then, by the same reason, an indictment on stat. 30 Geo. II. c. 24, which speaks of *false pretences*, must state what the false pretences are, otherwise the indictment is bad; there is no distinction between the two cases, the same objection which held in the one must also prevail in the other. I am of opinion that the objection is fatal. *Grose*, J., of the same opinion; observing, that this is a charge for a precise crime, and therefore it must be alleged. Judgment reversed, and the defendant ordered to be set at liberty.

The false pretences must be proved as laid; for here it was alleged that the defendant said he had paid a sum of money into the Bank of England, and it was proved in evidence that he merely alleged "the money has been paid into the bank," the variance was holden fatal; 1 *Campb.* 494. But a basket is sufficiently described in the proceedings, under the general term "parcel;" 1 *Campb.* 212. And it does not seem necessary to describe the false pretences with greater minuteness than that with which they were presented to the mind of the party injured at the time the imposition was practised upon him; 3 *T. R.* 102. On an indictment for delivering in payment of a horse certain promissory notes, which the prisoner knew to be not good nor of any value, the notes purported to be of a country bank, which was supposed to have failed; it was held, that at all events it was necessary to prove that the notes were bad and of no value. *R.* v. *Flint*, *R. & R. C. C.* 460. See *R.* v. *Spencer*, 3 *Car. & P.* 420.

If the indictment charge the defendant with having attempted to obtain money by means of a paper writing purporting to be an order for money, and the instrument cannot be considered as stated in the indictment to be such an order, it is bad. *R.* v. *Cartwright R. & R. C. C.* 106.

It is not necessary to prove the whole of the pretence charged; proof of part of the pretence, and that the money was obtained by that part will suffice. *R.* v. *Hill*, *R. & R. C. C.* 190.

It is necessary to aver that the defendant did *knowingly and designedly pretend*, &c. and it is sufficient to aver that the defendant *did knowingly and designedly obtain* the goods by means of the false pretences. *R.* v. *Howarth*, 3 *Stark. C. N. P.* 26. See also *R.* v. *Hill*, *supra.*

The *intent to cheat* should be stated in every material part of the indictment; and an indictment for presenting a forged order to W. L. treasurer, Intent.

INDICTMENT FOR.

&c. pretending it was genuine, and obtaining from W. L. under it, 4*l.* 10*s.* 6*d.* after charging that the prisoner, with intent to cheat, &c. the treasurer presented the order, and that he knowingly, &c. pretended it was a genuine order, proceeded; "and so the jurors, &c. say, that the prisoner, on, &c. did obtain the said sum of, &c." but the intent to cheat and defraud W. L. was not stated in this part of the indictment, nor was the obtaining charged to have been effected knowingly and designedly, the indictment was held bad. *R.* v. *Rushworth*, 1 *Stark. C. N. P.* 396; *R. & R. C. C.* 317, S. C.

The property obtained.

The *property* which the defendant obtained should be stated accurately. See *post*, **Indictment**, Vol. III. p. 348.

Owner of.

The statement as to who was the owner of the property should be according to the fact, or a variance would be fatal. See *post*, **Indictment**, Vol. III. p. 343.

An indictment for a fraud at common law, charging the false pretence to have been made to one person, and the deceit to have been practised on a different person, was held bad. *R.* v. *Lara*, 2 *Leach*, 647; 2 *East's P. C.* 819, 824; 6 *T. R.* 565. S. C.

Negativing truth of pretences.

The indictment must negative by *special averment* the truth of the pretences. It is not enough to charge that the defendant *falsely pretended*, &c. (setting forth the pretences) *by means of which said false pretences he obtained the money*, &c. therefore for want of such averment in the indictment, the Court of King's Bench reversed the judgment. *R.* v. *Perrott*, 2 *M. & S.* 379.

IV. Forms.

(No. 1.)

To the Constable of in the county of .

Warrant on 7 & 8 Geo. 4, c. 29, s. 53, to apprehend an offender for a cheat.

County of } *WHEREAS complaint hath been made unto me one of his Majesty's*
to wit. } *justices of the peace for the said county, upon the oath of A. I. of that on the day of A. O. did knowingly, unlawfully, and designedly, by false pretences then and there made by him, that is to say, by* [here state shortly the false pretences,] *obtain certain goods and chattels* [or *monies*, or *valuable securities*,] *to wit, &c. of the property, goods, and chattels of the said A. I. of and from the said A. I. with intent then and there to cheat and defraud the said A. I. of the same, contrary to the statute in that case made and provided. These are, therefore, in his Majesty's name, to command you, upon sight hereof, forthwith to apprehend and bring the said A. O. before me, to answer the said complaint, and further to be dealt with according to law. Given under my hand and seal this day of A. D.* 18

(No. 2.)

Commitment under 7 & 8 Geo. 4, c. 29, s. 53, for obtaining goods by false pretences.

[Commencement as usual, *ante*, p. 8, (No. 1.)] *on, &c. at, &c. knowingly, unlawfully, and designedly, by certain false pretences, then and there made by him, that is to say,* [here state shortly the false pretences,] *did then and there obtain from the said C. D. certain goods and chattels* [or *monies*, or *valuable securities*,] *of the said C. D. with intent then and there to cheat and defraud the said C. D. of the same: against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 3.)

Indictment at common law for selling by false weights and measures.

—— *THE jurors for our Lord the King upon their oath present, that C. D. late of, &c. on, &c. and from thence until the taking this inquisition, did use and exercise the trade and business of a shopkeeper, and during that time did deal in the buying and selling by weight of divers goods, wares, and merchandizes, to wit, at, &c. aforesaid; and that the said C. D. being a person of wicked and depraved mind, and contriving and fraudulently intending to cheat and defraud the subjects of our said Lord the King, whilst he used and exercised his said trade and business, to wit, on the said, &c. and on divers other days and times between that day and the day of taking this inquisition, at, &c. aforesaid, did knowingly, unlawfully, wilfully, and publicly keep in a certain shop there, wherein the said C. D. did so as aforesaid carry on his said trade, a certain false pair of scales for the weighing of goods, wares, and merchandizes, by him sold and disposed of in the way of his said trade; which said scales were then and there, by artful and deceitful ways and*

means, so made and constructed as to cause the goods, wares, and merchandizes weighed therein and sold thereby, to appear of greater weight than the real and true weight by one-eighth part of such apparent weight; and that the said C. D. on, &c. aforesaid, at, &c. aforesaid, (he the said C. D. then and there knowing the said scales to be false as aforesaid,) did knowingly, willingly, and fraudulently sell and utter to one A. B. a subject of our said Lord the King, certain goods in the way of his said trade, to wit, a large quantity of [butter] weighed in and by the said false scales, as and for two pound weight of [butter,] whereas in truth and in fact the weight of the said [butter] so sold as aforesaid was short and deficient of the said weight of two pounds by one-sixth part of the said weight of two pounds, to wit, at, &c. aforesaid, to the great damage of the said A. B. to the evil example of all others, and against the peace of our Lord the King his crown and dignity.

(No. 4.)

Indictment for defrauding a person of a sum of money by colour of a false and counterfeit letter and other false token.(a)

—— *THE jurors for our Lord the King upon their oath present, that L. P. late of, &c. being an evil disposed person, and not minding to get his living by truth and honest labour, according to the laws of this realm, but compassing and devising how he might unlawfully obtain and get into his hands and possession the monies of the honest liege subjects of our said Lord the King, for the maintenance of his unthrifty living, on, &c. at, &c. aforesaid, falsely and deceitfully did pretend and affirm to one T. T. [that his, the said L. P.'s name, was H. H. and that he was the son of H. H. of N. in the county of S. Esquire, and nephew to Mr. H. of N. in the county of S. (meaning J. H. of N. in the county of S. clerk,) and that the said L. P. a certain false and counterfeit letter, in the name of him the said J. H. as a true letter of the proper handwriting of him the said J. H. falsely, fraudulently, and deceitfully, to the said T. T. then and there did deliver, (he the said J. H. of N. in the county of S. clerk, then and long before being the special friend and intimate acquaintance of him the said T. T.) by which said false and counterfeit letter it was mentioned that the said J. H. desired the said T. T. to supply the bearer thereof, Mr. J. H. with the sum of sixty guineas, and to place it to his account, (meaning the account of him the said J. H.)] and that the said T. T. then and there believing the said false and counterfeit letter to be of the proper handwriting of him the said J. H. did then and there pay and deliver to the said L. P. sixty pieces of gold coin of the proper coin of this kingdom called guineas, of the value of sixty-three pounds of lawful money of Great Britain, whereas in truth and in fact, the said J. H. never did write or send, or cause to be written or sent, any such letter to the said T. T. desiring the said T. T. to supply the said H. H. with any sum of money whatever, and so the jurors, &c. do say, that the said L. P. on the said, &c. at the said, &c. by colour of the said counterfeit letter, and by the said false pretences, unlawfully, falsely, fraudulently, and deceitfully, did obtain and get into his hands and possession, of and from the said T. T. the said sum of sixty-three pounds of lawful money of Great Britain, of the monies of him the said T. T. and the said L. P. the said T. T. of his money aforesaid then and there fraudulently and deceitfully did deceive and defraud, to the great damage and deceit of the said T. T. to the evil example, &c. against the peace, &c. and also against the form, &c.*

(No. 5.)

Indictment on 7 & 8 Geo. 4, c. 29, s. 53, for obtaining goods from a tradesman under pretence of being servant to a customer and sent for them by him. (b)

—— *THE jurors for our Lord the King upon their oath present, that J. O. late of, &c. being an evil disposed person, and a common cheat, and contriving and intending unlawfully, fraudulently and deceitfully to cheat and defraud one J. P. of, &c. [woollen draper] of his goods, wares, and merchandizes, [or monies, or securities, &c. see ante, 602,] on, &c. with force and arms, at, &c. aforesaid, unlawfully, knowingly, and designedly, did falsely pretend to the said J. P. that [he the said J. O. then was the servant of one C. C. of [tailor], (the said C. C. then and long before being well known to the said J. P. and a customer of the said J. P. in his said business and way of trade) and that he the said J. O. was then sent by the said C. C. to the said J. P. for five yards of certain superfine woollen cloth,] by which said false pretences the said J. O. did then and there, to wit, on, &c. at, &c. aforesaid, unlawfully, knowingly, and designedly, obtain from the said J. P. [five yards of superfine woollen cloth,] of the value of [four pounds, fifteen shillings] of the goods, wares, and merchandizes of the said J. P. with intent then and there to cheat and defraud him the said J. P. of the same, against the form of the statute in such case made and provided;*

(a) See this form, Cro. C. C. 7th ed. 307.

(b) This form may be readily adapted to other cases: see various other forms of Indictments, 3 Chit. C. L. 1005, &c.

CHILDREN.

whereas in truth and in fact, the said J. O. was not then the servant of the said C. C., and whereas he the said J. O. was not then or ever hath been sent by the said C. C. to the said J. P. for the said cloth, or for any cloth whatsoever,] to the great damage and deception of the said J. P. to the evil example of all others, against the peace of our said Lord the King, and also against the form of the statute in such case made and provided.

Cheese. *See ante,* **Butter and Cheese,** p. 547.

Chelsea Hospital. *Offences relating to. See post,* **Seamen,** Vol. V.; *as to laying Property in in Indictments, post,* **Indictment,** Vol. III. p. 343.

Children. (*a*)

I. *Stealing of,* 608.
[9 Geo. IV. c. 31, s. 21.]
II. *Carnally abusing,* 609.
(1.) *A Girl under Ten Years of Age,* 609.
(2.) *A Girl between Ten and Twelve Years of Age,* 609.
[9 Geo. IV. c. 31, s. 17.]
III. *Concealing the Birth of,* 610 to 613.
[9 Geo. IV. c. 31, s. 14.]

I. Child Stealing.

Child stealing, a felony.

By the 9 Geo. IV. c. 31, s. 21, it is enacted, "that if any person shall maliciously, either by force or fraud, lead or take away, or decoy or entice away, or detain any child under the age of ten years, with intent to deprive the parent or parents, or any other person having the lawful care or charge of such child, of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong; or if any person shall, with any such intent as aforesaid, receive or harbour any such child, knowing the same to have been, by force or fraud, led, taken, decoyed, enticed away, or detained, as hereinbefore mentioned; every such offender and every person counselling, aiding, or abetting, such offender, shall be guilty of felony, and, being convicted thereof, shall be

Punishment.

liable to be transported beyond the seas for the term of seven years, or to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding two years, and, if a male, to be once, twice, or thrice, publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment: provided always, that no person who shall have claimed to be the father of an illegitimate child, or to have any right to the possession of such child, shall be liable to be prosecuted by virtue thereof, on account of his getting possession of such child, or taking such child out of

Proviso.

(*a*) As to the abduction of, see title, **Abduction,** *ante,* p. 6; as to abortion, see title, **Abortion,** *ante,* p. 9; as to the support of bastard children, see title, **Bastards,** *ante,* p. 346; as to the support of poor children, see *post,* **Poor,** Vol. IV.; as to their being witnesses, see *post,* **Evidence,** Vol. II. p. 63, **Infant,** Vol. III.; as to right to defend parent, see title, **Assault,** *ante,* p. 270; as to their liability for crimes, and other points as to, see *post,* **Infants,** Vol. III.

the possession of the mother, or any other person having the lawful charge thereof." STEALING OF, &c.

See the general clauses, affecting this and all the provisions of this act, *post*, **Malicious Injuries to Person**, Vol. III.

This act repeals the stat. 54 Geo. III. c. 101.

The word *detain* is introduced in this act, which was not in the former one.

(No. 1.)

[Commencement as usual, as *ante*, p. 8, (No. 1.)] *on, &c. at, &c. a certain child, under the age of ten years, to wit, of the age of* [*seven*] *years, named E. F. the son,* [or *daughter*] *of one J. F. then and there feloniously and maliciously, by force and fraud, did lead and take away,* [or *decoy and entice away*, or *detain*, as the case may be,] *with intent to deprive the said J. F. of the possession of the said child:* [or *with intent certain articles, to wit, &c. of the value of £ , upon and about the person of the said E. F. the goods and chattels of the said J. F. then and there feloniously to steal, take, and carry away;*] [or *with intent then and there to deprive one A. B. of the possession of the said E. F., the said A. B. then and there having the lawful care and charge of the said E. F.* according to the fact]: *against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual to the end.] Commitment under 9 Geo. 4, c. 31, s. 21, for stealing, &c. a child.

(No. 2.)

—— *THE jurors for our Lord the King upon their oath present, that C. D. late of, &c. on &c. with force and arms, at, &c. a certain child under the age of ten years, to wit, of the age of* [*seven*] *years, named E. F. the son* [or *daughter*] *of one J. F. then and there feloniously and maliciously, by force and fraud, did lead and take away, with intent then and there to deprive the said J. F. of the possession of the said child:* [or *with intent then and there to deprive one A. B. of the possession of the said E. F., the said A. B. then and there having the lawful care and charge of the said E. F.:*] [or *with intent certain articles, to wit, &c. of the value of £ upon and about the person of the said E. F. of the goods and chattels of the said J. F. then and there feloniously to steal, take, and carry away*: according to the facts; and if any doubt, add more counts accordingly]: *against the form of the statute in such case made and provided, and against the peace of our Lord the King his crown and dignity.* Indictment for like offence.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said C. D. afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, a certain other child under the age of ten years, to wit, of the age of [*seven*] *years, named E. F., the son* [or *daughter*] *of the said J. F. then and there feloniously, maliciously, and by fraud did decoy and entice away, with intent, &c.* [as in the first count to the end.] [Add another count merely stating the detention.] Second count.

II. Carnally abusing Children.

(1.) Carnal Knowledge of Girls under Ten Years of Age.

By the 9 Geo. IV. c. 31, s. 17, it is enacted, "that if any person shall unlawfully and carnally know and abuse any girl under the age of ten years, every such offender shall be guilty of felony, and being convicted thereof shall suffer death as a felon." Carnally abusing a girl under ten years, Death.

See the general clauses affecting the whole of this act, *post*, **Malicious Injuries to Persons**, Vol. III.

This act repeals the stat. 18 Eliz. c. 7.

By the 18th section of the statute, the law as to the proof of the offence is materially changed; it will be found, *post*, **Rape**, Vol. V. p. 259.

(2.) Carnal Knowledge of Girls between Ten and Twelve Years of Age.

By the 9 Geo. IV. c. 31, s. 17, it is enacted, "that if any person shall unlawfully and carnally know and abuse any girl being above the age of ten years and under the age of twelve years, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be impri- Carnally abusing a girl between ten and twelve years. Punishment for.

CARNALLY ABUSING, &c.

soned, with or without hard labour, in the common gaol or house of correction, for such term as the court shall award."

See the general clauses, affecting this and all the provisions of this act, *post*, **Malicious Injuries to Persons**, Vol. III.

This act repeals c. 13 of the Statute of Westminster, (3 Edw. I.)

By the 18th section of the act, the law as to the proof of this offence is materially changed, and will be found, *post*, **Rape**, Vol. V. p. 259.

As to the attempt to assault children, see *ante*, **Attempts, &c.** p. 292.

Under these acts the consent or resistance of the child is immaterial.

As to the admissibility of children as witnesses, see *post*, **Evidence**, Vol. II. p. 63.

The indictment should conclude "contrary to the form of the statute." 1 *East's P. C.* 448. The word "ravished" should not be inserted. *Id.*

(No. 1.)

Commitment on 9 Geo. 4, c. 31, s. 17, for carnally abusing a girl under ten years.

[Commencement as usual, *ante*, p. 8, (No. 1.)] *on, &c. at, &c. feloniously did assault one C. D., a girl under the age of ten years, to wit, of the age of* [*nine*] *years, and her the said C. D. then and there feloniously did unlawfully and carnally know and abuse, against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual to the end.]

(No. 2.)

The like of a girl between ten and twelve years.

Same as preceding form, omitting "*feloniously*," and stating the girl as "*a girl above the age of ten years, and under the age of twelve years, to wit, of the age of* [*ten*] *years.*"

(No. 3.)

Indictment on 9 Geo. 4, c. 31, s. 17, for carnally abusing a girl under ten years.

—— *THE jurors for our Lord the King upon their oath present, that C. D. late of, &c. on, &c. at, &c. with force and arms, in and upon one E. F. a girl under the age of ten years, to wit, of the age of* [*nine*] *years, in the peace of our Lord the King then and there being, feloniously did make an assault, and her the said E. F. then and there feloniously did unlawfully and carnally know and abuse, against the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity.*

(No. 4.)

The like of a girl between ten and twelve years.

—— *THE jurors for our Lord the King upon their oath present, that C. D. late of, &c. on, &c. at, &c. with force and arms, in and upon one E. F. a girl above the age of ten years, and under the age of twelve years, to wit, of the age of* [*eleven*] *years, in the peace of God and our Lord the King then and there being, did unlawfully make an assault, and her the said E. F. then and there did unlawfully and carnally know and abuse, against the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity.*

III. Concealment of Birth of.

Concealment of birth of.

The murder of *bastard* children by the mother was considered as a crime so difficult to be proved, that the stat. 21 Jac. c. 17, was passed, which made the concealment of the death of a bastard child an undeniable evidence of murder in the mother, except she could prove by one witness at least that it was actually born dead.

But this law, which was accounted to savour strongly of severity, and always construed most favourably for the unfortunate object of accusation, was repealed, together with an Irish act upon the same subject, by stat. 43 Geo. III. c. 58, s. 3, (called Lord Ellenborough's Act.) 4 *Bla. Com.* 198; 1 *Russ.* 424.

A woman secreting the dead body of her child, to conceal the fact of its birth, guilty of misdemeanor.

This latter act, except as to its repeal of the former, is repealed by the 9 Geo. IV. c. 31, and by the 14th section of which act it is enacted, "that if *any* woman shall be delivered of *a child*, and shall, by secretly burying or

CHILDREN, CONCEALMENT OF BIRTH OF.

otherwise disposing of the dead body of the said child, endeavour to conceal the body thereof, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding two years; and it shall not be necessary to prove whether the child died before, at, or after its birth: provided always, that if any woman tried for the murder of her child shall be acquitted thereof, it shall be lawful for the jury, by whose verdict she shall be acquitted, to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as if she had been convicted upon an indictment for the concealment of the birth."

Proviso.

See the general clauses, *post*, **Malicious Injuries to Persons**, Vol. III.

This provision is in effect nearly the same as that of the 43 Geo. III. c. 58, s. 3, except that the woman may now be indicted for the concealment as a specific misdemeanor, whereas under the 43 Geo. III. she could be only found guilty of this offence after a trial on an indictment or inquisition for murder; and also, that by this act, hard labour may be imposed. Also by this new act, the offence is extended to the concealment of the birth of any child, whether a bastard or not.

Observations and decisions as to.

A woman may now be convicted of concealing the birth of her dead bastard child, on an indictment for that specific misdemeanor, as well as after a trial for murder, on being acquitted of the capital charge; and it should also be observed, that if the coroner's jury find that the birth of the child was concealed, this will neither put the party upon her trial, nor warrant the coroner in committing her; and this being only a misdemeanor, it seems that there is no law that justifies her detention till a magistrate's warrant can be taken out. *Car. C. L.* 242, 3; see *R.* v. *Maynard*, *R. & R. C. C.* 240; *R.* v. *Cole*, 3 *Campb.* 371.

The stat. 43 Geo. III. c. 58, s. 3 & 4, was held to extend to all cases of concealment of the birth, whether the child be born alive or otherwise, and although the birth was probably known to an accomplice. *R.* v. *Cornwall*, *Russ. & R. C. C. R.* 336. The same law would apply to this new act.

In the case of *R.* v. *Mary Southern*, 1 *Burn's J.* 24th ed. 335, the prisoner was indicted for the wilful murder of her female bastard child. It appeared in evidence, that in the course of the night she was delivered of the child, which at four o'clock in the morning she took and threw into the privy. It also appeared that she had provided a cap and some trifling articles of childbed-linen. No marks of violence appeared on the body of the child; and the surgeon, who examined the prisoner soon after her delivery, added, that from the state of the after-birth, and from the appearance of the child, he was of opinion that even if the child had been born alive, it could only have lived for a very short period. It was contended for the prisoner, that the statute of 43 Geo. III. c. 58, did not apply to the case of a still-born bastard child; and that from the construction which had been put upon the former stat. of 21 James I. c. 27, (the defects of which it was the object of the stat. 43 Geo. III. c. 58, to remedy, and within the provisions of which the present case would not fall,) that even if it did not sufficiently appear that the child was born dead, the circumstances of the prisoner having made provision for the birth would take the case out of the statute. But *Bayley*, J. said, he should rule that the stat. 43 Geo. III. c. 58, extended to all cases, whether it was proved that the child was still-born, or left the matter in doubt; and that he was of opinion in this case there was sufficient evidence to go to the jury of a concealment of the birth. His lordship added, that if the prisoner had avowed her pregnancy while she was in that state, or had, to the knowledge of any other persons, made preparation for her confinement, these circumstances would undoubtedly have been evidence to have satisfied a jury that the putting away the child was not for the purpose of concealing the birth, but that they would only have been matters of evidence, and would not have withdrawn the question of concealment from the consideration of the jury. The jury found the prisoner guilty of the con-

CHILDREN, CONCEALMENT OF BIRTH OF.

cealment, and she was sentenced to be imprisoned two months in the house of correction.

In the case of Anne Bayley, tried for child murder at Stafford, 1828, *Car. C. L.* 243, *Vaughan*, B. laid down, that on all inquests held on the bodies of dead bastard children, it was the bounden duty of the coroner to tell the jury, in all cases where there was not the most *clear and decisive proof* that the child was born alive, that they ought never to think of returning a verdict of wilful murder against the mother.

If any person, even an accomplice, were present at the birth; *R. v. Peat*, 1 *East's P. C.* 229; or if the mother called for help, or had previously confessed her pregnancy; *Id.* 228; these circumstances would probably negative the *concealment*. So if the woman made provision for the birth of her child, this also might be deemed a circumstance indicative of her intention not to conceal it. *Id.* (*a*).

Abortion. As to the offence of abortion, see *ante*, **Abortion**, p. 9.

Murder. As to the murder of bastards, see *post*, **Homicide**, Vol. III.

(No. 1.)

Commitment on 9 Geo. 4, c. 31, s. 14, for concealing the birth of a child.

[Commencement as usual, as *ante*, p. 8, (No. 1.)] *on, &c. at, &c. in the said county, being then and there delivered of a certain child, did, by secretly burying the same* [or otherwise, according to the fact,] *unlawfully endeavour to conceal the birth thereof, against the form of the statute in such case made and provided, and you the said keeper, &c.* [as usual to the end].

(No. 2.)

Indictment for like offence.

—— *THE jurors for our Lord the King upon their oath present, that A. B. late of, &c. on, &c. at, &c. being then and there pregnant with child, was then and there delivered of the said child alive, and which said child then and there instantly died, and that the said A. B. being so delivered of the said child as aforesaid did then and there unlawfully endeavour to conceal the birth of the same by then and there secretly burying* [or other-

(*a*) The following useful observations upon the subject of infanticide are collected in Mr. J. Jervis's work on Coroners, 127, 8.

The first question which naturally presents itself is, whether the child was born alive. As a test of this, it was formerly usual to immerse the lungs in water, it being supposed that if they floated, the child must have respired. But this test is now quite exploded, for it is obvious, that if the child make but one gasp and instantly die, the lungs will swim in water as readily as if the child had breathed longer, and it is not uncommon for an infant to breathe as soon as its mouth is protruded from its mother, although it may die before its body be born. *Hunt.* 17. Air may also be passed into the lungs by inflation or be generated by putrefaction, and both will produce the same effect.

This question is, however, less difficult in cases of immature birth. Under the fifth month no fœtus can be born alive; from the fifth to the seventh it may come into the world alive, but cannot maintain existence; but at the seventh it may be reared. As the period of gestation may be pretty accurately ascertained from the appearance of the fœtus in these cases, the doubt is easily resolved. See *For. Med.* 312; *Prac. Mid.* 112; 3 *Par.* 100.

The next question is, the cause of the death. Now the child may die in the womb,—during the labour by pressure —or by strangulation from the umbilical cord. *Elem. of Mid.* 180. In which latter cases the body presents appearances which to a common observer would seem to be the marks of a violent death. Upon this subject Dr. Hunter says,—"When a child's head or face is swollen, and is very red or black, the vulgar, because hanged people look so, conclude it was strangled, nothing is more common in natural births."—p. 13.

But the child, though safely delivered, may still die without any criminal act of the mother. Children may be born so weak, that if left to themselves, after breathing or sobbing they would die; or even a strong child may be suffocated by being left upon its face either in the pool made by the natural discharges or upon wet clothes.—*Hunt.* 18. These and a variety of other causes may contribute to the death of new-born infants, particularly where the mother is delivered in secret by herself, and being exhausted, frequently faints and becomes insensible.

wise disposing of, as the case may be] *the dead body of the said [male] child, against the form of the statute in that case made and provided, and against the peace of our Lord the King his crown and dignity.* FORMS.

And the jurors aforesaid, on their oath aforesaid, do further present, that the said A. B. on, &c. aforesaid, at, &c. aforesaid, being then and there pregnant with a child, was then and there delivered of the said last-mentioned child, which said last-mentioned child was, at the time the said A. B. was so delivered of him as last aforesaid, dead, to wit, at, &c. aforesaid: and the said A. B. being so delivered of the said last-mentioned child as aforesaid, did then and there unlawfully endeavour to conceal the birth of the same, that is to say, by secretly burying [according to the fact] *the dead body of the said last-mentioned child, against the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity.* Second count.

Chimney Sweeps. *See* Apprentices, *ante*, p. 225.

Church.

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III. *Seats and Pews*, 616.
[58 Geo. III. c. 45; 59 Geo. III. c. 134; 3 Geo. IV. c. 72.]

IV. *Goods, Ornaments, and Monuments, &c.* 619.

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GENERAL MATTERS AS TO.

I. General Matters relating to.

Definition of word church.

THE ancient Saxon word is *cyrce*, the Danish *kircke*, the Belgic *kercke*, the Cimbric *kirkia* or *kurk*; probably from the Greek word κυριακος, belonging to the Lord, or κυριου οἰκος, the Lord's House; so that we have lost the ancient pronunciation of the word (except in the northern parts of England and Scotland) by softening the letters *c* or *ch*, as we have done in many cases; which letters the ancient Greeks and Romans always pronounced hard, as the letter *k*.

Chancel.

Chancel (cancellus) seemeth properly to be so called, *a cancellis*, from the lattice work partition betwixt the quire and the body of the church, so framed as to separate the one from the other but not to intercept the sight. 1 *Burn's E. L.* 342. (*a*)

Ile.

Ile is said to proceed from the French word *aile (ala)*, a wing, for that the Norman churches were built in the form of a cross, with a nave and two wings. *Id.* See *post*, 616, &c. as to seats in.

Way.

Although the church and churchyard be the parson's and be consecrated, yet a man may prescribe to have a way through either. 2 *Roll's Abr.* 295.

Door.

No one can make a private door into the churchyard without the consent of the minister, whose freehold the churchyard is, and a faculty also from the bishop for the same. 1 *Burn's E. L.* 349.

Freehold.

The *soil and freehold* of the church and churchyard belongs solely to the parson or incumbent for public purposes, and he alone has the right of making any disposition of or bringing any action for an injury with respect thereto. See *Bac. Abr. Churchwardens*, B. The *fee simple* of the glebe is in abeyance. 1 *Fost.* 341. Such freehold is in him for public purposes and not for his own emolument. *Per Bayley*, J. *Bryan* v. *Whistler*, 8 *B. & Cres.* 293.

Action for injuring freehold.

If the walls, windows, or doors, or any part of the *freehold* of the church or churchyards be injured by any person, the incumbent of the rectory, or his tenant if they be let, may have his action for the damages. *Wats.* c. 39. As to the *goods* in the church, see *post*, **Churchwardens**, p. 640, &c.

Who may erect.

No person can erect a church without the leave and consent of the bishop. *Gibs.* 189.

Consecration.

The civil law takes *no* notice of churches or chapels till they are consecrated by the bishop. 3 *Inst.* 203, 4; *Gibs.* 190; and see *Stallwood* v. *Fredger*, 2 *Phil. Rep.* 292. And as to the consecration and dedication of churches, &c. see 1 *Burn's E. L.* 323 to 342, by *Tyrwhit*.

Uniting of churches.

By stat. 17 C. II. c. 3, in cities and towns corporate, the bishop (with the consent of the mayor, aldermen, and justices of the peace, and of the patron) may unite two churches or chapels; and make order, with the like consent, that the patrons present by turns, having regard to the value of the livings united; and the incumbents thereof shall be graduates.

Sect. 2. Notwithstanding any such union be made by virtue hereof, each of the parishes so united shall continue distinct as to all rates, taxes, parochial rates, charges, and duties, and all other privileges, &c. whatsoever, other than such as are before specified; and churchwardens shall be elected for each parish, as they were before such union made.

New churches.

Clauses are commonly inserted in the several acts of parliament for making provision for the rectors of new churches, which clauses give certain powers to justices of the peace in relation to the assessments to be made for that purpose. And in the case of borrowing money for rebuilding clergymen's

(*a*) A grant of part of the chancel of a church by a lay impropriator to his heirs and assigns is not valid in law, and therefore such grantee, or those claiming under him, cannot support trespass for pulling down his or their pews there erected. See *Clifford* v. *Wicks*, 1 *B. & A.* 498. The parson alone can confer a complete title in the body of the church, but Lord Coke says, "that for the body of the church the ordinary is to place and displace; in the chancel the freehold is in the parson, and is parcel of his glebe." *Brownl. & Godsb. R.* 45. Custom may vest this power in the churchwardens. *Post*, 616; 1 *Burn's E. L.* by *Tyrwhitt*, 342, n.

houses, by the 17 Geo. III. c. 53, s. 1, (called Mr. Gilbert's act, explained and amended by stat. 21 Geo. III. c. 66,) the estimates are to be sworn to before a justice of the peace or master in chancery; and see stat. 5 Geo. IV. c. 89. CHURCHYARD.

The stats. 58 Geo. III. c. 45; 59 Geo. III. c. 134, amended by stat. 5 Geo. IV. c. 103; relate to the building and promoting the building of additional churches in populous parishes. See also the stats. 43 Geo. III. c. 108; 51 Geo. III. c. 115; 55 Geo. III. c. 147; 56 Geo. III. c. 141; and 1 Geo. IV. c. 6; relating to parsonage-houses, churchyards, and glebe lands.

But these enactments more immediately belonging to the ecclesiastical law, and not relating in any way to the office and duties of a justice of peace or parish officer, it has not been considered expedient to insert them in this work. See *Burn's E. L.* tit. *Churches.*

II. Churchyard.

Churchyard. A churchyard is a place belonging to the church, and where dead bodies are buried.

It is the common burial place for all parishioners. *Comp. Incumb.* 381.

Repair of fence, &c. The *parishioners* are bound to repair the fence of the churchyard at their own charge. *Lind.* 253; 2 *Inst.* 489.

And Lord *Coke* says, "that the parishioners ought to repair the inclosure of the churchyard, because the bodies of the more common sort are buried there, and for the preservation of the burials of those that were, or should have been while they lived, the temples of the Holy Ghost." 2 *Inst.* 489.

And if the churchyard be not decently inclosed the church (which is God's house) cannot decently be kept, and therefore this the parishioners ought to do by custom known and approved; and the conusance thereof belonged to the ecclesiastical court. 2 *Inst.* 489.

By prescription the *vicar* may be liable to repair the fence. In *R.* v. *Reynell, Clerk*, 6 *East*, 315, a vicar was indicted for a *misdemeanor*, in not repairing the fence of a churchyard, which he had been immemorially bound to repair, by means whereof cattle broke in and injured the tombstones, church porch, &c. to the nuisance of the parishioners. Accordingly, after verdict for defendant, the Court of King's Bench refused to grant a rule *nisi* for a new trial, on the ground of the verdict being against evidence: leaving the prosecutors to indict again for any continuing want of repair.

If the owners of lands adjoining to the churchyard have used time out of mind to repair so much of the fence thereof as adjoineth to their ground, such custom is a good custom, and the churchwardens may have an action against them at the common law for the same. 2 *Roll. Abr.* 287; *Gibs.* 194.

By *Canon* 85, the churchwardens or questmen shall take care that the churchyards be well and sufficiently repaired, fenced, and maintained with walls, rails, or pales, as have been in each place accustomed, at their charge unto whom by law the same appertaineth.

If trees in the churchyard be cut down, or the grass thereon eaten by a stranger, the incumbent may bring his action; *Bro. Abr. Trespass*, 210; and so may his lessee if the churchyard be let; 2 *Roll. Abr.* 337; the soil and freehold being in the incumbent, *ante*, 614.

As to burials in churchyards, see *Burn's E. L.* title, *Burial; post*, Homicide, Vol. III. p. 258.

Enlarging of, &c. The 56 Geo. III. c. 141, enables ecclesiastical corporate bodies under certain circumstances to alienate lands for enlarging cemeteries or churchyards.

By the 39 Geo. III. c. 134, s. 36, all parishes or extra-parochial places required by the commissioners shall furnish lands for enlarging existing or making additional churchyards or burial grounds, as the commissioners shall deem necessary; and the commissioners shall give notice to the churchwardens, to be left at their abodes, of the intention to enlarge the existing or

SEATS AND PEWS.

set out new burial grounds, and of the extent of ground required for such purpose, and for a proper approach thereto, and of the place in which the same is required to be provided; and the churchwardens shall within fourteen days call a meeting of the vestry, or persons possessing the powers of vestry, for taking all necessary measures for providing the same: and in case the parish or place cannot provide the same without purchase, the vestry, or persons possessing the powers of vestry, are required forthwith to proceed to treat for ground according to such notice, but shall not conclude any bargain without the commissioners' approbation.

Duty of churchwardens as to.

The 3 Geo. IV. c. 72, s. 26, empowers the commissioners therein mentioned to authorise parishes to procure and buy additional burial grounds, and empowers churchwardens to complete the purchases.

III. Seats and Pews in.

Seats and pews. Who a right to in general.

By the general law and of common right all the pews in a parish church are the common property of the parish, they are for the use in common of the *parishioners*, who are *all* entitled to be seated orderly and conveniently without payment, so as best to provide for the accommodation of all. *Fuller* v. *Lane*, 2 *Addams*, 425; *Walter* v. *Sumner*, 1 *Hagg. Rep.* 317; *Wats.* c. 39; *Pettman* v. *Bridger*, *Phill.* 323.

Nonparishioners have no such rights: and directly an occupier of a pew ceases to be a parishioner, his right to the pew, however founded and how valid soever during his continuance in the parish, at once ceases and determines. *Fuller* v. *Lane*, 2 *Addams*, 425; *Byerley* v. *Windus*, 5 *B. & C.* 19; 7 *D. & R.* 564, S. C.

By the 43 Geo. III. c. 108, s. 5, in every parochial church or chapel hereafter erected, ample provision shall be made for decent and suitable accommodation of all persons soever entitled to resort thither whose circumstances may render them unable to pay for the same; and see further the provisions in the acts for building new churches, *post*, 618, as to free seats, &c.

The seats cannot be *sold* nor *let* without a special act of parliament. *Wyllie* v. *Mott*, 1 *Hagg. Rep.* 29.

Who may appoint to sit in.

But though parishioners have this right, they are not at liberty to choose and take what seats they like, the distribution of seats among them rests in the ordinary, and which authority he in general exercises by the churchwardens. See *Wats.* c. 39; *Pettman* v. *Bridger*, *Phill.* 316, 323; *Groves* v. *Rector of Hornsey*, 1 *Hagg.* 394.

This authority must be exercised justly and discreetly by the churchwardens, or they may be corrected by the ordinary. *Wyllie* v. *Mott*, 1 *Hagg. Rep.* 33.

They should place the parishioners according to their rank and station. *Phill.* 323.

By custom the churchwardens may have the ordering of the seats, as in London. *Wats.* c. 39; 1 *Salk.* 167; *Gibs.* 198.

When it belongs to a particular person.

The parson or rector impropriate is entitled to the chief seat in the chancel. *Noy*, 153; *Johns.* 264.

In some places where the parson repairs the church the vicar by prescription claims a right of a seat for his family. *Johns.* 242, 243.

It is a groundless notion with impropriators that they have the same right in the great chancel that a nobleman hath in a lesser. 1 *Burn's E. L.* 864.

Where a parishioner has a pew allotted to him he cannot on his ceasing to be a parishioner let the pew with, and thus annex it to his house; but it reverts to the disposal of the ordinary. See *Wyllie* v. *Mott*, 1 *Hagg. Rep.* 34; *post*, 617.

Right to by faculty or prescription.

A pew, seat, or priority in a seat, in the body of the church, may be appropriated and belong to a *house* in the parish, by *faculty*, or by *prescription*,

which presupposes a faculty. See *Roll. Abr.* 288; *Gibs.* 221; *Wyllie* v. *Mott*, 1 *Hagg. Rep.* 39.

A prescriptive right thereto will be created if it hath been used and also repaired *time out of mind* by the inhabitants of the house. *Gibs.* 221; 2 *Roll. Abr.* 288; 1 *T. R.* 428.

No one can claim a seat in a church by prescription as appendant or belonging to *land;* but it must be laid as belonging to a house, in respect to the inhabitancy thereof. 1 *Wood's Inst.* b. 1, c. 7.

Nor can he claim such a seat by length of possession only, without claiming it as appurtenant to a messuage. *Stocks* v. *Booth*, 1 *T. R.* 428.

Nor can he claim it unless it be annexed to a house in the parish; and no action will lie at common law for disturbance in a seat unless it be so annexed. *Mainwaring* v. *Giles*, 5 *B. & A.* 356.

Nor can an extra-parochial person claim a pew in the *body* of the church. *Semble, Byerley* v. *Windus*, 5 *B. & Cres.* 1; 7 *D & R.* 564, S. C. *ante*, 616; and at all events such persons cannot claim it without the strongest proof of a prescriptive title; and therefore if they sue in the Ecclesiastical Court to be quieted in the possession of such seats, the Court of King's Bench will grant a prohibition. *Id.* If the seat were in the aisle it would be different, and he might have a prescriptive right there. *Davis* v. *Witts*, 1 *Hagg.* 294; *Gibs.* 198, 362.

Nor can a seat be granted to a *person* and his heirs absolutely; for the seat doth not belong to the person, but to the inhabitant. *Gibs.* 221; *Poph.* 140; *T. Raym.* 246.

But if a faculty be annexed to a messuage, it may be transferred with the messuage to another person. *Stocks* v. *Booth*, 1 *T. R.* 431.

No gift of a pew is good without a faculty. *Tattersall* v. *Knight*, 1 *Phil. R.* 237.

Persons having pews appurtenant to their houses cannot let them to non-resident persons, and thus by contract defeat the general right of the parish. *Walter* v. *Sumner*, 1 *Hagg. Rep.* 317, 319; and *Wyllie* v. *Mott*, 1 *Hagg. Rep.* 34; *ante*, 616.

Possession for thirty-six years of a pew claimed as appurtenant to a messuage in the parish, has been held to be presumptive evidence of a prescriptive right in a case where the church had been rebuilt about forty years before. *Rogers* v. *Brooks*, 1 *T. R.* 431.

Where it appeared that the seat itself had been made thirty-five years ago for the accommodation of the plaintiff, and to put an end to a dispute between two families, this proof was holden to rebut the presumption which would otherwise arise from so long a possession. *Griffith* v. *Mathews*, 5 *T. R.* 296; and see *Walter* v. *Sumner*, 1 *Hagg. Rep.* 322.

An old entry in a vestry book, signed by the churchwardens, stating that a pew had been repaired by A. *in consideration of his using it*, is evidence for a person claiming the pew under A. *Price* v. *Littlewood*, 3 *Camp.* 288.

Remedies for disturbance, &c. of seats.

Trespass will not lie by an individual for entering a pew because he has not exclusive possession; 1 *T. R.* 430; 2 *Roll. Rep.* 139; but an action on the case lies for the disturbance of his right. *Noy*, 78; 1 *Sid.* 88.

In all cases of a faculty and prescriptions for seats the matter is solely determinable at the common law; in other cases the Ecclesiastical Court has exclusive jurisdiction.

But for a disturbance of a seat a party may sue in the Spiritual Court, and the defendant, if he will, may admit the prescription to be tried there. *Jacob* v. *Dallow*, 2 *Salk.* 551; 2 *Ld. Raym.* 755, S. C.; 1 *B. & A.* 498.

In a suit in the Ecclesiastical Court for perturbation of a seat, if it appear that the churchwardens have acted properly in displacing the plaintiff, the court will dismiss them; but will not proceed to confirm the possession of the person seated by them, as it does not form part of the question before the court, and may be injurious to the parish by taking the pew more out of the power of the churchwardens. *Wyllie* v. *Mott*, 1 *Hagg. Rep.* 41.

The Ecclesiastical Court will admonish a wrong-doer not to disturb a per-

SEATS AND PEWS.

son in possession of a pew, although he has no well founded title to it. *Cross* v. *Salter*, 3 *T. R.* 639.

Building and repairing by parish.

Generally the seats in churches are to be built and repaired, as the church is to be, at the general charge of the parishioners, unless any particular person be chargeable to do the same by faculty or prescription. *Degge*, p. 1, c. 12.

Erecting pew without license.

If any persons of their own heads shall presume to build any seat in the church without license of the ordinary, or consent of the minister and churchwardens, or in any inconvenient place, or too high, it may be pulled down by order of the bishop, or his archdeacon, or by the churchwardens, by the consent of the parson.

Though more pews and galleries be necessary, churchwardens cannot erect them of their own head, the ordinary must be consulted. But if the incumbent, churchwardens, and parishioners unanimously agree that more pews are necessary, and that they shall be fixed in such a place, there is no necessity for consulting the ordinary. *Johns.* 163; 1 *Salk.* 167; 1 *Burn's E. L.* 360; and see *Tattersall* v. *Knight*, 1 *Phil. Rep.* 232.

Pulling down a pew.

Therefore if any one presume to cut or pull down any seat annexed to the church, the parson may sue in trespass against the wrongdoer, though he formerly set it up, if he do it without the parson's consent or order from the ordinary; but if the seat be set loose, he that built it may remove it at his pleasure. *Degge*, p. 1, c. 12; 1 *Burn's E. L.* 364, 365.

If any seats annexed to a church be pulled down, the property of the materials is in the parson, and he may make use of them if they were placed in the church by any one of his own head without legal authority; but for the seats erected by parishioners by good authority, it seemeth that the property in the materials, upon removal, is in the parishioners. *Degge, P. C.* c. 12; 1 *Burn's E. L.* 364.

Statutory provisions.

The acts 58 Geo. III. c. 45, 59 Geo. III. c. 134, and 3 Geo. IV. c. 72, relating to the building and promoting the building of additional churches in populous parishes, have several provisions relating to the pews of such churches, which will be found for the most part collected in the subjoined notes. (*a*)

Seats for minister, &c.

(*a*) Before consecration of any church or chapel under the act, a seat or pew sufficient to hold six persons at least shall be set apart in the body or ground floor of the church or chapel, near the pulpit, for the use of the minister and his family; and other seats, not among the free seats, for not less than four persons, for the minister's servants; and that the pews, sittings, or benches, in every such church or chapel to be marked with the words "free seats," amounting to not less than one-fifth of the whole sittings in every such church or chapel, which shall be built wholly or in part out of any rates, or with money raised on the credit of any rates, shall be appropriated for the use of the poor persons resorting thereto for ever, upon which pews or sittings no rent shall be charged. 58 Geo. III. c. 45, s. 75.

Free seats.

Choice of pews.

All subscribers, being parishioners, to any church or chapel built under this act, shall have choice of pews at the rates fixed by the commissioners, in the order of their amount of subscription, and of the same amount in the order of their subscription. Sect. 76.

Letting out, &c. of pews to parishioners only.

Church or chapel wardens of any additional church or chapel shall not let or sell any pews and seats except to parishioners, during their continuing inhabitants of the parish; and every sale of any pew or seat shall be subject to the reserved rent fixed under said act or this act, and shall be by private contract, and not by public auction. 59 Geo. III. c. 134, s. 32.

Subscribers to building to be free from pew rents, &c. when.

Commissioners may discharge any subscribers towards building any church or chapel, wholly or in part, from payment of pew rents for a limited time or for life, in proportion to their subscriptions, as commissioners shall see fit; and they may allow any subscriber, if he remove from the parish, to assign the remainder of such term to any other parishioner inhabiting the parish. Sect. 33.

Assignment of pews.

It shall be lawful for the commissioners to transfer any rights to pews with

GOODS AND ORNAMENTS.

IV. Goods and Ornaments of and Monuments in a Church.

With respect to what goods and ornaments should be provided in a church, see 1 *Burn's E. L.* 368; and as to the power and duty of churchwardens in providing and taking care of them, see *post*, **Churchwardens**; as to whom they belong to, see *post*, **Churchwardens**, p. 640.

Goods and ornaments.

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the consent of the owners thereof, in any church or chapel belonging to any person residing in any division of a parish or place in which a new church or chapel shall have been built, acquired or appropriated under said acts, to the church or chapel of the division in which such person shall reside, for enabling the commissioners to make free seats in the church or chapel from which such rights shall be transferred; and the persons from whom pews shall be so taken, and to whom other pews shall be assigned by the commissioners in any other church or chapel, shall have the same rights to the pews so assigned as they had in their former pews, or such right or title as shall be directed in such assignment without faculty or other process; and every such assignment shall be registered in the registry of the diocese, and a duplicate deposited in the chest of the church or chapel in which such pews shall be assigned, but no greater right shall be given to any pew by such transfer than belonged to the owner or occupier of the pews in respect whereof such transfer shall be made. 3 Geo. IV. c. 72, s. 23.

Determination of term of letting pews.

In case any lessee of any pew or seat for a longer term than one year, shall cease to be an inhabitant of the parish, place, division, or district, or shall not attend the church or chapel for one year, his lease shall determine at the end of the current year. Sect. 24.

Amount of pew rents.

Commissioners may make orders as to the amount of rents for pews or seats; and the produce thereof shall form a fund, out of which provisions shall be made for the minister and clerk. 58 Geo. III. c. 45, s. 63.

How to be settled and paid.

Pews or seats in every church or chapel built under the act, (except those set down as free seats,) to be charged with the yearly rents set opposite the figures or numbers marked upon them in a list or schedule, to be made and signed by the commissioners, and annexed to the deed of consecration; such rents to be paid by the occupiers of the pews or seats to the persons appointed by the churchwardens, by two payments, on Monday after 25th December, and on 24th June, in the vestry-room, between nine in the morning, and four in the afternoon. Sect. 77.

Alteration of rents.

Churchwardens, with consent in writing of the incumbent, patron, and bishop, may alter such pew rents; and a new list or schedule of rents, and the pews or seats on which they are charged, shall be signed by the churchwardens, incumbent, patron, and bishop, and deposited with the deed of consecration. Sect. 78.

Proceeding on default of payment.

If the rent of any seat or pew shall be unpaid for three months, and notice in writing demanding payment thereof shall have been given to the owner or occupier, the churchwardens may either enter upon and hold such seat or pew, or let the same to any other person till the rent in arrear and all costs shall be paid; or otherwise to sell the same pews or seats by auction to the best bidder, and out of the money thence arising to pay the rent in arrear, with the costs, rendering the overplus to the owner, or the churchwardens may recover the rent in arrear by action for use and occupation against the owners or occupiers. Sect. 79.

The 73rd section points out how churchwardens may sue for and recover pew rents.

To whom rent may be directed to be paid, and application of payment.

Commissioners, if they deem it expedient, may from time to time direct the rents of pews in any church or chapel built or acquired under said act or this act to be assigned to the parish or district, and received by the church or chapel wardens, who shall pay the stipend to the minister and clerk: provided, that the parish shall not be answerable to such minister or clerk for any greater sum in each year than the rent of the pews actually let during the preceding year; and any surplus of the pew rents after paying such stipend and other expenses, shall (except as mentioned in sect. 27,) be invested in government securities in the names of trustees to be appointed by the bishop, and accumulated as a fund; first for building or purchasing a house, with consent of the bishop, for the residence of the spiritual person serving the church or chapel; secondly, for augmenting his stipend, reducing the pew rents or increasing the accommodation in such church or chapel, in manner directed by the bishop. 59 Geo. III. c. 134, s. 26.

GOODS AND ORNAMENTS.

They generally belong to the parishioners, and not the incumbent; and if they be taken away or broken, the churchwardens may bring an action. *Wats.* c. 39.

By the laws of England the goods belonging to a church may be aliened by the churchwardens, with the consent of the parish. *Wats.* c. 39.

A person may give or dedicate goods to God's service in such a church, and deliver them into the custody of the churchwardens, and thereby the property is immediately changed. *Degge*, pt. 1, c. 12,

And if a person erect a pew in a church, or hang up a bell in the steeple, they thereby become church goods, though they are not expressly given to the church, and he may not afterwards remove them; if he does, the churchwardens may sue him. 1 *Burn's E. L.* 377; 2 *Salk.* 547.

Organ, &c.

The parish cannot, generally speaking, without their consent, be charged with the expense of erecting or repairing an organ, or adding new ornaments to the church. As to the power of select vestries in this respect, see *post*, Poor, Vol. IV.; Vestries, Vol. V.

In *Butterworth and Barker* v. *Walker and Waterhouse*, 3 *Burr.* 1689, it seems to have been the opinion of the Court of King's Bench that the consent of the parish is not necessary to the ordinary's ordering an organ (provided by subscription) to be erected in a church; and in this case a prohibition was denied.

In the case of *The Churchwardens of St. John's, Margate*, v. *The Parishioners, Vicar, &c. of the same*, 1 *Hagg.* 198, Lord *Stowell* declared that the law respecting church ornaments is now generally understood and settled. It was there said that the consent of the parishioners is not indispensably necessary, unless to charge the parish with any expense for the support of

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Surplus.

Provided, that the surplus of such pew rents, after paying the stipend and expenses mentioned in sect. 26, shall, if commissioners think it expedient, be applied towards payment of any money borrowed at interest by annuity or otherwise, for building any church or chapel, or for purchasing for it any site, and defraying all expenses relative thereto, and in repairing such church or chapel; and the residue of such pew rents, if any, shall be applied as directed in sect. 26, or in aid of the church rate, if the commissioners shall so think fit; and the church or chapel wardens, with consent of the commissioners, may borrow at interest by annuity or otherwise any money for building such church or chapel, or purchasing such site or defraying the expenses relative thereto, upon the credit of such pew rents, and by writing under their hand may charge such pew rent, subject to such stipend and expense aforesaid, with payment of money with interest, or with annuities, as such church or chapel wardens shall think fit. Sect. 27.

Alteration of rents where assigned.

Church and chapel wardens of any church or chapel built or provided under said act and this act, are authorised and required when directed by the bishop, with consent of the patron and incumbent, and where pew rents have been assigned to the parish with consent of the vestry, to make such alterations in any such pew rents as shall be directed or approved of with such consent. Sect. 31.

Rents to be paid in advance, &c.

Pew rents shall be payable in advance, i. e. one year's rent shall be paid on the admission to the pew or seat, if given at Lady Day or Michaelmas, or if at any intermediate period then the proportion of the half-year to Lady Day or Michaelmas, and a half-year's rent above such proportion; and thereafter half-yearly payments shall be made in advance, commencing at Lady Day or Michaelmas following the taking; and every such pew and seat shall be forfeited and become vacant by discontinuing any such payment in advance for two following half years. Sect. 32.

Notice of vacant pews.

In every case in which pew rents shall be fixed under the provisions of said acts, notice shall be given for six successive weeks at the end of each year of all the pews vacant, or which shall become vacant at the commencement of the next year, by writing affixed on the doors of the church or chapel and vestry-room, and all pews not taken at the rents fixed within fourteen days after the commencement of the ensuing year, shall be let to any inhabitant of any adjoining parish or place in the churches or chapels of which there shall not be sufficient accommodation for the inhabitants thereof, at the rent fixed upon such pews, for any term not exceeding the end of the year, when such pews shall be again let in manner aforesaid, and so from year to year. 3 Geo. IV. c. 72, s. 24.

Letting to non-parishioners.

the ornament after it has been put up. But if there be no charge incurred, the approbation of the majority of the parishioners is not necessary, nor the disapprobation binding on the ordinary. He then decreed a faculty for accepting and erecting an organ offered to the church of St. John's, Margate, without a clause against future expenses being charged to the parish, which was rich and populous. In cathedrals, organs may be deemed necessary, and the ordinary may compel their erection by the dean and chapter. In parish churches it is otherwise, and it might be proper to discourage them in small or poor parishes.

Superstitious pictures, &c.

If any superstitious pictures or images are in a window of a church or aisle, it is not lawful for any to break them without license of the ordinary; and in *Prickett's* case, *Wray*, C. J., bound the offender to the good behaviour. *Cro. Jac.* 366.

Monuments.

Monuments]—It is lawful to build or erect tombs, sepulchres, or monuments for the deceased in church, chancel, common chapel, or churchyard, provided it be done in a convenient manner; 3 *Inst.* 102; and by license of the bishop, or consent of the parson and churchwardens. *Degge*, pt. 1, c. 12.

Monuments may be set up in the aisles, belonging to particular persons, without such license or consent. *Wats.* c. 39.

But then, as in all other cases, they must be set up in a convenient and proper manner, so as not to obstruct divine service in any way. See 3 *Inst.* 202.

The ordinary must be allowed the proper judge of that conveniency; and if a monument be erected in an inconvenient or improper manner, he may decree and compel a removal, without any danger of an action at law. See *Gibs.* 453, 454.

It seems that even the rector cannot grant a vault in the church, but only leave to bury there in each particular instance. *Bryan* v. *Whistler*, 8 *B. & Cres.* 288.

A custom for the churchwardens of a parish to set up monuments, &c. in a church without consent of rector or ordinary, is illegal. *Becwith* v. *Harding*, 1 *B. & A.* 508.

There is not at common law a right to erect even a flat gravestone, for mere protection of the grave, in a churchyard, without legal authority of the ordinary, except a custom that the churchwardens shall give leave for that purpose be shown to obtain. *Bardin* v. *Calcott*, 1 *Hagg. Rep.* 14—20.

Repair of monuments.

Monuments once erected may be repaired; for this is of public consequence, when their importance in tracing family descents, &c. is considered. It may be proper to apply to the churchwardens, as the agent of the ordinary, for leave to do so, but they are bound to grant it as far as their authority extends, and if they do not, they will be liable to the censure of the Ecclesiastical Court. If parties are not at liberty to repair, the object of obtaining liberty to erect would be defeated: it is rather the duty of churchwardens to encourage parishioners to provide that monuments may be put in repair, than to obstruct others in doing it; for decency and propriety require that they should not remain in a state of ruin and decay. *Id.*

Defacing, &c.

The defacing of monuments is punishable by the common law. *Year Book*, 9 Edw. IV. 14, *Lady Wiche's* case: and so it was agreed by the whole court, M. 10 J., in the Common Pleas, between *Corven* and *Pym*, 1 *Burn's E. L.* 379: and for the defacing thereof, they that build or erect the same may sue at law during their lives, (as the Lady Wiche had in the case of the 9 Edw. IV.); and after their deceases, the heirs of the deceased may bring the action. See *Cro. Jac.* 367.

Gravestones, windingsheets, coats of arms, pennons, or other ensigns of honor, hanged up, laid or placed in memory of the dead, the property remains in the executors, and they may have actions against such as break, deface, or carry them away. 3 *Inst.* 110; *Co. Litt.* 18 b.

WHO TO REPAIR.

V. Repairs of Church.

(1.) Who to Repair.

Who to repair.

Bishops.

Formerly the bishops had the whole tithes of the diocese, a fourth part of which in every parish was to be applied to the repairs of the church, but upon a release of this interest to the rectors, they were consequently acquitted of the repairs of the churches. *Degge*, pt. 1, c. 12.

Rectors.

And by the canon law the repair of the church belongeth to him who receiveth this fourth part; that is, to the rector, and not to the parishioners. 1 *Salk.* 164.

Inhabitants.

But custom (that is the common law) transferreth the burden of reparation, at least of the nave of the church, upon the parishioners, and likewise sometimes of the chancel, as particularly in the city of London in many churches there, and this custom the parishioners may be compelled to observe where such custom is. *Lindw.* 53.

It seems, however, if a church fall down, the parishioners are not bound to repair it. *Read's Church Service;* 1 *Ventr.* 367.

Who to repair chancel.

But generally the parson is bound to repair the *chancel;* not because the freehold is in him, for so is the freehold of the church, but by the custom of England, which hath allotted the repairs of the chancel to the parson, and the repairs of the church to the parishioners.

By custom, however, the parishioners or the owner of an estate may be liable to repair the chancel. *Gibs.* 199.

Where there is both rector and vicar in the same church, and no custom or order to the contrary, they shall contribute in proportion to their benefice. *Lindw.* 253.

And as rectors or spiritual persons, so also impropriators are bound of common right to repair the church. *Gibs.* 199; 3 *Keb.* 829.

And an impropriator of a rectory or parsonage, though bound to repair the chancel, is also bound to contribute to the reparations of the church, in case he hath lands in the parish which are not parcel of the rectory. *Davie's case, Gibs.* 197, 221-3.

Generally, however, the repairing of the chancel is a discharge from contributing to the repairs of the church. *Gibs.* 199, 200.

Founder of church when exempt.

It is said that the patron of a church, as in right of the founder, may prescribe that, in respect of the foundation, he and his tenants have been freed from the charge of repairing the church. *Degge*, pt. 1, c. 12.

Repairing a chapel of ease, when a discharge.

If there be a chapel of ease within a parish, and some part of the parish have used time out of mind, alone, without others of the parishioners, to repair the chapel of ease, and there to hear service and to marry, and all other things, but only they bury at the mother church; yet they shall not be discharged of the reparation of the mother church, but ought to contribute thereto, for the chapel was ordained only for their ease. 2 *Roll's Abr.* 289, l. 50; *Hob.* 66; 3 *Mod.* 284.

So, in the like case, if the inhabitants who have used to repair the chapel prescribe that they have time out of mind used to repair the chapel, and by reason thereof have been discharged of the reparation of the mother church; yet this shall not discharge them of the reparation of the mother church, for that is not any direct prescription to be discharged thereof, but is by reason thereof a prescription for the reparation of the chapel. 2 *Roll's Abr.* 290.

If the chapel be three miles distant from the mother church, and the inhabitants who have used to come to the chapel have used always to repair the chapel, and there marry and bury, and have never within sixty years been charged to the repair of the mother church; yet this is not any cause to have a prohibition, but they ought to show in the spiritual court their exemption, if they have any, upon the endowment. 2 *Roll's Abr.* 290, l. 10; *sed vid.* 1 *Salk.* 165.

WHO TO REPAIR.

But if the inhabitants of a chapelry prescribe to be discharged *time out of mind* of the reparation of the mother church, a prohibition lieth upon this surmise. 2 *Roll's Abr.* 290, l. 22; *Hobart*, 67; *Brown* v. *Palfry*, 2 *Levinz*. 102.

If there be a parish church and chapel of ease within the same parish, and the chapel of ease hath time out of mind had all spiritual rights except sepulture, and this hath been used to be done at the parish church, and therefore they who have used to go to the chapel of ease have used time out of mind to repair a part of the wall of the churchyard of the parish church, and in consideration thereof, and because that they who are of the chapel of ease have used time out of mind to repair the chapel of ease at their own costs, they have been time out of mind discharged of the reparation of the parish church; this is a good prescription; and therefore if they be sued in the spiritual court to repair the parish church a prohibition lieth. 2 *Roll's Abr.* 290, l. 30. See 1 *Burn's E. L.* 353-4.

Churches united, how to be repaired.

If two churches be united, the repairs of the several churches shall be made as they were before the union. *Degge*, pt. 1, c. 12; *ante*, 614.

Non-residents, &c.

In *Jeffery's case*, 5 *Rep.* 67, it was solemnly adjudged that the rates for the repair of the church shall be laid upon every occupier of lands in the parish, although such occupier live in another parish; and such person may come to the vestries of the parishioners, and vote in making a rate; but he shall not be charged towards the ornaments of the church, as for bells, repair of seats, bread and wine, clerk's wages, visitation charges, and the like, by reason of such lands; for that the personal estates of the inhabitants are chargeable with every thing that doth not relate to the fabric of the church, or repairs of the fences of the churchyard, or such other things as concern the freehold. And see *Paget* v. *Crumpton*, *Cro. El.* 657, 659; 2 *Roll.* 289, l. 20; *Lindw.* 255.

No man shall be charged to repair of the church in respect of land which he has in another parish. 5 *Rep.* 67; 2 *Roll*, 289, l. 30.

Nor in respect of a lighthouse. *Rebow* v. *Bickerton*, *Bunbury*, 81.

Lands leased.

Where lands are in farm, not the lessor, but the tenant shall be rated and pay. *Gibs.* 221.

Hall of a company.

The hall of a company being rated to the repairs of a church, the spiritual court in case of nonpayment may proceed against the master and wardens of such company. *T. Jones*, 187.

Stall in a market.

If a petty chapman take a standing, for rent to be paid by him, in the waste of the manor within the market, for two or three hours every market day, to sell his commodities, the market being holden there one day every week, but he inhabiteth in another parish; he may not be rated to the reparation of the church for this standing. 2 *Roll. Abr.* 289.

(2.) Who may compel Repairs.

Who may compel repairs.

By Canon 86, every dean, dean and chapter, archdeacon, and others, which have authority to hold ecclesiastical visitations by composition, law, or prescription, shall survey the churches of his or their jurisdiction once in every three years, in his own person, or cause the same to be done.

And by the said Canon they were required from time to time to certify the high commissioners for causes ecclesiastical every year, of such defects in any the said churches, as he or they should find to remain unrepaired, and the names and surnames of the parties faulty therein. Upon which certificate the high commissioners were desired by the said canon *ex officio mero*, to send for such parties and compel them to obey the just and lawful decrees of the ecclesiastical ordinaries making such certificates.

But by the 16 Car. c. 11, the high commission court was abolished; so that the cognizance thereof now resteth solely upon the ecclesiastical judge, who has undoubted cognizance of neglect of repair of the church, churchyard, &c. 3 *Bla. Com.* 92; 5 *Rep.* 66.

WHO MAY COMPEL REPAIRS.

By Canon 85, the churchwardens or questmen shall take care and provide that the churches be well and sufficiently repaired, and so from time to time kept and maintained, that the windows be well glazed, and that the floors be kept paved, plain, and even.

Churchwardens duty thereon.

If the churchwardens *erect or add any thing new* in the church, as a new gallery where there was none before, they must have the consent of the major part of the parishioners, and also a license from the ordinary. 1 *Mod.* 237; *Groves and another* v. *Rector, &c. of Hornsey*, 1 *Hagg. Rep.* 188.

But as to the common *reparations* of the fabric, or ornaments of the church, where nothing new is added or done, it doth not appear that any consent of the major part of the parishioners is necessary; for to this the churchwardens are bound by their office, and they are punishable if they do it not. 1 *Burn's E. L.* It should seem, however, that the churchwardens cannot so repair without the consent of the major part of the parishioners, unless after notice given they refuse to meet or give their consent.

If the major part of the parishioners of a parish where there are four bells, agree that there shall be made a fifth bell, and this is made accordingly, and they make a rate for paying for the same; this shall bind the lesser part of the parishioners, although they agree not to it; for otherwise any obstinate person may hinder any thing intended to be done for the ornament of the church. 2 *Roll. Abr.* 291.

And although churchwardens are not generally charged with the repairs of the *chancel*, yet they are charged with the supervisal thereof, to see that it be not permitted to dilapidate and fall into decay; and when any such dilapidations shall happen, if no care be taken to repair the same, they are to make presentment thereof at the next visitation. 1 *Burn's E. L.* 357.

Proceedings to compel repairs.

The cognizance of the repairs of the church and churchyard belong to the spiritual court; 3 *Bla. Com.* 92; 5 *Rep.* 66; and the parishioners may be compelled by that court to repair the body of the church, and they might be excommunicated until it is repaired, except those who are willing to contribute. *Read's Church Service.*

The cognizance of the repairs of the church and churchyard belonging to the spiritual court, the Court of King's Bench will not grant a *mandamus* to churchwardens to make a church rate. *R.* v. *Churchwardens of St. Peter, Thetford*, 5 *T. R.* 364.

But it lies to the churchwardens to assemble a meeting to inquire whether it be fit to make a rate. *R.* v. *Churchwardens, &c. St. Margaret's, Westminster*, 4 *M. & S.* 250; and see the 53 Geo. III. c. 127, *post.*

VI. Church Rates.

(1.) Who may make, and steps preliminary to making.

Who may make rate, and steps to be taken in making.

If a church be so much out of repair that it is necessary to pull it down, or if it be so small that it needs to be enlarged, the major part of the parishioners, having first obtained the consent of the ordinary to do what is needful, and meeting upon due notice, may make a rate for new building or enlarging as there shall be occasion. 2 *Mod.* 222; *Gibs.* 197.

And the same would equally apply to rates for the repairs or finding of ornaments and goods of the church, except it should seem that the consent of the ordinary is unnecessary.

And the proper method of proceeding in such cases seemeth to be thus: namely, that the churchwardens first of all take care that public notice be given in the church for a general vestry of the whole parish for that purpose; which notice ought to be attested and carefully preserved, as being the foundation of all the subsequent proceedings.

At the time and place of meeting the minister and churchwardens ought to attend; and when the parishioners are assembled, the minister is proper

to preside; and he or one of the churchwardens, or such person as shall be appointed by them, ought to enter the orders of the vestry, and then have them read and signed; and agreeable thereunto, before making a rate for the repair of the church, a petition to the ordinary for a faculty (setting forth the particulars) should be drawn up and signed by the minister, churchwardens, and parishioners present and approving thereof. Whereupon the ordinary will issue a monition to cite all persons concerned, to show cause why a faculty should not be granted, upon the return of which citation, if no cause or not sufficient cause be shown, the ordinary will proceed to grant a faculty as is desired, and as to him shall seem good. 1 *Burn's E. L.* 357, 358. RATES, WHO MAY MAKE, &c.

The churchwardens have no power to make any rate themselves exclusive of the parishioners, their duty being only to summon the parishioners who are to meet for that purpose, and when they are assembled, a rate made by the majority present shall bind the whole parish, although the churchwardens voted against it. *Bac. Ab. Churchwardens*, C. *Wats.* 389. Parishioners must be present.

The churchwardens in summoning the parishioners need not do it from house to house, but a general public summons at the church is sufficient, and the major part of them that appear on such occasions will bind the whole parish. *Ventr.* 367. Summons.

It does not seem absolutely essential that the notice should specify the purpose for which the meeting is to be held. See *Clutton* v. *Cherry*, 2 *Phil.* 373. Notice.

Stat. 58 Geo. III. c. 69, intituled, "An Act for the regulation of parish vestries," enacts, "that no vestry or meeting of the inhabitants in vestry of or for any parish shall be holden until public notice shall have been given of such vestry, and of the place and hour of holding the same, and the special purpose thereof, three days at the least before the day to be appointed for holding such vestry, by the publication of such notice in the parish church or chapel on some Sunday during or immediately after divine service, and by affixing the same, fairly written or printed, on the principal door of such church or chapel."(a)

If the churchwardens give the parishioners due notice that they intend to meet for the purpose of making a rate, and the parishioners refuse to come, or being assembled refuse to make any rate, the churchwardens may make one without their concurrence, for as they are liable to be punished in the ecclesiastical court for not repairing the church, it would be unreasonable that they should suffer by the wilfulness and obstinacy of others. *Bac. Ab. Churchwardens*, C.

If the major part of a parish at a vestry agree to make repairs, the others are bound, though it be to find ornaments, as new bells, &c. (2 *Roll.* 291, l. 20,) but bells are not mere ornaments, for they are as necessary as the steeple itself. *Woodward* v. *Makepeace*, 1 *Salk. Rep.* 164. Ornaments, &c.

By custom there may be select vestries of a certain number of persons elected yearly to make rates, and manage the concerns of the parish for that year: and such custom is a good custom. *Read's Church Service; Gibs.* 246; *Str.* 428. See *post*, **Vestries**, Vol. V. Select vestry.

After the churchwardens and parishioners have agreed as to what sum is fit for the repairs, they are to make an equal rate for collecting it. Rate to be made.

(2.) Mode of laying Assessment.

An order and direction set down by Dr. King, Dr. Lewen, Dr. Lynsey, Dr. Hoane, Dr. Sweite, Dr. Steward, and others, doctors of the civil law, to the number of thirteen in all, assembled together in the common dining hall of Doctors' Commons in London, touching a course to be observed by the assessors in their taxation for the repairs of the church and walls of the Mode of laying the assessment in general.

(a) See further *post*, **Poor**, Vol. IV. **Vestries**, Vol. V.

MODE OF LAYING ASSESSMENT.

churchyard of Wrotham, in Kent; and to be applied generally upon occasion of the like reparations to all places in England whatsoever:—

(1.) Every inhabitant dwelling within the parish is to be charged according to his ability, whether in land or living within the same parish, or for his goods there; that is to say, for the best of them but not for both.

(2.) Every farmer dwelling out of the parish, and having lands and living within the said parish, in his own occupation, is to be charged to the value of the same lands or living, or else to the value of the stock thereupon; even for the best, but not for both.

(3.) Every farmer dwelling out of the parish and having lands and living within the parish, in the occupation of any farmer or farmers, is not to be charged; but the farmer or farmers thereof are to be charged in particularity, every one according to the value of the land which he occupieth, or according to the stock thereupon; even for the best, but not for both.

(4.) Every inhabitant and farmer occupying arable land within the parish, and feeding his cattle out of the parish, is to be charged for the arable lands within the parish, although his cattle be fed out of the parish.

(5.) Every farmer of any mill within the parish, is to be charged for that mill; and the owner thereof (if he be an inhabitant) is to be charged for his liability in the same parish besides the mill.

(6.) Every owner of lands, tenements, copyholds, or other hereditaments, inhabiting within the parish, is to be taxed according to his wealth in regard of a parishioner, although he occupy none of them himself; and his farmer or farmers also are to be taxed for occupying only.

(7.) The assessors are not to tax themselves, but to leave the taxation of them to the residue of the parish. *God. Append.* 10, 11.

Who to be assessed.

The party to be assessed may be collected from the foregoing seven rules. Parties not liable to the repairs for which the rate is made, must not be assessed, and as to who such parties are, see *ante*, 622.

In respect of property assessed.

A rate for the reparation of the *fabric* of a church, and such things as concern the freehold thereof, is real, charging the land and not the person; but a rate for *ornaments*, seats, and bread and wine, &c. is personal upon the goods and not upon the land. *Gibs.* 196; 2 *Roll's Abr.* 291; see *Degge*, p. 1, c. 12.

Houses as well as lands are chargeable, and in some places houses only; as in cities and large towns where there are only houses and no lands to be charged. *Hetl.* 130; 2 *Lutw.* 1019.

If a parish plead a custom for it to be laid only for lands, and not for houses; or to be laid only for arable lands, and to be excused for their pastures; or to be laid only for their sheep-walks and not for the rest; the custom cannot be good, for by the law all lands and houses are to be equally rated; and their paying for some part can be no good cause for the discharge of the rest. *Hetl.* 130; *Latch.* 203.

Persons living out of the parish and having lands within the parish, as we have already seen, should be rated for the same in respect of *real* charges but not of *personal* charges. *Lindw.* 255, *ante*, 623.

A taxation by the pound rate is the most equitable mode of assessing it, and not according to the quantity of land, &c. See *Lindw.* 255; *Wood's Inst.* b. 1, c. 7.

Equality.

The property and parishioners should be equally rated. *Hetl.* 130, and *Latch.* 203.

If a parish consists of several vills, and there is a custom to levy the rate in certain proportions, they must pursue it whether reasonable or not. *Burton* v. *Wileday*, *Andrews*, 32.

A custom in the parish to pay the church rate by divisions is good; and an allegation in an action for a false return to a *mandamus*, of a custom of payment by the chapelwardens of A. to the churchwardens of B. may be supported by evidence of a custom of payment to officers acting only for the township of B. not co-extensive with the parish of B. but who have always been described as the churchwardens of B., for being merely a name of

description, it is sufficient, though it be not their legal name. *Stead* v. *Heaton*, 4 *T. R.* 669.

MODE OF LAYING ASSESSMENT.

A church rate cannot be made to reimburse the churchwardens monies that they have expended, or which they may hereafter expend, on the parish church, for they ought not nor are they bound to lay out money until they have collected it in hand. *R.* v. *Chapelwardens of Haworth, &c.* 12 *East*, 556, *infra.*

Time of assessment.

In *Lanchester* v. *Frewer*, 2 *Bingh.* 361, the facts were, that twenty parishioners joined at a vestry in signing an order for the repairs of the church, and one of them, a churchwarden, paid the artificers, but the rate for reimbursing him was quashed, and the Court of Common Pleas decided that he could not sue the person who signed the order for contribution.

Rate to reimburse.

The regular way is for the churchwardens to raise the money before-hand, by a rate made in the regular form for the repairs of the church, in order that the money may be paid by the existing inhabitants at the time, on whom the burthen ought properly to fall. 12 *East*, 556.

R. v. *Chapelwardens of the Township of Haworth, in the parish of Bradworth, in the West Riding of Yorkshire*, 12 *East*, 556. Motion for a *mandamus* to these defendants, to make a rate upon the inhabitants of their township for levying 50*l.* being one-fifth part of a church rate charged upon the parish at large, for *reimbursing* the churchwardens of the town of Bradford such sums as they had expended, or might hereafter expend, on the parish church of Bradford, and to pay the said 50*l.* when raised to those churchwardens. The relators' affidavit stated that the parish of Bradford consisted of fifteen townships, of which Hayworth is one, and that there is an immemorial custom in the parish, that each of the townships should contribute to the church rates in certain proportions stated, of which the proportion of Haworth was one-fifth: that at a vestry held in the parish church on the 4th of April last, after regular notice, it was ordered that the churchwardens of Bradford should collect the rate in question of 250*l.* for *reimbursing* themselves such sums as they had expended, or might thereafter expend on the parish church of Bradford, and then stated a demand and refusal of the proportion of the rate payable by the defendants. In answer, it was objected, 1st. That any custom for fixing on a part of a parish a certain proportion of a church rate, which ought to be equally distributed on all the parishioners, was bad upon the face of it, as making that certain and invariable which, in its very nature, was variable and fluctuating, unequal and unjust. This question, it was said, was not decided in *Stead* v. *Heaton*, 4 *T. R.* 669, which turned on another point as to the evidence of the custom. Lord *Ellenborough*, C. J.—We shall not decide this question upon affidavits, but shall for this purpose assume the custom to be good; the point, however, did not pass without consideration in *Stead* v. *Heaton*. Secondly, that no rate could be made to reimburse churchwardens, for they were not bound, nor ought they to lay out money till they had collected it in hand, *non constat*, that it is to reimburse them what they have expended within the same year. And *Dawson* v. *Wilkinson*, *Andr.* 11, and *Cas. temp. Hardw.* 381; and *Tawney's case*, 2 *Ld. Raym.* 1009, were cited as negativing the power of churchwardens to make a rate to reimburse themselves or former churchwardens. Lord *Ellenborough*, C. J.—The regular way is for the churchwardens to raise the money before hand, by a rate made in the regular form for the repairs of the church, in order that the money may be paid by the existing inhabitants at the time, on whom the burden ought properly to fall. It will, indeed, sometimes happen, that more may be required to be expended at the time than the actual sum collected will cover, but still it is admitted that the inconvenience has been gotten rid of in such cases by an evasion, for the rate has been made in the common form, and when the churchwardens have collected the money, they have repaid themselves what they had disbursed for the parish. But we cannot now grant the *mandamus* to make a rate in the common form, for the demand made upon the defendants was to make a rate in the form in which the rule is drawn up, to reimburse the churchwardens of Bradford for money which they had expended, as well as for what they might

MODE OF LEVYING ASSESSMENT.

expend, and the refusal of the defendants to make such a rate applies to the form of the demand, and we cannot now qualify their refusal; at present it appears that the rate prayed for in this form would be bad, and therefore we cannot enforce it by *mandamus*.—*Per Cur.* Rule discharged.

A court of equity will not decree a church rate to be made to reimburse a former churchwarden monies laid out while in office, though in pursuance of an order of vestry. *Lanchester* v. *Thompson and others*, 5 *Madd.* 64.

Indeed if the churchwardens defer to make or collect their rate until they are out of their office, they are deprived of all legal authority of doing either; but they may present the persons in arrear at the Easter visitation when they go out of their office, and the judge will cause justice to be done therein, or their successors may prosecute for the same. 1 *Bac. Abr.* 376, tit. *Churchwardens, et seq.*

Two rates.

In strictness where a rate is required for the repairs of the fabric and another for the repairs of the ornaments of the church, two distinct rates should be made; by the practice, however, now in vogue only one rate is made for all purposes, which is certainly a more easy and convenient proceeding and may be sanctioned. *Shaw's P. L.* 92.

(3.) Form of Assessment.

Form of the assessment.

The form of the church-rate may be thus:—

WE, the churchwardens and other parishioners of the parish of in the county of and diocese of whose names are hereunto subscribed, do hereby this day of in the year at our vestry meeting for that purpose assembled, rate and tax all and every the inhabitants and parishioners of the parish aforesaid, hereunder mentioned, for and towards the repairs of the church of the said parish for this present year, the several sums following, viz.:

	£	s.	d.
A. B.	1	2	0
C. D.	0	3	0
E. F.	0	2	6
&c.			

A. B., *C. D.* } *Churchwardens.*

E. F., *G. H.*, *I. K.*, *&c.* } *Parishioners.*

(4.) Mode of Levying Assessment.

Levying the assessment.

By suit in Ecclesiastical Court.

If any of the parishioners refuse to pay their rates, being demanded by the churchwardens, they may be sued for and recovered in the ecclesiastical courts, and not elsewhere. *Degge*, p. 1, c. 12. For the cognizance of rates made for the reparation of churches and church-yards belongs to the spiritual courts. *Gibs.* 195; 5 *Rep.* 66; *ante*, 624.

If a suit be instituted in the ecclesiastical court for a church rate, and a custom pleaded of a certain sum or of something done in lieu of the rate, and that plea is admitted, they may proceed to try that custom in the same manner as a *modus;* but if the custom be denied, it will be a proper ground for a prohibition for defect of trial in the ecclesiastical court, for the trying of the custom is the province of the common law. 1 *Atk.* 289.

So if the bounds of the parish come into dispute in the ecclesiastical court, that is, if the party assessed aver that the land for which he is assessed lies in another parish and not in the parish where it is assessed; if the party be contentious, he may have a prohibition, and try it at common law. *Degge*, p. 1, c. 12.

For recovery of church or chapel rates.

By stat. 53 Geo. III. c. 127, s. 7, for the more easily and speedily recovering church rates or chapel rates of limited amount, it is enacted,

that "if any one duly rated to a church rate or chapel rate, the validity whereof has not been questioned in any ecclesiastical court, shall refuse or neglect to pay the same sum at which he is so rated, it shall and may be lawful for any one justice of the peace of the same county, riding, city, liberty, or town corporate, where the church or chapel is situated, in respect whereof such rate shall have been made, upon the complaint (*a*) of any churchwarden or churchwardens, chapelwarden or chapelwardens, who ought to receive and collect the same, by warrant (*b*) under the hand and seal of such justice, to convene before any two or more such justices of the peace any person so refusing or neglecting to pay such rate, and to examine upon oath (which oath the said justices are hereby empowered to administer) into the merits of the said complaint, and by order (*c*) under their hands and seals to direct the payment of what is due and payable in respect to such rate, so as the sum ordered and directed to be paid as aforesaid do not exceed 10*l.*, over and above the reasonable costs and charges, to be ascertained by such justices; and upon refusal or neglect of such party to pay according to such order, it shall and may be lawful for any one of such justices, by warrant (*d*) under his hand and seal, to levy the money thereby ordered to be paid, together with the amount of such costs and charges, by distress and sale of the goods of such offender, his executors or administrators, rendering only the overplus to him or her, the necessary charges of distraining being thereout first deducted and allowed by the said justices; [see stat. 54 Geo. III. c. 170, s. 12, *infra*;] and any person finding him or herself aggrieved by any judgment given by two or more such justices, may appeal to the next general quarter sessions to be held for the county, riding, city, liberty, or town corporate wherein the church or chapel is situated, in respect whereof such rate shall have been made, and the justices of the peace there present, or the major part of them, shall proceed finally to hear and determine the matter, and to reverse the said judgment if they shall see cause; and if the justices then present, or the major part of them, shall find cause to affirm the judgment given by the first two or more justices, the same shall be decreed by order of sessions, with costs, against the appellant, to be levied by distress and sale of the goods and chattels of the said party appellant: provided always, that in case any such appeal be made as aforesaid, no warrant of distress shall be granted until after such appeal be determined: provided also, that nothing herein contained shall extend to alter or interfere with the jurisdiction of the ecclesiastical courts to hear and determine causes touching the validity of any church rate or chapel rate, or from proceeding to enforce the payment of any such rate, if the same shall exceed the sum of 10*l.* from the party proceeded against: provided likewise, that if the validity of such rate, or the liability of the person from whom it is demanded to pay the same, be disputed, and the party disputing the same give notice thereof to the justices, the justices shall forbear giving judgment thereupon, and the person or persons demanding the same may then proceed to the recovery of their demand, according to due course of law, as heretofore used and accustomed: provided likewise that nothing herein contained shall affect any regulations that may have been made by authority of parliament, respecting the church rates or chapel rates of any particular parishes or districts."

MODE OF LEVYING ASSESSMENT.

53 Geo. 3, c. 127.

Appeal.

In case of appeal warrant of distress not to issue.

Saving of the ecclesiastical jurisdiction.

Rate exceeding 10*l.*

And by 54 Geo. III. c. 170, s. 12, the goods and chattels of any person neglecting to pay any sum legally assessed on him for any churches for seven days after demand made, may be distrained, not only within the district, parish, township, or hamlet, in which it is made, but also within any other district, parish, &c. within the same county, riding, division, or jurisdiction; and if sufficient distress cannot be found within such county, &c., then, on oath thereof made before any one or more justice or justices of the peace for any other county, &c. in which any of the goods or chattels of such person shall be found, (which oath such justice or justices shall administer and certify by indorsing his or their name or names on the warrant granted to make

Distress may be made in any district, &c. in same county, &c. 54 Geo. 3, c. 170, s. 12.

Backing warrant of distress to other counties.

(*a*) See form, (No. 1), *post*.
(*b*) See form, (No. 2), *post*.
(*c*) See form, (No. 3), *post*.
(*d*) See form, (No. 4), *post*.

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such distress,) such goods, &c. shall be liable to such distress and sale in such other county, &c., and may under such warrant and certificate be distrained and sold, as if found within the district, parish, &c. in or for which the rate was due.

Costs of distresses. 7 & 8 Geo. 4, c. 17.

By the 7 & 8 Geo. IV. c. 17, the provisions of the 57 Geo. III. c. 93, regulating the costs of distresses for rent, &c., are extended to distresses for church rates, &c. By that act of Geo. IV. it is enacted, that "all the rules, regulations, clauses, provisions, penalties, matters, and things in the said act contained, shall extend and be construed to extend, and shall be applied and put in execution, so far as the same are applicable and capable of being put in execution, with respect to any distress or levy which shall be made for any land tax, assessed taxes, poor rates, church rates, tithes, highway rates, sewer rates, or any other rates, taxes, impositions, or assessments whatever, in all cases where the sum demanded and due for or in respect of such taxes, rates, tithes, assessments, or impositions shall not exceed the sum of 20*l.*, and in all cases where the whole of the several sums sought to be levied by distresses taken for different purposes at the same time shall not exceed the sum of 20*l.*; and that such costs and charges, and no other, shall be taken and payable as the costs and charges of the levy and disposition of such distresses; and that all such proceedings shall and may be had and taken against any and every person transgressing the regulations of the said act in the levying or distraining for any such taxes, rates, impositions, or assessments, and all such persons shall be liable to and shall incur such and the like penalties, as by the said act are directed, required, and imposed with respect to persons making any distress for rent contrary to the directions of the said act; and that in any order or judgment of any justices before whom any complaint shall be preferred in consequence of this act, such order shall be expressed to be made upon a complaint for the breach of the said recited act as amended by this act; and that the said recited act and this act shall be taken and construed together as one act, to all intents and purposes whatsoever."

Proceedings of justices.

Before the passing of 53 Geo. III. c. 127, s. 7, considerable delay and expense were incurred in the recovery of church rates. That act, as we have seen *ante*, 628, provides a summary remedy, by application to justices of peace in cases of withholding church rates not exceeding 10*l.*, where the party does not dispute the obligation to pay them, but does not invest justices with the power which belongs exclusively to the ecclesiastical court, *viz.* the power of deciding on the validity of the rate or the liability of the person to pay it. The justice cannot issue his warrant unless it be made affirmatively to appear before him that the amount does not exceed 10*l.*, and that no question is made on the rate in the ecclesiastical court. If neither of these preliminary exceptions have place, the party may give notice to the two justices before whom he is summoned to appear, that he disputes the validity of the rate or his liability to pay it, though no proceeding is actually commenced in the ecclesiastical court: and any expression by him, manifesting that he disputes the rate *bonâ fide*, will be a sufficient notice to make a *cesser* of the proceedings before the justices. *R.* v. *The Chapelwardens of Milnrow*, 5 *M. & S.* 248.

In a late case where a constable, having a warrant of distress under 53 Geo. III. c. 127, s. 7, broke the outer door of and entered plaintiff's dwelling-house, it was held, that although he thereby exceeded his authority; yet as it was not shown that he acted with any other intention than that of executing the authority delegated to him by the warrant, no action could be maintained after the expiration of three calendar months after the fact committed. *Theobald* v. *Crichmore*, 1 *B. & A.* 227; and see s. 12 of the act.

Quakers refusing to pay.

Also a Quaker refusing to pay church rates may be sued, as other parishioners, in the ecclesiastical court; or he may be proceeded against before the justices of the peace, in the same manner as for his tithes.

And by stat. 53 Geo. III. c. 127, s. 6, reciting, that "whereas by stat. 7 & 8 Will. III. it is enacted, where any Quaker shall refuse to pay for or compound for his great or small tithes, or to pay any church rates, two or more of his Majesty's justices of the peace are authorised to hear and determine the

same, not exceeding the value of 10*l.*: and whereas by a statute made and passed in the first year of King George the First the said act is extended to other objects: and whereas it is become expedient to enlarge the said sum; be it enacted, that, from and after the passing of this act, all the provisions of the said acts of King William and King George shall be deemed and taken to extend to any value not exceeding 50*l.*: provided always nevertheless, that, from and after the passing of this act, one justice of the peace shall be competent to receive the original complaint, and to summon the parties to appear before two or more justices of the peace, as in the said act is set forth." MODE OF LEVYING ASSESSMENT.

(5.) Appeal against Rate.

If any person find himself aggrieved by the inequality of the assessment, his appeal must be to the ecclesiastical judge. *Degge*, 172. Appeal against the rates.

And in such case, if he will be relieved, he must show that he is illegally or unequally taxed in respect of the quantity of his land, as being rated for more than he has, or that the land which he hath is over-rated, or that the rate was needless, or that some lands in the parish are omitted in the rate. 1 *Wood's Inst.* b. 1, c. 7.

When the amount of assessment does not exceed the sum of 10*l.* he has an appeal to the quarter sessions by stat. 53 Geo. III. c. 127, s. 7. See *ante*, 629.

Unless the rate be wholly a nullity and void, its legality cannot be disputed in an action for levying it under a distress authorised by a magistrate's warrant.

By the 17 Geo. II. c. 37, where there shall be any dispute in what parish or place improved wastes and drained and improved marsh lands lie and ought to be rated, the occupiers of such lands or houses built thereon, tithes arising therefrom, mines therein, and saleable underwoods, shall be rated to this and all other parish rates within such parish or place as lies nearest to such lands; and if on application to the officers of such parish or place to have them rated as aforesaid any dispute shall arise, the justices of the peace at the next sessions after such application made, and after notice given to the officers of the several parishes and places adjoining to such lands, and to all others interested therein, may hear and determine the same on the appeal of any person interested, and may cause the same to be equally assessed, whose determination therein shall be final. But this shall not determine the boundaries of any parish or place other than for the purpose of rating such lands to the parochial rates as aforesaid. In case of marsh lands, &c.

(6.) Church Rates under Acts for Building Additional Churches.

All money expended in purchasing sites, and advanced by commissioners to any parish under the act, or paid by commissioners in cases of neglect to provide sites, and all sums expended or advanced under the act in carrying the purposes thereof into execution, shall be charged on the church rates, and the churchwardens are required and empowered to make sufficient rates for repaying such expenses and advances, within the periods or at the times specified by the commissioners. 58 Geo. III. c. 45, s. 56. Sums expended in purchasing sites, or advanced to parishes by commissioners, to be charged upon and paid out of church rates.

Where money shall have been expended in purchasing sites, or advanced by commissioners under the act for extra-parochial places in which no church rate shall be made, any justice on the requisition of the commissioners shall appoint two or more persons to make and levy rates for making all payments and repayments as may be required under the act, who shall have the same powers as churchwardens; and all such rates shall be deemed church rates, and all laws relative to church rates shall be applicable thereto. *Id.* s. 57. In what cases rates may be raised by justices in extra-parochial places for purposes of act.

Power is given to churchwardens in parishes with consent of the vestry, and persons appointed in extra-parochial places with consent of the majority of persons who would be entitled to vote in a vestry, with notice given in the Churchwardens may borrow money on credit of rates.

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church and chapel therein or nearest thereto, to borrow money on the rates, and to raise by rates money sufficient to pay the interest and one twentieth of the principal, until the whole money borrowed shall be repaid. 58 Geo. III. c. 45, s. 58.

And also money for enlarging existing churches, &c.

Power is given to churchwardens with consent of vestry and of the bishop and incumbent to borrow and raise on the rates money necessary for or towards defraying the expense of enlarging or extending the accommodation in any then existing church or chapel, and to make rates for payment of the interest,

Fund for payment.

and providing a fund of not less than the interest for repayment of the principal, or repaying the principal in such other manner as shall be agreed on. Provided that one-half of the additional accommodation shall be allotted to uninclosed or free seats. *Id.* s. 59.

No application to be made for building, &c. by means of rates without consent of majority of inhabitants paying poor rates; or where a select vestry without the consent of a certain portion thereof.

No application to build or enlarge any church or chapel, wholly or in part, by means of rates, shall be made unless the major part of the inhabitants and occupiers assessed to the poor, in vestry assembled, shall consent thereto, or where the parish shall be under the care of a select vestry or body, with the consent of four-fifths thereof, such consents to be certified to some justice by an overseer of the poor; nor unless two-thirds in value of the proprietors of lands within such parish, whether for estates of freehold or copyhold, or by virtue of leases for terms of not less than fifteen years absolute or determinable upon a life or lives, shall have consented thereto, such consents to be given by writing under the hands of all persons and corporations sole, and of the president or head member of corporations aggregate, and of the husbands, guardians, committees, trustees, attornies, or agents of femes covert, minors, insane persons, and persons out of the kingdom, and of the major part of the trustees for any charitable or other purpose. *Id.* s. 60. See further the 59 Geo. III. c. 134, s. 24, *infra*.

Churchwardens of parish where church, &c. built may raise rates for the purpose.

Power is given to churchwardens of any parish or place in which any church or chapel shall be built, on such application as aforesaid, (s. 60,) to make rates for raising the sum or portion of the sum proposed to be defrayed by rates, or to borrow any such sums on the credit of such rates; and in every such case to make rates for payment of the interest of any monies advanced for building any church or chapel on credit of the rate, and for providing a fund of not less than the amount of the interest for repayment of the principal, or for repaying such principal in such manner as shall be agreed upon. *Id.* s. 61.

Churchwardens, &c. empowered to levy rates.

By 59 Geo. III. c. 134, s. 23, any church or chapel warden of any parish or division, or consolidated or district chapelry, in which rates shall be made under said act or this act, may recover such rates by all such ways and means as church rates may be recovered by, as fully as if they were hereby specially given: provided that church or chapel wardens appointed under said act or this act shall not in virtue of such office be deemed overseers of the poor.

No application to build or enlarge church, &c. made if certain number of parishioners dissent.

Sect. 24. After reciting so much of sect. 60 of 58 Geo. III. c. 45, as requires the consent of two-thirds in value of the proprietors, enacts, that such recited provision shall be repealed; and that no application to build or enlarge any church or chapel wholly or in part shall be made, nor shall any church or chapel be built, rebuilt, or enlarged, or ony purchase made of any new or additional burial ground, by means of rates on any parish where one-third in value, (to be ascertained by an average of the poor's rate for the preceding three years,) of the proprietors of tenements in such parish, whether for estates of freehold or copyhold, or for terms of years absolute, whereof fifteen years shall be unexpired or determinable on a life or lives, shall dissent therefrom; such dissent to be entered in the book containing the proceedings of the vestry, and to be signified, in case of any future vestry, within two months after the resolution, and in case of any such resolution already passed, within two months from passing this act, under the hands of such proprietors as aforesaid, and of the president, head or chief member of any corporations aggregate, and of the husbands, guardians, committees, trustees, attornies, or agents of any femes covert, minors, persons insane or absent from the kingdom, and

Districts to be separate parishes for all ecclesiastical purposes.

the major part of the trustees of any charitable institution, or of any part of them authorised to act in the trusts.

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By sect. 25, It shall be lawful for the inhabitants of any parish assembled at any vestry, or the major part of the inhabitants so assembled, of which notice shall have been given on two successive Sundays preceding, or for two-third parts of such of the persons exercising the powers of vestry as shall be assembled at any meeting of which notice shall have been given as notices for assembling such persons are given, to order and direct the making and raising of any rate not exceeding one shilling in the pound in any one year, or five shillings in the pound in the whole, upon the annual value of the property in the parish, for the purpose of building or enlarging any church or chapel, either wholly or in part, by means of rates, without any further or other or greater number of consents of any number of inhabitants, or proprietors, or occupiers, or other persons: provided that no larger rate than aforesaid shall be directed to be raised in relation to any application to build or enlarge any church or chapel, either wholly or in part, by means of rates, if any such proportion of dissents, as in sect. 24 is specified, are signified as there directed; and every such direction shall be imperative upon the church or chapel wardens, who shall forthwith make and raise the rate so ordered; and every such rate shall be made, raised, levied, and accounted for in like manner and with all such powers and under such penalties as are in law applicable to church rates.

Rate not exceeding 1*s.* in the pound in any one year, or 5*s.* in the whole, may be raised for building or enlarging a church or chapel without such proportion of consents of proprietors, &c. as is required by 58 Geo. 3, c. 45, s. 60.

Proviso as to dissent in case of a larger rate.

Order to raise rate imperative.

When any parish shall be desirous of increasing the accommodation in the parish church, and it shall be expedient to take down the existing church and to rebuild it on the same or a more convenient site, it shall be lawful for the churchwardens, with the consent of the vestry, or persons possessing the powers of vestry, and of the ordinary patron, incumbent and lay impropriator, if any, to take down such existing church, and to rebuild it on same, or a new site; and the churchwardens may borrow on credit of the church rates, or any rates made under said act, or this act, money necessary for defraying all or any part of the expense of taking down and rebuilding such church, and to make rates for paying the interest of the money so borrowed and for providing a fund not less than the amount of the interest for repaying the principal, or for repaying such principal at such times and in such manner and proportions as shall be agreed upon by the lenders: provided that no church shall be so taken down and rebuilt by means of rates, if such proportions of dissents as in sect. 25 specified are signified in writing as thereby directed; and such church, when consecrated, shall be the parish church for celebrating divine offices and solemnizing marriages: provided that one half of the additional accommodation obtained by rebuilding such church shall be set apart for free and open sittings, and that persons enjoying pews or sittings in the church, held in virtue of any faculty or prescription, shall have pews or sittings as near as may be in the same situation, and of like dimensions, allotted to them in said new church, and that all tombstones, monuments, and monumental inscriptions in the old church, shall be carefully preserved by the churchwardens, and shall be set up by them at the charge of the parish in the new church, as near as circumstances will admit, in the situations from whence they were removed in the old church. *Id.* s. 40.

Rates may be laid on any parish, for rebuilding or enlarging the church.

Money may be borrowed upon rates, &c.

No church taken down, &c. if dissent signified as herein mentioned.

Proviso for free and open sittings, and for situation and dimensions of new pews, and for tombstones, &c.

The repairs of district churches or chapels shall be made by the districts to which they belong, by rates to be raised within the districts in like manner as repairs of churches by parishes, and such district shall be deemed a separate parish for that purpose; and the repairs of chapels not made district churches shall be made by the parish in or for which the chapels shall be built. 58 Geo. III. c. 45, s. 70.

Repairs of district churches to be made by rates upon the district.

Districts shall be made subject to the repair of the original parish church for twenty years after the district church shall be consecrated, after which the parish church shall be repaired by the remainder of the parish, and each district shall afterwards make separate rates for such repairs, as if separate parishes. *Id.* s. 71.

District to remain liable for repairs of parish church for 20 years.

It shall be lawful for the churchwardens of any parish, with the consent of the vestry, bishop, and incumbent, to borrow and raise on credit of the

Churchwardens, with consent of vestry, &c. may

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church rates, or any rate made under said act or this act, money necessary for defraying the expense of repairing any churches or chapels, and where such money shall have been borrowed, to raise by rate a sum sufficient from time to time to pay the interest of the money so borrowed, and not less than ten *per cent.* of the principal, out of the produce of such rates, until the whole money borrowed shall be repaid. 59 Geo. III. c. 134, s. 14.

raise money upon credit of rates for repair of churches, &c.

Chapels belonging to parishes, with or without districts assigned, to be repaired by the parishioners at large, in the same manner as the church of the parish.

All chapels acquired and appropriated, or built or enlarged and improved under said acts, or under any local acts wherein no provision is made relating thereto, in aid of the churches of the parishes or places in which they shall be situated, (whether or not any districts of such parishes shall have been assigned to such chapels for ecclesiastical purposes,) shall be repaired by the parishes or places at large to which such chapel shall belong, and rates shall be raised for that purpose in like manner as for the repair of the churches of such parishes or places, and all the laws in force for making and raising rates for the repair of churches shall be applied for making and raising rates for the repair of such chapels. 3 Geo. IV. c. 72, s. 20.

District to remain liable to repairs of parish church for 20 years.

Parishes may, &c.

It shall be lawful for the commissioners, in any case in which any division of a parish previously divided under the acts should be again divided, and on which any church or chapel shall be built or acquired, and appropriated for the use of such new division, by any instrument under the seal of the commissioners, to declare that all liability to repair the church or chapel of the division from which such new division shall be made, shall cease from the period specified in such instrument; and after such period the new division shall be liable only to repair the church or chapel built therein, and to repair the church of the original parish for the then residue of the twenty years under 58 Geo. III. c. 45, s. 71, s. 21.

Appointment by commissioners of select vestry for management of new churches.

In every district parish, or division of a parish, or district chapelry, in which any church or chapel shall be built, acquired, or appropriated under said act, or this act, in which there shall not be a distinct vestry, a select vestry of so many persons as commissioners shall direct, shall be appointed by the commissioners, with the advice of the bishop, out of the substantial inhabitants, for the care and management of the church or chapel, and all matters relating thereto, and such select vestry shall annually elect the church or chapel warden on the part of the parish or chapelry, and shall elect new members of such vestry as vacancies shall arise by death, resignation, or ceasing to inhabit the parish, and proper pews shall be provided for the use of the church or chapel wardens. 59 Geo. III. c. 134, s. 30.

Such vestry to appoint church or chapel wardens.

In cases of division of parish, vestrymen resident in district left to original parish church, to continue to act for ecclesiastical purposes.

Vestrymen to act only in division of their residence.

How deficiency of vestrymen to be supplied.

Where any parish or place shall be divided into separate parishes for ecclesiastical purposes, or into separate districts or chapelries in which select vestries shall be appointed by the commissioners, all members of the select vestry of the original parish who shall reside in the district or division of the original church or chapel, shall continue to act as the vestry of such district or division in all matters relating to such church or chapel, and the repairs thereof, or to any other ecclesiastical matters or things, or in the distribution of any proportion of any bequest, gifts, or charities which may under this act be assigned to any such district or division: provided that no member of any select vestry shall, after such division, act in any manner relating to any church or chapel, or any other ecclesiastical matters or things, except such as relate to the division in which he shall reside; and if by reason of such division a sufficient number of such members of select vestry shall not remain resident in the division within which the original church or chapel shall be situate, according to the proportion fixed by the commissioners, (regard being had to the population of such division, and its relative population to that of the whole parish or place,) all such deficiencies shall be filled up as vacancies have before been filled up therein: provided that no person shall vote in supplying such deficiencies unless resident within the division for which the members are to be chosen; provided that the persons chosen shall not thereby be members of the vestry for any other purposes than such as relate to the division for which they shall be chosen, or for the distribution of any charitable gifts therein; provided that all the members of the select vestry of any such parish or place resident in any other divisions thereof shall be members of

such vestries as shall be appointed under the acts for the divisions in which they shall reside. 3 Geo. IV. c. 72, s. 10.

VII. Profanation of and Offences relative to Churches.

And herein,—1st. As to Arresting Clergyman attending Divine Service; —2dly. Holding Fairs, Plays, &c. in Churches, &c.;—3dly. Brawling in Churches;—4thly. Striking in Churches, &c.;—5thly. Stealing, &c. from Churches, &c.;—and 6thly. Other Profanations.

(1.) Arresting a Clergyman performing Divine Service, or in going or returning.

Arresting clergymen.

The stat. 9 Geo. IV. c. 31, s. 23, enacts, "that if any person shall arrest any clergyman upon any civil process while he shall be performing divine service, or shall with the knowledge of such person be going to perform the same, or returning from the performance thereof, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall suffer such punishment by fine or imprisonment, or by both, as the court shall award."

See the general clauses affecting this and all the provisions of the act, *post*, **Malicious Injuries to Persons**, Vol. III.

Repeal.

This act repeals the stat. 50 Edw. III. c. 5, and the stat. 1 Rich. II. c. 15, (which related to this offence.)

Alterations, &c.

This provision is nearly a re-enactment of the stat. 1 Rich. II. c. 15; however, that did not extend to arrests of clergymen going or returning from performing service.

The act applies to week days as well as Sundays and holidays. *Wats.* c. 34.

The arrest, though it may be punished, is still good in law, unless on a Sunday, so that if a rescous be made, and thereby any person shall be killed, the killing is murder. *Wats.* c. 34.

As to what constitutes an arrest, see *ante*, **Arrest**, p. 256.

(1.) Holding Fairs, Plays, &c. in Churches.

Fairs in.

Fairs used in former times to be kept in church-yards, and even in churches, till the indecency and scandal was so great as to want a reformation; *Burn's E. L.* 340; and accordingly by 13 Edw. I. st. 2, c. 6, no fairs nor markets shall be kept in church-yards.

Plays, &c.

By canon 88, plays are not suffered in churches, chapels, or church-yards, nor feasts, &c. or any other profane purposes, nor musters.

(3.) Brawling, &c. in Churches.

Brawling in churches.

By stat. 5 & 6 Edw. VI. c. 4, s. 1, if any person shall by words only quarrel, chide, or brawl in any church or church-yard, the ordinary (on proof of two witnesses) may suspend every layman, being an offender, *ab ingressu ecclesiæ*, and every clergyman from the ministration of his office so long as he shall think meet. This act was not intended to abridge the ecclesiastical jurisdiction. *Jackson* v. *Barrett*, 1 *Hagg.* 15.

Proceedings under this act must be supported by two witnesses on the specific charge, or they will be dismissed. *Hutchins* v. *Denziloe*, *Hagg. Rep.* 181.

Provocation is no defence to a suit for brawling in a church at a vestry

PROFANATION AND OFFENCES AS TO.

meeting. *Jenkins* v. *Barrett*, 1 *Hagg. Rep.* 15; and see *Frances* v. *Ley*, *Cro Jac.* 367.

As to the evidence, see *Austen* v. *Degger*, 3 *Phil.* 120.

Brawling, &c. in.

By 27 Geo. III. c. 44, the suit for brawling or striking must be brought within eight calendar months.

The court will consider time and place in cases of chiding, quarrelling, and brawling; that may be "chiding" or "brawling" in the church, which would not be so in the vestry. The vestry is a place for parish business, and the court would not interfere further than might be necessary for the preservation of due order and decorum. *Hagg. Rep.* 184, 185.

Suspension of a parishioner *ab ingressu ecclesiæ*, prescribed by the above act, 5 & 6 Edw. VI. was limited to a month only under certain circumstances; *Clinton* v. *Hatchard*, 1 *Add. Rep.* 96; and in another case, *Canning* v. *Sawkins*, 2 *Phil. Rep.* 293, for brawling in a church, it was limited to three weeks, with notification in the church of such suspension in the latter case, and costs in both. In *Cox* v. *Goodday*, 2 *Hagg.* 138, a clergyman was suspended for a fortnight for words spoken during divine service by way of admonition of a passionate tenor, though expressed without any tone of passion.

And in *North* v. *Dickson*, 1 *Hagg. Rep.* 730, the defendant was suspended for a fortnight and condemned in costs.

This being a criminal proceeding, the office of the judge wrongly promoted, by misnomer of the judge in a copy of the articles for this offence, is fatal. *Williams* v. *Bott*, 1 *Hagg. Rep.* 1. And it seems the articles should be in his name as vicar general and official principal, for the vicarial jurisdiction of their offices seems in some degree concurrent. The omission, however, of the latter description is fatal. *Thorpe* v. *Mansell*, 1 *Hagg. Rep.* 4.

The particular words of *brawling* must be set forth in the articles. *Jenkins* v. *Barrett*, 1 *Hagg. Rep.* 14.

(4.) Striking, &c. in Churches.

Assaulting clergymen.

Beating clerks in orders was punishable under the *Articuli Cleri*, 9 Edw. II. st. 1, c. 3, but so much of that act relating thereto is repealed by 9 Geo. IV. c. 31.

The 5 & 6 Edw. VI. c. 4, s. 3, so far as the same relates to striking, or drawing any weapon with intent to strike, in churches, &c. is repealed by the 9 Geo. IV. c. 31, except so far as it is punishable under ecclesiastical censures.

The enactment of 5 & 6 Edw. VI. c. 4, s. 2, in force, is, "if any shall smite or lay any violent hands on another in any church or church-yard, he shall be deemed *ipso facto* excommunicate, and be excluded from the fellowship and company of Christ's congregation."

Lay any violent Hands]—But churchwardens, or perhaps private persons, who whip boys for playing in the church, or pull off the hats of those who obstinately refuse to take them off themselves, or gently lay their hands on those who disturb the performance of any part of divine service, and turn them out of the church, are not within the meaning of this statute,. 1 *Hawk.* c. 63, s. 29.

A threatening posture is not a smiting within the act. *Jenkins* v. *Barrett*, 1 *Hagg. Rep.* 15.

Excommunication.

Shall be deemed ipso facto Excommunicate]—And he shall not excuse himself by showing that the other assaulted him. 1 *Hawk.* c. 63, s. 28.

Ipso Facto]—Nevertheless in this and other like cases, there ought either to be a precedent conviction at law, which must be transmitted to the bishop; or else the excommunication must be declared in the spiritual court upon a proper proof of the offence there; for it is implied in every penal law that no

one shall incur the penalty thereof till he be found guilty upon a lawful trial. 1 *Hawk.* c. 63, s. 27. CHURCH-WARDENS.

As to excommunication, *vide* stat. 53 Geo. III. c. 127, s. 1, 2, which abolishes excommunication in all cases except in definitive sentences, or interlocutory decrees having force of definitive sentences, and pronounced as spiritual censures for offences of ecclesiastical cognizance.

(5.) Stealing from and Breaking into Churches.

As to the offence of breaking into and stealing, &c. from churches, see Sacrilege, Vol. V.

(6.) Other Profanations and Offences.

As to not going to church, holding fairs, places of entertainment, travelling, taking and exercising ordinary callings, killing game, and serving process, &c. on a Sunday, see *post*, Lord's Day, Vol. III.

As to burning of churches, *ante*, Burning, p. 537.

Churchwardens.(a)

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I. Nature of Office, &c.

CHURCHWARDENS are the guardians or keepers of the church, and representatives of the body of the parish. 1 *Bla. Com.* 394. Nature of office.

Their duties were originally confined to the care of the ecclesiastical property of the parish, over which they exercised discretionary power for specific purposes. 1 *Hagg.* 173.

They are to a certain degree the guardians of the moral character and public decency of their respective parishes. *Griffiths* v. *Reed*, 1 *Hagg. Rep.* 208.

In general the number of the churchwardens is two. 2 *Stra.* 1246. Number of.

Churchwardens, when sworn in, are so far incorporated by law as to sue Churchwardens a body corporate.

(a) See in general *Steer's P. L.* and *Shaw's P. L.*

WHO EXEMPT.

for the goods of the church, and to bring an action of trespass for them; and also to purchase goods for the use of the parish; but they are not a corporation in such sort as to purchase lands, or take by grant, except in London by custom. *Gibs. Code*, 241.

II. Who are Exempt from Serving as.

Peers, clergymen, and members of parliament.

All peers of the realm, by reason of their dignity; so all clergymen, by reason of their order; and also all parliament men, by reason of their privilege, are exempted from the office of churchwardens. *Gibs.* 215.

Counsellors or attorneys.

A counsellor or attorney ought not to be chosen churchwarden; and if he be, he may have a prohibition by reason of his attendance on the courts at Westminster. 2 *Roll. Abr.* 272.

Apothecaries and surgeons.

Apothecaries, who have served seven years, shall be exempted from the office of churchwarden. 6 & 7 Will. III. c. 4.

Freemen of the Corporation of Surgeons in London are exempted from being churchwardens. 18 Geo. II. c. 15.

Dissenting ministers.

Dissenting teachers or preachers in holy orders, or pretended holy orders, being duly qualified, are exempted from the office of churchwardens. 1 Will. III. sess. 1, c. 18; 52 Geo. III. c. 155, s. 9.

Other dissenters.

Other dissenters, scrupling to take upon them the office, may execute the same by a sufficient deputy, to be approved of in like manner as other churchwardens. 1 Will. III. sess. 1, c. 18.

Catholic ministers.

Every Roman Catholic minister on taking the oath, and conforming to the regulations therein specified, shall be exempted from the office of churchwarden. 31 Geo. III. c. 32, s. 8.

Persons having convicted a felon.

All persons who have prosecuted felons to conviction are exempted from the office of churchwardens in the parish where the offence was committed. (*a*) 10 & 11 Will. III. c. 23, s. 2.

Militia.

No serjeant, corporal, or drummer of the militia, nor any private man, from the time of his enrolment until his discharge, shall be liable to serve as a peace or parish officer. 42 Geo. III. c. 90, s. 174.

Aliens, convicts, &c.

Aliens, Jews, children, and persons convicted of felony, are disqualified from being elected churchwardens. *Anthony* v. *Seger*, 1 *Hagg. Rep.* 19.

No person living out of the parish can be chosen churchwarden. *Gibs.* 215; 1 *Hagg.* 10.

Non-residents.

But persons who are not personally resident in a parish, but are partners of a house of trade situate within it, are not exempted from serving the office. *Stevenson* v. *Langston*, 1 *Hagg. Rep.* 379; see 1 *B. & Cres.* 178, 123; 2 *B. & Cres.* 322.

III. Who to Elect Churchwardens.

Who to elect.

Churchwardens are sometimes appointed by the minister, and sometimes by the parishioners, sometimes by both together, according as the custom of the place directs. 1 *Bla. Com.* 394; 2 *Atk.* 650; 2 *Stra.* 1246; 1 *Ventr.* 167.

Where there is no such custom, the election must then be according to the directions of the canons of the church; and canons 89, 90, direct, that all churchwardens or questmen in every parish shall be chosen by the joint consent of the minister and the parishioners, if it may be; but if they cannot agree upon such choice, then the minister is to choose one and the parishioners another, and without such joint or several choice none shall take upon themselves to be churchwardens. *Gibs.* 241; 1 *Stra.* 145; 2 *Stra.* 1246; *sed vide Bac. Abr. Churchwardens*, A.

(*a*) The first assignee of the certificate of having convicted a felon, was entitled to the exemption by this act of Will. III., but that right is now taken away by 58 Geo. III. c. 70, s. 2.

In some cases the lord of the manor prescribeth for the appointment of churchwardens. *God.* 153; 2 *Inst.* 653; 1 *H. Bla.* 28. WHO TO ELECT.

A curate is included under the word parson. *Hubbard* v. *Penrice*, 2 *Stra.* 1246.

If the parson or vicar, who has by custom a right to choose one churchwarden, be under sentence of deprivation, the right of choosing both churchwardens results to the parishioners. *Carth.* 118.

The parson cannot intermeddle in the choice of that churchwarden which it is the right of the parishioners by custom to elect. 2 *Stra.* 1045.

Nor can the archdeacon or any others who by virtue of their offices are to swear and admit churchwardens, control the election, such offices are purely ministerial. *Bac. Abr. Churchwardens*, A. The spiritual court cannot generally control or examine into the election. 1 *Salk.* 166; *post*, 540.

Although the parishioners neglect ever so long to choose churchwardens, yet the ordinary hath no power of appointing them. *Stutter* v. *Freston*, 1 *Stra.* 52.

By custom churchwardens may be chosen by a select vestry, or by a particular number of the parishioners. See *Jones*, 439; *Cro. Car.* 551; *Hard.* 378; 1 *Mod.* 181; *post*, **Vestries**, Vol. V.

By 58 Geo. III. c. 45, s. 73, one of the acts relating to building additional churches, two fit persons shall be appointed to act as churchwardens for every church or chapel built or appropriated under the act, at the usual period of appointing parish officers in every year, one by the incumbent and the other by the inhabitant householders in the district; and when elected, they shall appear and be admitted and sworn according to law, and shall receive the rents of the seats and pews, and pay the stipends or salaries to the minister and clerk, and shall do all acts requisite for the repairs, management, good order, and decency of behaviour in the church or chapel, and they shall continue in office till others be chosen: and on non-payment of the rents of seats and pews may enter upon and sell the same, or recover by action in the names of "the churchwardens of the church or chapel of," [describing the same] without specifying their names, and no such action shall abate by their death or going out of office. Appointment, &c. of, under acts for building new churches.

IV. Time and Mode of Election.

They are to be chosen every Easter week. *Can.* 90. Time of election.

In the election of churchwardens by the parishioners, the majority of those who meet at the vestry, upon a written notice given for that purpose, will bind the parish. *St. Saviour's, Southwark case, Lane's Rep.* 21. Election.

As to the mode of summoning, &c. the vestry, see further, *ante*, 625, and *post*, **Vestries**, Vol. V.

If there be a custom to conclude a poll for the election of churchwardens at a certain time, that being a reasonable time, the voters must tender their votes within it. *R.* v. *Commissary of the Bishop of Winchester*, 7 *East*, 573.

After the election of the churchwardens they are to take an oath to execute the office truly and faithfully; (see *Gibs.* 243; *Ward*, 364;) and they must not execute their office till they are sworn. *Gibs.* 243; *Shaw's P. L.* 70. *Steer's P. L.* Oath to be taken.

The oath as said to have been agreed on upon mutual consultation between the civilians and common lawyers, is as follows:—

You shall swear truly and faithfully to execute the office of a churchwarden within your parish, and according to the best of your skill and knowledge present such things and persons as to your knowledge are presentable by the laws ecclesiastical of this realm: so help you God, and the contents of this book. Gibs. 243.

This oath is administered by the archdeacon or ordinary of the diocese, and if he refuse, a *mandamus* will lie to compel him. *Com. Dig. Mandamus*, (A.); *Bac. Abr. Churchwardens*, (A.)

TIME AND MODE OF ELECTION.

No fee can be demanded for swearing the churchwardens or taking their presentments. 1 *Salk.* 330.

A churchwarden duly elected may be directed by the spiritual court to take the oath of office before the proper ordinary; (*Cooper* v. *Allwatt*, 3 *Phill. Rep.* 166;) and if he refuse to take his office and oath he may be excommunicated for the refusal, and no prohibition will lie. *Gibs.* 216, 243, 961; 1 *Mod.* 194.

Duration of office.

With respect to the time they are to continue in office, by canon 89 they are not to continue longer than one year except they be chosen again, but by canon 188, the office of churchwardens is to continue till the new churchwardens be sworn. *Nolan's P. L.* 4th ed. 44.

Mandamus to elect.

In 2 *Stra.* 686, a *mandamus* to churchwardens to call a vestry to elect churchwardens was refused; but see 1 *Stra.* 52; 1 *Nol. P. L.* ch. 2, part 2.

Validity of election, &c. how tried.

The courts of common law are the proper ones for deciding the validity of the custom of choosing churchwardens, like of all other customs of the realm, and not the spiritual courts. *Cro. Car.* 552; *Bac. Abr. Churchwardens*, (A.); 1 *Salk.* 160. So also the common law is to determine the legality of the votes given on the election. *Burr.* 1420. When two churchwardens are sworn in, the right is to be settled in an action. *Williams* v. *Vaughan*, 1 *Bla. Rep.* 38.

The spiritual court, however, may become the means of trying the validity of the election by a return of "not elected," "not duly elected," or any other return that answers the writ and affords an opportunity of trying the right in an action for a false return. 1 *Ld. Raym.* 138; 1 *Stra.* 610; 2 *Ld. Raym.* 1379, 1405; 2 *Salk.* 433; *Comp.* 413.

In a late case of *R.* v. *Williams*, 8 *B. & Cres.* 681, to a *mandamus* to admit A. B. into the office of churchwarden, reciting that he had been duly elected, a return that A. B. was not duly elected was held good.

A *quo warranto* will not be granted, as the office does not concern the rights or prerogatives of the crown. *R.* v *Daubeny*, 2 *Stra.* 1196; *R.* v. *Shepherd*, 4 *T. R.* 381.

V. Their Interest and Power over things of the Church, &c. and Contracts by.

Interest and power of churchwardens over things of the church, and contracts by.

The churchwardens, when chosen, are a corporation entrusted with the care and management of the *goods* belonging to the church, which they are to order for the best advantage of the parishioners; they are likewise enabled to take goods for the benefit of the church, but cannot dispose of them without the consent of the parishioners. *Bac. Abr. Churchwardens*, (B.)

They have such a special property in the organ, bells, parish books, bible, chalice, surplice, &c. and other *goods*, belonging to the church, that for the taking away or for any damage done any of these, they may bring an action at law, laying the damage to them or the parishioners; (*Wats.* c. 29;) and therefore the parson cannot sue for them in the spiritual court. *Bac. Abr. Churchwardens*, (B.) So they may indict the offender. *Id.*

Release by.

But churchwardens have nothing but to the use of the parish, and the corporation consists of both, and one only cannot release or give away the goods of the church; (*Cro. Jac.* 234; *Yelv.* 173;) nor can both churchwardens without the consent of the parishioners. 1 *Roll's Abr.* 393; 1 *Ventr.* 189.

Contracts by.

It has been laid down as a general rule that an agreement by parish officers in the course of their official duties, which is beneficial to the parish, is binding on it and succeeding churchwardens. See 2 *P. Wms.* 266; 1 *Powell on Contr.* 114; 1 *Com. Contr.* 396.

It has been held, a party cannot recover against several overseers of a parish for money lent to one of them in his capacity of overseer, unless the rest have expressly promised repayment. 3 *Stark. Rep.* 65.

INTEREST AND POWER OF, &c.

Churchwardens have no right to or interest in the *freehold* and inheritance of the church, which belongs solely to the parson or incumbent. *Bac. Abr. Churchwardens*, (B.)

Therefore they cannot grant a license for burying in the church; (*Cro. Jac.* 366;) though by custom they may have a fee for burying in the church itself. *Ventr.* 274; 3 *Keb.* 504.

We have already seen what power and interest the churchwardens have with respect to the *seats* in the church, *ante*, p. 616, 617. If any of them be taken or injured, the churchwardens may sue. *Bac. Abr. Churchwardens*, (B.)

Churchwardens themselves or any others cannot take down arms in windows, or deface gravestones or monuments erected in the church or churchyard, and if they do, an action lies by the heirs or executors of the parties for whom they were erected. *Roll's Abr.* 625; and see *ante*, p. 621.

A custom for the churchwardens of a parish to set up monuments, &c. in a church without the consent of the rector or ordinary, is illegal. *Beckwith* v. *Harding*, 1 *B. & A.* 508.

Churchwardens cannot, in general, purchase land for the use of the church or parish, except in London by custom. *Jones*, 439; *Gibs.* 215; *Mar.* 22, 67. If land be given to the parish for the use of the church, it must not be to the churchwardens and their successors, but it should be to feoffees in trust to the use intended, which must from time to time be renewed as the trustees die away. *Gibs.* 215.

By the 59 Geo. III. c. 12, s. 9 to 17, various powers are given to churchwardens and overseers to purchase and sue for, &c. lands for the use of the poor, with the consent of the inhabitants. See *post*, Poor, Vol. IV. 5 *B. & Cres.* 433; 2 *D. & R.* 708, S. C.

They cannot make a lease of lands given to feoffees for the use of the parishioners; (12 Hen. VII. 29 a; 13 Hen. VII. 10 a.;) nor maintain trespass or other action for entry upon, or taking the profits of such land. 12 Hen. VII. 29 a.

Churchwardens where additional chapel built.

Churchwardens of every parish in which any additional chapel shall be built or provided under the act without making any division thereof into separate parishes or district parishes, shall do all such things as churchwardens to be appointed under the act are authorised and required to do. 58 Geo. III. c. 45, s. 74.

Actions by.

We have already seen various instances in which the churchwardens may or may not sue, *ante*, p. 614, 616, 620, 640, &c. and *post*, 645.

They cannot bring actions as such after the expiration of their office; (*Stra.* 852; *Bac. Abr.* tit. *Churchwardens*;) but their successors must do it; (*Wats.* c. 39, (*u*);) and if any of the goods of the church be detained or not delivered by the predecessors, the successors may bring an action against him also, laying the damage to the parishioners; (*Gibs.* 216;) but if the action be commenced within the year, they may proceed in it after the year. *Id. F. N. B.* 91 k.; 2 *P. Wms.* 126.

When an obligation is made to churchwardens and their successors, and they die, their executors shall bring the action, and not their successors. *Vin. Abr. Churchwardens*, (D.)

The 58 Geo. III. c. 45, s. 73, relating to the building of additional churches, empowers churchwardens to sue for and recover pew rents.

VI. Duties of, in general.

Repairs. Rates. Pews.

We have already noticed several important duties of churchwardens relating to the repair of churches, the assessing and collecting of church rates, and the disposition of pews, &c.

Poor.

By 43 Eliz. c. 2, s. 1, every churchwarden is an overseer of the poor, though every overseer of the poor is not a churchwarden. The duties and liabilities of churchwardens as such overseers will be found fully considered, *post*, Poor, Vol. IV.

DUTIES OF, IN GENERAL.

The 55 Geo. III. c. 137, s. 6, prohibits churchwardens, overseers, and persons having the management of the poor, from being concerned in contracts, &c. for the supplying for their own profit goods, &c. for the use of the poor or workhouse, &c. under the heavy penalty of 100*l.* unless a certificate of two justices be obtained, &c. See *post*, Poor, Vol. IV.

As to contracts by the churchwardens and overseers for lodging or employing of the poor, see 45 Geo. III. c. 54, s. 1, 2, *post*, Poor, Vol. IV.

By 9 Geo. III. c. 37, churchwardens for paying the poor otherwise than in lawful money are to forfeit to the poor not less than 10*s.* nor more than 20*s.* See *post*, Coin.

Vacancy.

Churchwardens have the care of a benefice during its vacancy. Having first taken out a sequestration from the spiritual court, they are to manage all the profits and expenses of the benefice for him that shall next succeed; plough and sow his glebe; take in the crop; collect tithes; thrash out and sell corn; repair houses and fences; and the like. And they shall take care that during the vacancy the church shall be duly served by a curate approved by the bishop, whom they are to pay out of the profits of the benefice. And if the successor thinks himself aggrieved by them, he may appeal to the ecclesiastical judge. *Par. L.* 99; *Com. Par. Off.* 90.

Death, &c. of incumbent.

The death or avoidance of the spiritual person who was the incumbent of the church of any parish or place, in which any separated parish or district church or chapel shall be consecrated, at the time of consecration shall be notified by the bishop under his hand and seal to the spiritual person then serving the church or chapel, and the churchwardens of the parish or place; and such notification shall be preserved with, and copies thereof entered in the books of registers of marriages, births, and burials, of the church of the parish or place, and in the books of registers to be provided for entering the publications of bans and solemnization of marriages, and the baptisms and burials in such chapels, and such entries shall be authenticated by the churchwardens, and shall be sufficient evidence of the period of commencement of such service under this act of the publication of bans and solemnization of marriages and baptisms, and performance of burials, in any such chapel, or any cemetery thereof. 58 Geo. III. c. 45, s. 29.

Trading on Sunday.

They (or the constable) shall levy the penalties for persons exercising their worldly calling on the Lord's Day. 29 Car. II. c. 7.

Profanation of the church.

They shall suffer no plays, feasts, banquets, suppers, church-ales, drinkings, temporal courts or leets, lay juries, musters, or any profane usage, to be kept in the church or churchyard. *Can.* 88.

And Sir *William Scott*, in the case of *Cox* v. *Goodday*, 2 *Hagg. Rep.* 141, said, "the duty of maintaining order and decorum in the church lies *immediately* upon the churchwardens, and if they are not present, or being present do not repress any indecency, they desert their proper duty."

Attending divine service.

They shall see that the parishioners resort to church, and continue there orderly during divine service, and shall present the defaulters. *Can.* 90.

Loitering in churchyard.

They shall not suffer any idle persons to abide either in the churchyard or church-porch during the time of divine service or preaching; but shall cause them to come in or to depart. *Can.* 19.

Levying 12*d.* a Sunday for not coming to church.

They shall levy the forfeiture of 12*d.* a Sunday, on the goods of persons not coming to church. 1 Eliz. c. 2. See Lord's Day, Vol. III.

Sports on Sunday.

They (or the constable) shall levy the penalty of 3*s.* 4*d.* for using unlawful pastimes on the Lord's Day. 1 Car. c. 1.

Recusants.

They shall, on pain of 20*l.* present at the sessions once a year the monthly absence from church of all recusants, and the names and ages of their children above nine years old, and the names of their servants. And if the party presented shall be indicted and convicted, the churchwardens shall have a reward of 40*s.*, to be levied of the recusant's goods by warrant of the justices in sessions. 3 J. c. 4.

Excommunicated persons.

They shall keep excommunicated persons out of the church. *Can.* 85.

Church way.

They are to see that the church ways be well kept and repaired. And the right to a church way may be claimed and maintained by a libel in the spiritual court. 2 *Roll. Abr.* 287.

Ornaments of church.

They shall take care to have in the church a large Bible, book of Common

Prayer, book of Homilies, a font of stone, a decent communion table, with proper coverings, the ten commandments set up at the east end, and other chosen sentences upon the walls, reading-desk, and pulpit, and chest for alms; all at the charge of the parish. *Can.* 80 to 84.

Bells. They ought to keep the keys of the belfry, and to take care that the bells be not rung without good cause, to be allowed by the minister and themselves. *Can.* 88.

Registers. Churchwardens or chapelwardens of every parish or chapelry are from time to time to furnish register books, adapted to the forms given by the act, at the expense of the parish or chapelry, whenever required by the rector, vicar, curate, or officiating minister to provide the same. And such books are to be of paper, unless required to be of parchment, by such churchwardens or chapelwardens respectively. Stat. 52 Geo. III. c. 146, s. 2. See the act in full, *post*, **Parish Registers**, Vol. V.

They are to provide and securely keep, at the expense of the parish or chapelry, a dry well-painted iron chest for the keeping such register books, either at the rector's, &c. house, or in the church. Sect. 5.

They are to make fair copies, if required so to do by the rector, &c. of all the entries in the register book annually, at the expiration of two months after the end of each year, and to attest the verification of the same by the rector, &c. Sect. 6.

They are to transmit such annual copies to the register of the diocese, by the post, on or before the 1st of June in every year. Sect. 7.

In case of neglect or refusal of the officiating minister to verify copies of the register books, they are to certify the default to the registrar of the diocese. Sect. 9. See these enactments in full, *post*, **Parish Registers**, Vol. V.

And such register, being carefully preserved, is good evidence; and the falsifying of it is punishable at the common law. *Gibs.* 229. See **Evidence**, Vol. II. p. 37, 38.

Communion. They shall at the charge of the parish, with the advice and direction of the minister, provide bread and wine against the communion. *Can.* 20.

Incumbent not reading prayers. They (or the overseers) shall levy the penalty of *5l.* for an incumbent not reading the common prayer once a month. 13 & 14 Car. II. c. 4, s. 7.

Charity briefs. They shall collect money on charity briefs, on pain of *20l.* 4 Ann. c. 14.

Strange preachers. They shall not suffer any strangers to preach but such as shall appear qualified on showing their license; and they shall see that such preachers register and subscribe their names in a book to be kept for that purpose, with the day when they preached, and the bishop's name who granted the license. *Can.* 50, 52.

Persons denied Christian burial. Persons who murder themselves, or die excommunicated, are denied Christian burial; and therefore the churchwardens are not to suffer them to be buried in the church or church-yard, without special license from the bishop; *Degge*, 183; but now a *felo de se* may be buried in the church-yard, though he is still denied Christian burial. See the 4 Geo. IV. c. 52, s. 2. **Homicide**, Vol. III. p. 258.

Eating flesh on fish days. They shall levy the penalties for eating flesh on fish days. 5 Eliz. c. 5.

Drunkenness. They shall receive the penalties for tippling and drunkenness. 4 J. I. c. 5; 21 J. I. c. 7. See *ante*, **Alehouses**, p. 100.

Spirituous liquors. They shall receive the penalties for hawking spirituous liquors. 9 Geo. II. c. 23. See **Hawkers and Pedlars**, Vol. II.

Butter and cheese. They (or the overseers) shall receive the penalties relating to butter and cheese. 13 & 14 Car. II. c. 26. See *ante*, **Butter and Cheese**, p. 547.

Greenwich hospital: They, together with the minister, are to sign certificates for the out-pensioners of Greenwich hospital, residing within their parish, with respect to the identity of their persons, in order to the receiving of their pensions. 3 Geo. III. c. 16.

County rate. They (or the overseers) shall pay to the high constables the general county rate out of their money collected for the poor. 12 Geo. II. c. 29.

Servants firing houses. They shall receive the penalty for servants carelessly firing houses. 6 Anne, c. 31. See *ante*, p. 542.

PRESENTMENTS BY.

They shall receive the penalties for tracing hares in the snow, (and other game penalties.) 1 J. c. 27. *Post*, Game, Vol. II.

Tracing hares.

Surveyors of highways.

They shall join with the constable and surveyor of the highways in choosing and returning new surveyors. 13 Geo. III. c. 78. *Post*, Highways, Vol. III. p. 49.

Population accounts.

They are to preserve and deliver over the population accounts to their successors; 1 Geo. IV. c. 94, s. 9; and as to their other accounts, see *infra*.

Juries.

They are to make out lists of persons qualified to serve on juries, and to fix them on church doors, and keep them for inspection. 6 Geo. IV. c. 50, s. 8, 9. *Post*, Jurors, Vol. III. p. 413.

Other duties.

There are numerous other instances in which churchwardens are appointed by statute to receive certain penalties, &c. and to act in other matters, but it is not necessary to state them here.

VII. Of Presentments by.

Presentments by.

Churchwardens by their oath are to present or certify to the bishop, or his officer, all things presentable by the ecclesiastical laws, which relate to the church, minister, and parishioners.

The articles delivered to them for their direction are for the most part founded on the book of canons made in the year 1603, and the rubricks of the Common Prayer.

There are also several things which they are bound to present by act of parliament; as tippling or drunkenness, by stat. 4 J. I. c. 5; recusants by stat. 3 J. I. c. 4. See *ante*, Alehouses, p. 100.

They may present as often as they please, but shall not be obliged above once a year where it hath so been used, and not above twice any where; except it be at the bishop's visitation. *Can.* 116, 117.

For the presentments of any church or chapel for one year the register shall have only 4*d*. *Can.* 116.

The minister may present where the churchwardens neglect. *Can.* 113. But such presentment ought to be upon oath. 2 *Vent.* 42.

VIII. Their Accounts.

Their accounts.

We have already seen in various parts of our considerations on matters relating to the church and churchwardens, what disbursements and receipts may be made and given by churchwardens.

When to account.

At the end of the year, or within a month after at most, they shall before the minister and parishioners (at a vestry) give up a just account of such money as they have received, and also what they have particularly bestowed in reparations and otherwise for the use of the church; and shall deliver up to the parishioners the money and parish goods in their hands, to be delivered over by them to the next churchwardens by bill indented. *Can.* 89.

Accounting to a select vestry.

If the custom of the parish is for a certain number of persons to have the government thereof, and the account is given up to them, the custom is a good custom, and the account given to them a good account. *Gibs.* 242.

Vouchers.

Mr. *Barlow* says, that for disbursements of any sum not above 40*s*. their own oath is held sufficient proof; but for all sums above, receipts must be produced. But it may be more satisfactory if receipts be produced for all. *Barl.* 105.

Allowance of the account.

The allowance of the account may be by entering it in the church book of accounts, and having it signed by those in the vestry who allow the accounts. *Barl.* 105.

In the case of *Wainwright* v. *Bagshaw*, 2 *Stra.* 974, 1133, the churchwardens were cited into the court of Lichfield to account. They pleaded, that they had accounted at the vestry according to law. Which plea was rejected, and thereupon a prohibition was granted; for the ordinary is not to

take the account, he can only give a judgment that they do account; and to what purpose should they be sent back to those who have taken their accounts already. ACCOUNTS OF.

When they have faithfully accounted, and their account is allowed by the minister and major part of the parishioners present, it shall not afterwards be in the power of any to make them account again; unless some fraud in their accounts be afterwards discovered. 1 *Wood's Inst.* b. 1, c. 7. Account allowed final.

If their receipts fall short of their disbursements, the succeeding churchwardens may pay them the balance, and place it to their account. 1 *Roll's Abr.* 121; *Can.* 89, 109, &c. And the Court of Chancery will, on application, make an order for the purpose. 2 *Eq. Abr.* 203; *Prec. Ch.* 43; but see 4 *Vin.* 529, 8vo. Reimbursement of.

In general, however, *preceding* churchwardens cannot be reimbursed a rate. *Ante*, 627; 5 *Ves.* 547; 5 *Mad.* 4; 8 *Taunt.* 201.

If they refuse, they may be presented at the next visitation by the new churchwardens; or any of the parish that are interested may, by process, call them to account before the ordinary; or the succeeding churchwardens may have a writ of account at common law. 1 *Roll's Abr.* 121. How compelled to account, &c.

And churchwardens *de facto* may maintain an action against a former churchwarden, for money received by him for the use of the parish, though the validity of the election of the plaintiffs to the office be doubtful, and though they be not the immediate successors of the defendant; for the defendant, who was a wrong-doer in withholding the money, shall not be permitted to deny their right to bring the action, and churchwardens being a corporation for the purpose of taking care of the goods of the church, the right to sue for money withholden from the parish passed from one set to the other; it being perfectly immaterial, whether the immediate or any other successors of the defendant brought an action which was not founded in privity between them. *Turner* v. *Barnes*, 2 *H. Bla.* 559.

And in a late case, where in the parish of B. consisting of the township of B. and several hamlets, two churchwardens were appointed by the township and two by the rest of the parish, who made separate rates for their own divisions respectively: it was held, that the acting churchwardens for the township might maintain *assumpsit* against their predecessors for a balance remaining in their hands, without joining the other churchwardens as plaintiffs or defendants, and without proving that their appointment was strictly legal. *Astle* v. *Thomas*, 2 *B. & Cres.* 271; 3 *D. & R.* 492, S. C.

By 3 & 4 W. & M. c. 11, in all actions to be brought in the courts at Westminster or at the assizes for money mispent by churchwardens, the evidence of the parishioners, other than such as receive alms, shall be taken and admitted. See the act, *post*, 646.

In the case of *Leman* v. *Goulty and another*, 3 *T. R.* 3, it was determined, that although the spiritual court may compel the churchwardens to deliver in their accounts, they cannot decide on the propriety of the charges made therein: and when they had delivered in their accounts, they had done every thing which that court had the power of enforcing, and there was an end of their jurisdiction, it was *functus officio;* and if they take any steps afterwards, it is an excess of jurisdiction for which a prohibition will be granted even after sentence.

IX. Their Punishment for Misbehaviour, &c.

If churchwardens misbehave themselves, it seems the parishioners may remove them. 13 *Co.* 70; *Com. Dig. Eglise*, f. 1. Misbehaviour of, &c.

For breach of duty they may be sued in the ecclesiastial court, as if they take the bells out of the church. 1 *Sid.* 281.

If they neglect their duty by wasting the goods of the church, the new churchwardens may call them to an account before the bishop, or bring their action at common law. *Read's Church Service.* Committing waste.

THEIR INDEMNITY AND PROTECTION OF.

By the 8 Wil. III. c. 11, s. 12, reciting, whereas many churchwardens and overseers, and other persons entrusted to receive collections for the poor, and other public monies relating to the churches and parishes whereunto they belong, do often mispend the same, to the prejudice of such parishes, and of the poor and other inhabitants thereof; and the parishioners, who are the only persons sometimes who can make proof thereof, have not been allowed to be witnesses against them; it is enacted, that in all actions to be brought in any court at Westminster, or at the assizes for the recovery thereof, the evidence of the parishioners, other than such as receive alms, shall be taken and admitted.

Parishioners made witnesses against them.

Not answerable for indiscretion.

But churchwardens are not answerable for indiscretion, but for deceit only, if they lay out more money than is needful. 1 *Wood's Inst.* b. 1, c. 7.

Disobeying orders.

For their punishment for disobeying orders of justices when acting as overseers of the poor, or parish officers, see *Penalty on Overseers for Neglect of their Duty*, **Poor**, Vol. IV.

Extortion.

An indictment lies against them for extortion and corruption in their office. 1 *Sid.* 307; see *post*, **Extortion**, Vol. II.; **Office**, Vol. III.

Embezzlement.

As to embezzlement by, see *post*, **Larceny**, Vol. III. p. 561, &c.

X. Their Indemnity and Protection of.

7 Jac. I. c. 5. 21 Jac. I. c. 12. Double costs.

By stats. 7 Jac. I. c. 5; 21 Jac. I. c. 12; if any action be brought against any churchwardens, or persons called sworn men, executing the office of churchwarden, for any thing done by virtue of their office, they may plead the general issue, and give the special matter in evidence; and if a verdict is given for them, or the plaintiff shall be nonsuit, or discontinue, in every such case the judge before whom the said matter shall be tried shall allow to the defendant his double costs.

In order to entitle the defendant to double costs under this act, there must be a certificate of the judge who tried the cause, that the action was brought against the defendant for something done by him in the execution of his office. But the judge is bound to grant such certificate, and it may be signed at any time after the trial. *Harper* v. *Carr*, 7 *T. R.* 448; 2 *B. & Cres.* 621; 4 *D. & R.* 156, S. C.

In *Kerchival's case*, *Cro. Car.* 285, 286, an action was brought against the churchwardens for a presentment upon common fame of incontinency. Upon not guilty it was found for the churchwardens, and moved that they might have double costs. But it was resolved, that this being merely ecclesiastical, it is not within this statute; for that the statute was never intended, but where they shall be vexed concerning temporal matters, which they shall do by virtue of their office, and not for presentments concerning matters of fame.

Where a churchwarden is sued for taking a distress for a poor rate under a warrant of magistrates, he is entitled to the protection given to magistrates and other officers by stat. 24 Geo. II. c. 44. *Harper* v. *Carr*, 7 *T. R.* 270; *Nutting* v. *Jackson*, *Bull. N. P.* 24.

And, therefore, if such an action be brought against him alone, without making the magistrates defendants also, he is entitled to a verdict on proving the warrant of the magistrates. *Id.*

But the statutes 7 Jac. I. c. 5, and 21 Jac. I. c. 12, s. 3, giving double costs to parish officers sued, &c. do not extend to actions against them for *non-feasance*, such as the non-payment of money laid out for the support of one of their paupers by another parish into which he went, and for which an action of *assumpsit* was brought against them. *Atkins* v. *Barnwell*, 3 *East's Rep.* 92.

Nor are they entitled to double costs on judgment as in case of a nonsuit in an action brought against them for the price of goods sold and delivered to them for the use of the poor, &c. *Blanchard* v. *Bramble*, 3 *M. & S.* 131.

See further as to the construction of these kind of statutory provisions, *post*, **Constable**, Vol. I.

XI. Sidesmen and Vestry Clerk.

Sidesmen.

In larger parishes there are officers called sidesmen (anciently synodsmen, otherwise called questmen,) to assist the churchwardens in their inquiries and presentment of offenders. They shall be chosen yearly in Easter week by the minister and parishioners, if they can agree; if not, by the bishop. *Can.* 90.

The sidesman's oath, said to have been agreed on by the civilians and common lawyers, is this:—

You shall swear that you will be assistant to the churchwardens in the execution of their office, so far as by law you are bound. So help you God. Gibs. 242.

Vestry Clerk.

It is usual for the vestry to appoint a clerk for the better management of the duty that devolves to them. But this is an office of merely a private nature. It depends altogether on the will of the inhabitants, who may elect a different clerk at each vestry. Neither is any salary annexed to the situation; if the fees are to be paid out of the poor rates, there is an end of all prescriptive right to it. As to any supposed agreement made by the parishioners that such should be an annual office, it cannot be obligatory longer than the parties choose to fulfil it; for it may be revoked at the next vestry. It is not, therefore, a fixed permanent office, for which a *mandamus* will lie. *R.* v. *Churchwardens of Croydon*, 5 *T. R.* 714.

(No. 1.)

Complaint by churchwarden in order to ground a distress for a church rate. (*a*)

——— } *BE it remembered, that on the day of in the year of our Lord*
to wit. } *at in the county of A. C. one of the churchwardens of the parish of in the said county, personally cometh before me J. P. one of his Majesty's justices of the peace for the said county, and on his oath (b) saith, that C. D. of, &c. in the said county, hath refused and neglected, and still doth refuse and neglect to pay to him, the said A. C. (such churchwarden as aforesaid,) or any person authorised to receive the same, the sum of being the sum to which the said C. D. is duly rated and assessed in the churchwarden's rate for church rates, and made the day of last, the validity of which said rate hath not been questioned in any ecclesiastical court, and which sum is now justly due from the said C. D. unto him the said A. C. as such churchwarden, and that he ought to collect and receive the same, and the said A. C. prayeth justice in the premises, and that the said C. D. may be summoned to answer the premises.*

Sworn before me, J. P. on, &c. *A. I.*

(No. 2.)

Summons thereon. (*c*)

——— } *To E. F. Constable of and to all Constables and others, his Majesty's*
to wit. } *officers of the peace for the county of*

WHEREAS information and complaint have been made before me, J. P. Esquire, one of his Majesty's justices of the peace for the said county, by A. C. one of the churchwardens of the parish of in the said county, that C. D. of, &c. hath refused and neglected, and still, &c. [proceed as in the complaint, to the asterisk, and then thus:] *These are therefore to require you forthwith to summon the said C. D. to appear before me and such other justices of the peace for the said county as shall be then present at in the said county of on the day of at the hour of in the forenoon of the same day, to answer unto the said information and complaint, and to be further dealt with according to law; and be you then there to certify what you shall have done in the premises. Given under my hand and seal, at in the said county, the day of one thousand eight hundred and*

J. P.

(No. 3.)

Order thereon, (*a*)

——— } *WHEREAS information and complaint have been made unto [me] J.P. Es-*
to wit. } *quire, one of His Majesty's justices of the peace in and for the said county, by A. C. one of the churchwardens of the parish of in the said county, that C.D.*

(*a*) See the 53 Geo. III. c. 127, *ante*, 628, 629.

(*b*) The statute, however, does not seem to require the information to be upon oath, *ante*, 629.

(*c*) See a general form of summons of a witness, *post*, 861.

FORMS.

of aforesaid, in the county aforesaid, hath refused and neglected, and still, &c. [proceed as in the complaint, to the asterisk, and then thus:] *And whereas by warrant under the hand and seal of* [me] *the said J. P. Esquire, so being such justice as aforesaid, the said C. D. hath been duly convened before us,* [K. L.] *and M. N. Esquires, two of his Majesty's justices of the peace in and for the said county, being the county where the church is situated, in respect whereof the said rates have been made, and being neither of us patron of the said church, nor any way interested in any of the rights, dues, or other payments belonging to the said church.* We the said justices, therefore, having considered the premises, and having also duly examined into the merits and truth of the said complaint upon oath, do find that there is justly due the aforesaid sum of (a) from the said C. D. to the said A. C. as such churchwarden as aforesaid, and do order and direct the aforesaid C. D. to pay, or cause to be paid, the same unto the said A. C. together with the further sum of for such costs and charges concerning the premises as upon the merits of the cause do appear to us to be just and reasonable. Given under our hands and seals, at in the said county, the day of in the year one thousand eight hundred and*

(No. 4.)

Warrant to levy.

—— to wit. } *To C. C. the Constable of and others whom this may concern.*

WHEREAS information and complaint have been made unto J. P. Esquire, &c. [proceed as in the Order, *supra*, No. 3, to the asterisk, and then thus:] *And whereas we the said justices, having duly considered the premises, and having also duly examined into the merits and truth of the said complaint upon oath, did on, &c. at, &c. by an order in writing under our hands and seals, order and direct the said C. D. to pay unto the said A. C. the aforesaid sum of duly rated and assessed to the said C. D. in the churchwardens' rate for church rates, and justly due unto the said A. C. as such churchwarden as aforesaid; and also the sum of shillings for the costs and charges of the said A. C. in recovering the same, making in the whole the sum of . And whereas it appeareth unto us that the said C. D. hath had due notice of the said order, but hath refused and neglected, and still doth refuse and neglect to pay, and hath not paid the said sum of or any part thereof.*

These are therefore to authorise and command you, that you do forthwith levy the aforesaid sum of by distress and sale of the goods and chattels of the said C. D. and out of the money arising from such sale that you do pay, or cause to be paid unto the said A. C. the said sum of and thereout also deduct your necessary charges of distraining; and if any overplus shall remain after such payment and deduction as aforesaid, that you do render the same unto the said C. D.

Given under our (b) hands and seals, this day of A.D. 18

Cinque Ports. *See ante,* Admiralty Court, p. 45; *post,* Ships, Vol. V.

Circuit. *See ante,* Assizes, p. 286; *post,* Shire-Hall, Vol. V.

Clergymen. (c)

IT would not be within the object or compass of this work to notice all the laws particularly affecting clergymen, those only which concern the magistrate, parish officer, or crown lawyer, will be noticed; for the rest the reader

(a) It must not exceed £10, see *ante*, 629.

(b) The warrant may be made by one of the justices only.

(c) As to the clergy in general, see *Burn's Ecclesiastical Law*, by *Tyrwhitt*, *Com. Dig.* tit. "*Eglise.*"

is referred to Burn's Ecclesiastical Law by Tyrwhitt, tit. *Privileges and Restraints on the Clergy, Residence, Public Worship, &c.* (*a*)

The 57 Geo. III. c. 99, consolidates and amends the laws relating to clergymen holding farms, and for enforcing residence on their benefices, and for the support of stipendiary curates in England. (*b*)

Liability to public charges.

Clergymen are in general liable to all public charges imposed by act of parliament when they are not expressly excepted. See 1 *Hawk.* c. 76, s. 15.

Liable to the poor.

By stat. 43 Eliz. c. 2, clergymen are liable to the poor rates for their glebe and tithe.

Liable to the highways.

Mr. *Hawkins* says, clergymen are within the purview of the statutes relating to the repair of highways, in respect of their spiritual possessions, as much as any other person whatsoever in respect of any other possessions; for the words are general, and there is no kind of intimation therein that any particular persons shall be exempted more than others. 1 *Hawk.* c. 76, s. 15.

By the General Highway Act, indeed, they are expressly made liable in respect of their *tithes*, &c. 13 Geo. III. c. 78, s. 34, 35, 45, 46. See **Highways**, Vol. III. p. 30, 31.

Exemption from duties on horses.

The exemptions from the duty on horses imposed by stat. 43 Geo. III. c. 161, extend to any rector, vicar, or curate, actually doing duty in the church or chapel of which he is rector, vicar, or curate, not possessed of 60*l.* per annum, whether arising from ecclesiastical preferment or otherwise; and not keeping more than one horse, mare, or gelding, for the purpose of riding, which otherwise would be chargeable within the act; except such person who shall occasionally perform the duty without being the regular officiating minister. Case 7, Sched. F.

Every ecclesiastical person not possessed of 100*l.* annual income from preferment or otherwise, is exempted from duty on any horse used only to draw a two-wheel tax cart. See stats. 48 Geo. III. c. 55; 52 Geo. III. c. 93, Sched. E, No. 1.

Apprentices.

It seems that clergymen are compellable to take parish apprentices, or at least are chargeable towards putting them out. 1 *Bott*, 608, pl. 841; 2 *Nol. P. L.* 346, 4th ed.

Shall not serve in temporal offices.

To the intent that clergymen may the better discharge their duty in celebration of divine service, and not be entangled with temporal business, if any of them be chosen to any temporal office, as bailiff, constable, &c. he may have his writ to be discharged. 1 *Inst.* 96.

Shall not serve in war.

Ecclesiastical persons have this privilege, that they ought not in person to serve in war. 2 *Inst.* 4.

Need not appear at the torn.

Ecclesiastical persons are not bound to appear at the torn, or view of frankpledge. 52 Hen. III. c. 10; 9 Edw. II. c. 3. 2 *Inst.* 4.

Nor be jurors.

Ecclesiastical persons are exempted from serving as jurors. 6 Geo. IV. c. 50, s. 2, *post*, **Jurors**, Vol. III. p. 406.

Privilege from arrest.

We have seen that by the 9 Geo. IV. c. 31, s. 23, it is a misdemeanor to arrest a clergyman on civil process while performing, or about to perform, or returning from performing, divine service, *ante*, 256.

The arrest, however, would be good if not made on a Sunday. *Wats.* c. 34.

(*a*) From a late important decision, from which much information on the subject may be collected, it appears that an incumbent of a living is bound to keep the parsonage house and chancel in good and substantial repair, restoring and rebuilding when necessary, according to the original form, without addition or modern improvement; but he is not bound to supply or maintain any thing in the nature of ornament, such as painting, (unless that be necessary to preserve exposed timber from decay,) and whitewashing and papering; and in an action for dilapidations against the executors of a deceased rector by the successor, the damages are to be calculated upon this principle. *Wise* v. *Metcalfe*, 10 *B. & C.* 299.

(*b*) In a late case it was held that a demise by a parson of his benefice, made subsequent to the 57 Geo. III. c. 99, for securing an annuity, is void, it being in substance a charging of the benefice, within the meaning of the 13 Eliz. c. 20, which, as far as it relates to chargings of benefices, is now in force, having been revived by the 57 Geo. III. c. 99. *Shaw* v. *Pritchard and others*, 10 *B. & C.* 241.

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Privilege in not answering questions.

As to the privilege of clergymen in not answering confidential communications, see *post*, Evidence, Vol. II. p. 68.

Assaulting.

A person laying violent hands on a clergyman may, as we have seen, be punished in the ecclesiastical courts; *ante*, 285.

Beating clerks in orders was punishable under the *articuli cleri*, 9 Edw. II. st. 1, c. 3, but so much of that "as relates to laying violent hands on a clerk," is now repealed by the 9 Geo. IV. c. 31.

Felonies by.

The 7 & 8 Geo. IV. c. 26, repeals so much of the 25 Edw. III. c. 6, (*vulgo*, st. 8,) as relates to clerks convicted of treasons or felonies, and to the arraignment of clerks; and by 6 Geo. IV. c. 25, s. 3, it is enacted, "that clerks in holy orders being convicted of felony, shall stand and be under the same pains and dangers for the same, and shall be used and ordered to all intents and purposes, as other persons not being in holy orders.

Jurisdiction of church.

By the 15 Edw. III. st. 1, c. 6, clergymen shall not answer before his Majesty's justices for things done touching the jurisdiction of the church, and by 18 Edw. III. st. 3, c. 6, temporal justices shall not enquire of process awarded by the ecclesiastical jurisdiction, as on wills, &c.

Incontinency.

By the 1 Hen. VII. c. 4, the incontinency of clergymen may be punished with imprisonment by the ordinary.

Clergy, Benefit of.

Original of the benefit of clergy.

THE benefit of clergy is now totally abolished by the 7 & 8 Geo. IV. c. 28, s. 6, *post*, 652, some account of its origin and effect may, however, as well be noticed.

Anciently princes and states, converted to Christianity, in favour of the clergy, and for their encouragement in their offices and employments, and that they might not be so much entangled in suits, did grant to the clergy very bountiful privileges and exemptions; and particularly an exemption of their persons from criminal proceedings, in some capital cases, before secular judges, which was the true original of the benefit of clergy. 2 *Hale*, 323.

The clergy increasing in wealth, power, honour, number, and interest, afterwards set up for themselves, and that which they obtained by the favour of princes and states at first, they now began to claim as their right, and a right of the highest nature, namely by the law of God; and by their canons and constitutions endeavoured, and in some places obtained, vast extensions of these exemptions, both with regard to the persons concerned, to wit, not only to persons in holy orders, but also to all that had any kind of subordinate ministration relative to the church; and likewise in respect of the causes, exempting as far as they could all causes of clergymen, as well civil as criminal, from the jurisdiction of the secular power, and wholly subordinating them immediately and only to the ecclesiastical jurisdiction, which they supposed to be lodged first in the pope by divine right and investiture from Christ, and from the pope shed abroad into all subordinate and ecclesiastical jurisdiction. 2 *Hale*, 324.

And by this means they endeavoured, and in some kingdoms and for some ages obtained, that there was a double supreme power in every kingdom; the one ecclesiastical, absolute and independent upon any but the pope, over ecclesiastical men and causes; and the other secular, of the king or civil magistrate.

But this claim of exemption, although it obtained much in this kingdom, yet grew so burdensome that it was from time to time qualified and abridged by the civil power, sometimes by acts of parliament taking it away in some cases, sometimes by the interpretation and construction of the judges, and sometimes by the contrary usage of the kingdom; for ecclesiastical canons never bound in England farther than they were received, and so had not their authority from their own strength and obligation, but from the usages

and customs of the kingdom that admitted them, and only so far forth as they were so admitted. 2 *Hale*, 325. BENEFIT OF CLERGY.

And therefore if they were indicted in cases criminal, but not capital, nor wherein they were to lose life or limb, there the privilege of clergy was not allowed; and therefore *not in indictments of trespass or petit larceny. Id.*

Also it was not allowed them in high treason.

But at the common law, in all cases of felony or petit treason, clergy was allowable, excepting two, lying in wait, and burning of houses, which were looked upon as hostile acts, and the authors of them therefore not entitled to the common privileges of subjects. 2 *Hale*, 330.

Who might demand it]—By a favourable interpretation of the statutes relating to the benefit of clergy, not only those actually admitted into some inferior order of the clergy, but also those who were never qualified to be admitted into orders, (which was formerly tried by putting them to read a verse,) were taken to have a right to this privilege as much as persons in holy orders. 2 *Hawk.* c. 33, s. 5. Who might demand it.

But by the common law a woman could not have the benefit of clergy; but by the statute of 3 Will. III. c. 9, a woman convicted or outlawed for any felony for which a man might have his clergy, shall, upon praying the benefit of that statute, be subject only to such punishment as a man would be in the like case.

Lord *Hale* says, a person convicted of heresy, a Jew, or a Turk, should not have their clergy; but a person excommunicate should have his clergy. 2 *Hale*, 373.

But by stat. 5 Anne, c. 6, which abolished the ceremony of reading, the wall of partition (as Sir *Michael Foster* expresses it) between subject and subject under one and the same degree of guilt, was taken away; and from this period the measure of punishment was governed by the degrees of real guilt, and not by the function or abilities of the offender. *Fost.* 306.

By stat. 4 Hen. VII. c. 13, every person (not being within orders) who had once been admitted to his clergy, should not be admitted to the same a second time.

And by the same statute, if he was convicted of murder, he should be marked, (unless he was a peer, 2 *Hale*, 376,) with an M on the brawn of the left thumb; and if for any other felony, with a T.

But he should not be ousted of his clergy, by the bare mark in his hand, or by a parol averment, without the record testifying it, or a transcript thereof, (according to the following statutes.) 2 *Hale*, 373.

In what cases it might be]—By stat. 25 Edw. III. st. 3, c. 4, all manner of clerks who were convicted before the secular judges for any treasons or felonies, touching other persons than the king himself, might have the privilege of the holy church. In what case demandable.

Clergy was never allowed in this nation in case of high treason, nor was it allowed on indictments of petit larceny or trespass; but by the above recited act clergy was allowed in all treasons and felonies, except treason against the king; so that after this statute the benefit of clergy might be pleaded and allowed in all other treasons and felonies. *Hale's Sum.* 230; 2 *Hale*, 326.

Consequently wherever clergy was not allowable in any other cases, it was taken away by some subsequent act of parliament. *Hale's Sum.* 230.

Also where a new felony was made by an act of parliament, clergy was to be allowed, unless expressly taken away by such statute. *Id.*

And if it made a new felony, and took away clergy, not generally, but in such or such cases regularly in other cases, clergy was allowable. 2 *Hale*, 335.

But if the statute enacted generally that it should be felony without benefit of clergy, or that he should suffer as in case of felony, without benefit of clergy, that excluded it in all circumstances and to all intents. 2 *Hale*, 335.

And where an act took away clergy from the principal, and said nothing of the accessary, the accessaries, as well *before* as *after*, might have their Accessary.

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clergy; 11 *Rep.* 37; *Fost.* 355; neither doth a statute excluding the accessaries thereby exclude the principals.

Benefit of clergy abolished.

Now abolished]—By the 7 & 8 Geo. IV. c. 28, s. 6, it is enacted, "that *benefit of clergy* with respect to persons convicted of felony shall be abolished; but that nothing herein contained shall prevent the joinder in any indictment of any counts which might have been joined before the passing of this act."

Repeal of acts.

The 7 & 8 Geo. IV. c. 27, repeals so much of the stat. 25 Edw. s. 3, c. 6, (*vulgo* st. 3,) as relates to clerks convicted of treasons or felonies, and to the arraignment of clerks; and also so much of the stat. 4 W. & M. c. 24, as explains the stat. 3 W. & M. c. 9; and the whole of the stat. 19 Geo. III. c. 74, except so much thereof as relates to the judge's lodgings: and the whole of the 4 Hen. VII. c. 13; 21 Hen. III. c. 11; 34 & 35 Hen. VIII. c. 14; 3 W. & M. c. 9; 6 Ann. c. 9.

The benefit of clergy had the same effect in restoring a party to his competency as a statute pardon; and the benefit of clergy being abolished, it was at least doubtful whether a person convicted of felony was a competent witness, although he had undergone the punishment.

Every punishment for felony, after it has been endured, shall have the effect of a pardon under the great seal.

But this is now remedied by the 9 Geo. IV. c. 32, s. 3, which, after reciting, "and whereas it is expedient to prevent all doubts respecting the civil rights of persons convicted of felonies not capital, who have undergone the punishment to which they were adjudged," enacts, "that where any offender hath been or shall be convicted of any felony not punishable with death, and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, the punishment so endured hath and shall have the like effects and consequences as a pardon under the great seal as to the felony whereof the offender was so convicted: provided always, that nothing herein contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any other felony."

By the 7 Geo. IV. c. 64, s. 7, felonies without benefit of clergy, and sect. 8, felonies within benefit of clergy, are provided for under all circumstances consequent on the indictment. See the provisions, *post*, **Felony**, Vol. II.

Clerk, Larceny *or* Embezzlement by. *See* Larceny, Vol. III. p. 557.

Clerk of Assize. *See ante*, Assizes, p. 286.

As to the lien of, see *R.* v. *Bury*, 1 *Leach*, 201.

Clerk of the Peace.

[37 Hen. VIII. c. 1; 22 & 23 Car. II. c. 22; 1 Will. III. sess. 1, c. 21; 4 & 5 Will. III. c. 24; 10 & 11 Will. III. c. 23; 3 Geo. I. c. 15; 22 Geo. II. c. 46; 55 Geo. III. c. 50; 57 Geo. III. c. 91; 5 Geo. IV. c. 61; 1 Will. IV. c. 25.]

Who shall appoint and who appointed.

THE *custos rotulorum* shall appoint an able and sufficient person, residing in the county or division, to execute the office of clerk of the peace, by himself or his sufficient deputy (to be allowed of by the said *custos rotulorum*, 37 Hen. VIII. c. 1); and to take and receive the fees, profits, and perquisites thereof, for so long time only as such clerk of the peace shall well

demean himself in his said office; 1 Will. III. sess. 1, c. 21, s. 5; and in the late case of *Harding* v. *Pollock*, 6 *Bing.* 25, it was fully settled, on error from the Exchequer Chamber in Ireland, that the appointment to the office of clerk of the peace is in the *custos rotulorum* of each county. *Bayley, J., diss.* CLERK OF THE PEACE.

In cities or towns corporate there is usually an analogous officer who performs correspondent duties under some other title, as "town clerk," and who is generally appointed, not by the *custos rotulorum*, but by the body corporate of which he is an officer. *Dick. Sess. by Talf.* 52. Town clerk.

The office of the clerk of the peace continues "for so long time as he shall well demean himself therein," and therefore he has an estate of freehold for life in the office, on condition of behaving well, and therefore he cannot be dispossessed, except for misbehaviour, by a competent tribunal; nor does his estate determine by the death or removal of the *custos*. 4 *Mod.* 167, 173, 293. Duration of office.

He can be appointed for no other term than "for so long time as he shall well demean himself in his office," and therefore an appointment during pleasure is void, and the party so appointed not a clerk of the peace.

By sect. 6 of the 1 Will. III. sess. 1, c. 21, if he shall misdemean himself in his office, and a complaint and charge in writing of such misdemeanor shall be exhibited against him to the justices in sessions, the said justices may, on examination and due proof thereof, openly in the said sessions suspend or discharge him from the said office; and in such case, the *custos rotulorum* shall appoint another able and sufficient person, residing in the said county or division, to be clerk of the peace. And in case of refusal or neglect to make such appointment, before the next general quarter sessions, the justices in sessions may appoint one. May be displaced for misbehaviour.

Extortion is one of the offences for which this power of the sessions may be put in force. *Mod. Ca.* 192.

The order of sessions removing a party so charged with misconduct need not set forth the evidence on which it is founded. *R.* v. *Lloyd*, 2 *Stra.* 996.

By sect. 8 of the 1 Will. III. sess. 1, c. 21, the *custos rotulorum* shall not sell the place of clerk of the peace, or take any bond or other assurance to receive any reward, fee, or profit, directly or indirectly, to him or to any other person for such appointment; on pain that such *custos rotulorum* selling, and such clerk of the peace buying, shall be disabled to hold their respective places, and shall each forfeit double the value of the thing given to him who shall sue. Office not to be sold.

By sect. 9, every clerk of the peace, before entering upon the execution of his office, shall, in open sessions, take the oath following: Oath.

I, A. B. do swear, that I have not nor will pay any sum or sums of money, or other reward whatsoever, nor given any bond or other insurance to pay any money, fee, or profit, directly or indirectly, to any person or persons whomsoever, for such nomination and appointment. So help me God.

He shall moreover take the oaths of allegiance, supremacy, and abjuration, and perform the same requisites as other persons who qualify for offices. Qualifying.

Duties of]—The clerk of the peace, by himself or his sufficient deputy, must be in constant attendance on the court of quarter sessions. He gives notice of its being holden or adjourned; issues its processes; records its proceedings; and does all the ministerial acts necessary to give effect to its decisions. *Dick. Sess.* 52, 53. Duties of, at sessions.

In the actual course of the sessions, it is the duty of the clerk of the peace to read the acts directed to be read in sessions; to call the jurors, and make known their defaults and excuses to the court; to call the parties under recognizance, whether to prosecute, plead, or give evidence; to present the bills to and receive them from the grand jury; to arraign prisoners; to receive and record verdicts; to administer all oaths; and make true entries of all proceedings. *Dick. Sess.* 53.

It is his duty, when prosecutors do not choose to seek professional assistance elsewhere, to draw the bills of indictment for felony at a fee of only 2*s.* each; and if an indictment so prepared be found defective, he is bound to In preparing indictments.

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provide another *gratis*, on pain of forfeiting 5*l.* to any one who will sue; 18 & 11 Will. III. c. 23, s. 7, 8. He has also been said to be amerciable in the Court of King's Bench for gross errors in indictments framed by him, and brought before that court on *certiorari*; *Lilly's Prac. Reg.* 71; and though perhaps at the present day he would scarcely be held responsible for mere error, there is no doubt that if an indictment drawn by him were of immoderate and oppressive length it might be referred to the master, and the clerk of the peace might be ordered to pay the costs of such parts of it as should be found manifestly superfluous; 1 *Dougl.* 193, 194; *R.* v. *Bury*, 1 *Leach*, 201. It seems, however, that the obligation to draw indictments at the statutable fee of 2*s.* is confined to cases of *felony*; and in case of *misdemeanor*, he may make reasonable charges to prosecutors requiring his assistance. *Dick. Sess.* 53.

Shall deliver estreats to the sheriff.

By stat. 22 & 23 Car. II. c. 22, s. 7, he shall deliver to the sheriff, within twenty days after September 29th, yearly, a perfect estreat or schedule of all fines and other forfeitures in sessions.

Shall deliver estreats into the Exchequer.

By sect. 8, he shall also yearly, on or before the second Monday after the morrow of All Souls, deliver into the Court of Exchequer (upon oath, stat. 4 & 5 Will. III. c. 24, s. 5,) a perfect duplicate, certificate, and estreat thereof; on pain of 50*l.*, half to the King and half to him that shall sue.

Penalty of concealing fines.

By stat. 22 & 23 Car. II. c. 22, s. 9, if he shall spare, take off, discharge, or conceal any such fine or forfeiture, unless it be by rule of court, he shall forfeit treble value, half to the King and half to him that shall sue; and shall also lose his office, and be for ever incapable to be employed in any office where the revenue is concerned. And moreover, by stat. 3 Geo. I. c. 15, s. 12, he may be amerced for not returning his estreats, by the barons of the Exchequer.

Return of persons tried.

The 1 Will. IV. c. 25, repeals the 55 Geo. III. c. 49, relative to the clerk of the peace, &c. making returns of persons committed, tried, and convicted, for criminal offences and misdemeanors.

Insolvents.

As to the duties, &c. of clerks of the peace, under the Insolvent Act, see the act 7 Geo. IV. c. 57, s. 77, 78, &c. *post*, **Insolvent**, Vol. III. p. 388.

As to his duties in summoning, &c. juries, see *post*, **Jurors**, Vol. III. p. 412, &c.

As to the enrolment of rules of friendly societies and saving banks, see *ante*, **Banks for Savings**, p. 315, &c; **Friendly Societies**, Vol. II.

Not to act as solicitor.

By stat. 22 Geo. II. c. 46, s. 14, no clerk of the peace, or his deputy, shall act as solicitor, attorney, or agent, or sue out any process at any general or quarter sessions, where he shall execute the office of clerk of the peace or deputy, on pain of 50*l.* to him who shall sue in twelve months, with treble costs.

Fees.

The clerk of the peace is not bound to enter judgment, or the like, at the suit of any, without having the fee due for the same; but if the court order any thing without suit of another, to wit, *ex officio*, there he ought to enter the same, without having any fee for the entering thereof. *Cromp.* 159.

The sessions cannot compel payment of his fees by summary process, or detain parties till they be paid, but he must seek his remedy by action. *Pollard* v. *Gerrard*, 1 *Ld. Raym.* 703.

Fees or gratuities payable at gaols and bridewells abolished.

By stat. 55 Geo. III. c. 50, s. 1, after reciting that "whereas it is expedient, for the better government of gaols and bridewells in England, that all fees and gratuities payable at the same, for the entrance, commitment or discharge of any prisoner, should be abolished;" it is enacted, "that from and after the first day of October next, all fees and gratuities paid or payable by any prisoner, on the entrance, commitment or discharge, to or from prison, shall absolutely cease, and the same are hereby abolished and determined."

Quarter sessions to make allowances to gaolers, &c.

Sect. 2. "And whereas in some places such fees and gratuities as aforesaid are payable to the gaoler or his servants, and are to him or them as a salary; be it enacted, that it may be lawful for the justices of the peace for any county, city or town, assembled in general or quarter sessions, to make such allowances to the aforesaid gaoler or servants, as may to them seem fit, in the way of salary or compensation, for the fees or gratuities, payable by prisoners, now abolished by this act."

Allowances paid out of county rates, &c.

Sect. 3. "That the said justices of the peace for any county, city or town,

may direct the said allowances to be paid out of any county rate, city rate or town rate, now by law authorised to be made and levied."

55 Geo. 3, c. 50.

Prisoners charged with felony or misdemeanor and acquitted, discharged without payment of fees, &c.

Sect. 4. "And whereas it is customary for clerks of the assize, clerks of the peace, clerks of the court or their deputies, or other officers in the courts of assize or session, to demand and take from persons indicted, divers sums in the way of fees; be it enacted, that every prisoner who now is or hereafter shall be charged with or indicted for any felony, or as an accessary thereto, or with or for any misdemeanor, before any court holding criminal jurisdiction within that part of the United Kingdom of Great Britain and Ireland called England, against whom no bill of indictment shall be found by the grand jury, or who, on his, her or their trial shall be acquitted, or who shall be discharged by proclamation for want of prosecution, shall be immediately set at large, without payment of any fee or sum of money, for or in respect of his, her or their discharge, to any person or persons whomsoever; except only in such cases wherein the prisoner shall have been charged, and shall then stand charged with any process authorising the detention of such prisoner: provided always, that if it shall happen that any prisoner who shall so stand charged with any process authorising his detention as aforesaid, shall have deen discharged in supposed obedience to this act, by reason that the sheriff or other officer entitled to have detained him was at the time of such his discharge ignorant that there was any such charge against him, it shall in such case be lawful for such sheriff or other officer, on receiving information of such charge, presently to retake the prisoner so discharged as aforesaid, and thereupon forthwith to detain him in custody upon such charge, in such manner as the said sheriff or other officer might have done if such prisoner had not been set at large; and that upon his being so retaken, the said prisoner shall be deemed for the purpose of that suit to have been in custody continually from the time when he so first stood charged as aforesaid."

Fees usually paid to clerks of courts, assize, &c. abolished.

Sect. 5. "That all such fees as have been usually paid or payable to the several clerks of assize and clerks of the peace, clerks of the court, or their deputies, in that part of the United Kingdom of Great Britain and Ireland called England, in any of the cases aforesaid, shall absolutely cease, and the same are hereby abolished and determined; and from and after the passing of this act, no clerk of assize, clerk of the peace, clerk of the court, or their deputies, shall ask, demand, take or receive any sum or sums of money, from any of the said prisoners as fees, for or in respect of his, her or their discharge."

County treasurers to pay allowances for places not usually assessed to county at large.

Sect. 6. "That in lieu and satisfaction of such lawful fees so abolished as aforesaid, the treasurers or other proper officers of the several counties in England, or of such districts, hundreds, ridings or divisions of a county as are not usually assessed to the county at large, and of such cities, towns corporate, cinque ports, liberties, franchises and places, as do not pay to the rates of the several counties in which they are respectively situated, shall, on receiving a certificate signed by one or more judge or justice of the peace, before whom such prisoner shall have been discharged as aforesaid, (which certificate the judge or justice is hereby required to give,) pay out of the rates of such county, or of such district, hundred, riding or division, or out of the public stock of such city, town corporate, cinque port, liberty, franchise or place, such lawful sum as has been usually paid upon that occasion, for every prisoner discharged as aforesaid, to such clerk of assize, clerk of the peace, or clerk of the court, or their respective deputies; which several sums so paid in pursuance of this act shall be respectively allowed to the said treasurer and officers, by the justices before whom their accounts shall be passed."

Indemnification for fees to clerks of peace.

Sect. 7. "That each and every clerk of the peace, or his or their deputy or deputies, and all and every officer who shall claim any fees or indemnification for the same, by virtue of any of the provisions hereinbefore contained for and in respect of any such prisoners, shall deliver at each and every session of the peace, or at some adjournment thereof, an account of all fees so due to him, or for which he shall claim any indemnification;

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which account shall be verified upon oath in court, before the chairman of such sessions."

55 Geo. 3, c. 50.

Clerks of assize to deliver account of fees.

Sect. 8. "That the clerks of assize shall, at each and every assize to be holden, deliver in to the judge of the assize who shall sit for the trial of such prisoners, an account of such fees as shall be due to him for and in respect of such prisoners; which account shall be verified upon oath before such judge to whom such account shall be delivered."

Officers exacting fees. Misdemeanor.

Sect. 9. "That from and after the passing of this act, any clerk of assize, clerk of the peace, clerk of the court, or their deputies or other officers, exacting such fees, shall be rendered incapable of holding his or their offices, and be guilty of a misdemeanor."

Justices of peace, at their annual and general quarter sessions, to settle a table of fees to be taken by the clerks of the peace.

By stat. 57 Geo. III. c. 91, s. 1, reciting that "whereas doubts have arisen touching the fees and allowances due and to be made to the clerks of the peace of the several counties and other divisions in England and Wales; for the removing of such doubts," it is enacted, "that from and after the first day of July next, it shall and may be lawful to and for the justices of the peace for the county of Kent, and for the county palatine of Lancaster, at their annual general sessions of the peace, and for the justices of the peace in every other county, riding, division, city, town, liberty or precinct, within England and Wales, at their respective general quarter sessions of the peace, to ascertain, make and settle a table of fees and allowances to be taken by the clerk of the peace for such county of Kent and such county palatine, and such other counties, ridings, divisions, cities, towns, liberties and precincts respectively; and such table of fees and allowances, when so made, shall be subject to the approbation of the justices of the peace at the then next succeeding general annual sessions of the peace for the county palatine of Lancaster, and for the county of Kent, and at the then next succeeding general quarter session of the peace for every other such county, riding, division, city, town, liberty or precinct as aforesaid, or at some adjournment of such sessions respectively; and such table of fees respectively, when so approved respectively, shall be laid before the judges of assize at the next assizes for such counties and places respectively, except the several places being counties in which assizes are not constantly or regularly holden in every year, and in those cases before the justices at the next assizes for the adjoining county where assizes are constantly and regularly holden, and to which prisoners are generally removed for trial from such places respectively, and also except the counties in Wales and the county palatine of Chester, and before the justices at the next great sessions for the several counties in Wales, and for the county palatine of Chester; and the said judges and justices respectively are hereby authorised to ratify and confirm such tables respectively, either as settled and approved as aforesaid, or with such alterations, additions and improvements, as to such judges and justices last mentioned shall appear to be just and reasonable; and it shall be lawful for the said justices of the peace, at their respective quarter or general sessions of the peace, from time to time in like manner to make other table of fees and allowances, instead of or in addition to the tables of fees and allowances before made, which shall and may be approved and afterwards ratified and confirmed in like manner; which fees and allowances contained in such tables respectively, when so made and approved, and afterwards ratified and confirmed as aforesaid, shall be the only fees and allowances which shall be taken by the clerks of the peace of the several counties and places for which such tables respectively shall be so made, approved, ratified and confirmed, from and after such ratification and confirmation thereof respectively; any thing in any act or acts of parliament, or any law, usage or custom to the contrary in anywise notwithstanding."

Penalty on clerks of the peace taking greater fees than allowed.

Sect. 2. "That if at any time after any such table of fees and allowances shall have been so ratified and confirmed as aforesaid, any clerk of the peace, or any person or persons acting as such, shall, under pretence of any matter or thing done, transacted or performed, demand or receive any other or greater fee or allowance than the fee or allowance, fees or allowances, ascertained, ratified and confirmed as aforesaid, such

clerk of the peace or other person shall for every such offence forfeit and pay the sum of five pounds to any person who shall sue for the same by action of debt, bill, plaint or information, in any of his Majesty's courts of record at Westminster, wherein no essoin, privilege, protection, wager of law, or more than one imparlance shall be granted or allowed."

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55 Geo. 3, c. 50.

There is no doubt that if he wilfully take more than his due under colour of his office, he may be indicted at common law for extortion, or be removed from his office, on articles exhibited against him in the court of quarter sessions. *Mod. Cas.* 192; *post*, Extortion, Vol. II.

Sect. 3. "That every table of fees and allowances which shall be made, approved, ratified and confirmed from time to time as aforesaid, shall be deposited with the clerk of the peace for the county or place for which such table of fees shall have been so made, approved, ratified and confirmed as aforesaid; and a true and exact written or printed copy or copies thereof shall be placed and constantly kept in a conspicuous part of every room or place wherein any general or quarter sessions of the peace for such county or place shall be held; and if any clerk of the peace, or person acting as such, shall at any time neglect to cause every such copy to be so placed and constantly kept according to the provisions of this act, he shall forfeit and pay to any person who shall sue for the same, for every such offence, the sum of five pounds, to be recovered by action of debt, bill, plaint or information, in any of his Majesty's courts of record at Westminster, wherein no essoin, privilege, protection, wager of law, nor more than one imparlance shall be granted or allowed."

Table of fees to be hung up in some conspicuous place where sessions are held.

Sect. 4. "That all suits and actions which shall be brought or commenced by virtue of this act, shall be brought before the end of three calendar months after the offence committed, and not otherwise."

Limitation of actions.

As to the transfer of balances in the hands of clerks of the peace, on account of lunatic asylum licenses, see 11 Geo. IV. c. 1; *post*, Lunatics, Vol. III.

Lunatic asylum licenses.

Various duties of the clerk of the peace will be found under different titles of this work.

Appointment of a clerk of the peace, on stats. 37 Hen. 8, c. 1, and 1 Will. 3, c. 21.

To all persons to whom these presents shall come, I [the Most Noble George Granville Leveson Gower, Marquis,] of the county of and custos rotulorum of the said county of send greeting.

WHEREAS the office of clerk of the peace for the county of is now void by the death of late clerk of the peace for the said county, Now know ye, that I the said [Marquis] of the county of custos rotulorum of the county aforesaid, do hereby nominate, elect, appoint, and assign W. K. an able and sufficient person, instructed and learned in the laws of England, and residing in the said county, to be clerk of the peace for the said county; to hold, execute, and enjoy the office of clerk of the peace for the county aforesaid, by himself or his sufficient deputy; and to take and receive the fees, profits, and perquisites thereof, so long as he shall well, justly, and honestly demean himself in his said office. In witness whereof I the said have hereunto set my hand and seal, the day of in the year

Clerk of the Market.

See post, Fairs and Markets, Vol. II.

Clipping Money.

See post, Coin, Vol. I.

Cloaths and Garments.

See ante, Assault, p. 286.

Clockmakers.

See Servants, Vol. V. p. 397.

Cloth and Clothier. *See* Woollen Manufacturer, Vol. V. p. 371.

Coaches and Carts. *See* Taxes, Vol. V.

Coaches. *See* Carriers, Vol. I.; Hackney Coaches, Vol. III.; Stage Coaches, Vol. V.

Coals and Coal Mines.

I. *Regulations as to Coals in general*, 658.

[30 Car. II. st. 1, c. 8; 6 & 7 Will. III. c. 10; 12 Anne, st. 2, c. 17; 11 Geo. II. c. 15; 17 Geo. II. c. 35; 15 Geo. III. c. 27; 31 Geo. III. c. 36; 43 Geo. III. c. 134; 52 Geo. III. c. 9.]

II. *Regulations as to Coals in London and Precincts*, 659.

[47 Geo. III. sess. 2, c. lxviii.]

III. *Coal Mines, Offences as to*, 720.

[7 & 8 Geo. IV. c. 30, s. 5.]

I. Regulations as to Coals in General.

Penalties on defacing marks on keels, boats, waggons, &c. carrying coals in ports.

By stats. 30 Car. II. st. 1, c. 8, 6 & 7 Will. III. c. 10, and 11 Geo. II. c. 15, for the admeasurement of keels, boats, waggons, wains, carts, and other carriages used for the carrying of coals in the ports of Newcastle, Sunderland, and the other members of the port of Newcastle; and by stat. 15 Geo. III. c. 27, for extending the like regulations to the other ports of this kingdom: if after the admeasurement thereof by the commissioners appointed for that purpose, the marks shall be removed or altered, every person who had a hand in or was privy to the doing thereof, shall, on conviction upon the oath of one witness before one justice, forfeit 10*l.* by distress, half to the King and half to the discoverer; and for want of distress shall be committed to the common gaol for three months.

31 Geo. 3, c. 36.

And by stat. 31 Geo. III. c. 36, s. 1, as to all such keels, boats, wains, carts, and other carriages used as aforesaid, which have been duly admeasured and marked as aforesaid, and such marks afterwards on repairing thereof or otherwise have been removed or altered, it is enacted that the same shall be re-admeasured and marked in manner aforesaid before they are again used, under penalty of forfeiture thereof, together with the coals laden thereon.

And by sect. 4, if any person shall wilfully or designedly remove, deface, or destroy any such mark, he shall on conviction before one justice, on the oath of one witness, forfeit and pay not exceeding 5*l.* nor less than 40*s.*; and in default thereof shall be committed by such justice to the house of correction nearest to the place where the offence was committed for any time not exceeding one month nor less than seven days.

Coal measure.

By stats. 12 Anne, st. 2, c. 17, s. 11, and 15 Geo. III. c. 27, s. 1, every coal bushel shall be round with a plain and even bottom, and be 19½ inches from outside to outside, and shall contain one Winchester bushel and one quart of water, according to the standard for the Winchester bushel,

described by stat. 13 & 14 Will. III. c. 5, s. 28, and all sea-coal and culm chargeable with any duties by the Winchester measure shall be charged, sold, measured, and paid by the calder containing 36 of such bushels heaped up, and no other, and so in proportion, under the like penalties as are by law prescribed in regard to the Winchester bushel. (*a*)

Three justices may set the retail price of coals in certain places.

And by stat. 17 Geo. II. c. 35, s. 1, three justices (one of the quorum) may set the prices of coals called sea-coals, brought by sea into any river, creek, or port, and sold by retail after landing in any place to which stat. 16 & 17 Car. II. respecting the price of coals brought into the River Thames doth not extend, as they shall judge reasonable; allowing a competent profit to the retailer beyond the price paid by him to the importer and the ordinary charges; and if an ingrosser or retailer of such coals shall refuse to sell as aforesaid, then the said justices shall appoint such persons as they shall think fit to enter into any place where such coals are stored up, and in case of refusal take in a constable to force entrance, and the said coals to sell at such rates, rendering the owner the money for which they were sold, necessary charges being deducted. And if any action be brought against the justice, constable, or other persons, for any thing done in pursuance of this act, he may plead the general issue; and if the verdict be found for him, he shall recover damages and treble costs.

Persons interested not to act.

Sect. 2. But no person interested in any wharf used for the receiving and uttering coals, or that trades in the sale of coals, shall act in setting the price of coals.

Measuring ships.

By 52 Geo. III. c. 9, which repeals stat. 25 Geo. III. c. 54, so far as relates to England and Wales, and makes other provisions in lieu thereof, enacts, sect. 6, that all ships in the coal trade shall be measured, and the duties paid on the greatest quantity of coal, culm, or cinders, which it shall appear that any such ship or vessel is capable of containing.

II. Regulations as to Coals in and near London.

Concerning the weights, measures, and prices of coals, especially in and about London, and also concerning the duties thereupon, there are regulations made by above forty different acts of parliament, which, not being of general concern, are here omitted. It is deemed proper however to insert the following important statute, which is so frequently called into force.

47 Geo. 3, c. lxviii.

The stat. 47 Geo. III. c. lxviii, intituled, "An Act for repealing the several acts for regulating the vend and delivery of coals within the cities of London and Westminster and liberties thereof, and in certain parts of the counties of Middlesex, Surrey, Kent, and Essex, and for making better provision for the same;" after reciting, that "whereas the several acts now in force and effect for regulating the vend and delivery of coals brought by sea into the port of London, within the cities of London and Westminster and the liberties thereof, and within such parts of the counties of Middlesex, Surrey, Kent, and Essex, as are situate within the distance of twenty-five miles from the Royal Exchange in the city of London, have been found insufficient to prevent the commission of frauds and impositions in the vend and delivery of such coals: and whereas it would tend greatly to facilitate the execution of the purposes intended by the said acts if the same were repealed, and further and better provisions made for those purposes;" enacts, "that so much of an act made in the seventh year of the reign of his Majesty King Edward the Sixth, intituled, An Act for the assize of fuel, as directs, 'that all coals to be made and put to sale in the cities of London, Westminster, or in the suburbs of the same, after the last day of September next coming, shall keep the assize hereafter expressed, that is to wit, that every sack of coals contain four bushels of good and clean coals, upon pain that every marker and every

Part of act 7 Edw. 6, c. 7, repealed.

(*a*) See also 47 Geo. III. sess. 2, c. lxviii. s. 109, *post*, 703, and 5 Geo. IV. c. 74, s. 7, 8, title, Weights, &c.

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47 Geo. 3, c.lxviii.

them, shall be as good, valid, binding, and effectual for the several purposes of this act, as if the said recited acts made in the forty-third and forty-fourth years of the reign of his present Majesty had not been repealed, any thing herein contained to the contrary thereof notwithstanding."

Annuities granted by the mayor, &c. charged on duties collected by virtue of this act.

Sect. 8. "That all and every bond and bonds, note and notes, and all and every other security and securities in writing, under the common seal of the mayor and commonalty and citizens of the city of London, which shall have been delivered under or in pursuance of the said recited acts made in the forty-third and forty-fourth years of the reign of his present Majesty, or either of them, to any person or persons to secure the payment of any sum or sums of money borrowed from and advanced or contracted to be advanced by any such person or persons to the said mayor, aldermen, and commons in common council assembled, shall be and continue in such and the like force and effect, and such several persons who shall have advanced or shall in pursuance of any such contract advance any such money, shall in respect of the sums so respectively advanced or to be advanced be and continue entitled to such annuities at such rates of interest as shall have in pursuance of such acts or either of them been made payable to any such obligee or obligees, as if such acts had not been repealed; and all such annuities respectively shall be and the same is and are hereby declared to be charged on all and every the duty or duties on coals, cinders, and culm, to be levied and collected by virtue of this act, and shall be and continue to be paid and payable out of all and every such duty or duties until redemption thereof by payment of such principal sum."

Notice of paying off annuities.

Sect. 9. "That the said mayor, aldermen, and commons shall give, or cause to be given, six calendar months' notice of their intention to pay off any such annuities which shall have been so granted under and by virtue of the said recited acts, made in the forty-third and forty-fourth years of the reign of his present Majesty, or either of them, to the person or persons to whom the same may respectively belong, at the end of which six calendar months, upon payment or tender of the respective sums for which any such annuity or annuities may have been granted, to or for the person or persons then entitled thereto, at the office of the chamberlain of the said city for the time being, in the Guildhall of the same city, the annuity and annuities payable to such person and persons respectively shall cease and determine, nevertheless the monies so tendered shall be paid to such person or persons upon his or their demand, and giving a discharge for the same."

Application of compensation when 200*l*.

Sect. 10. "That all such bonds as shall have been paid or given to secure the money to be paid for the purchase of any lands, tenements, or hereditaments, purchased by virtue of the powers of the said recited acts, made in the forty-third and forty-fourth years of the reign of his present Majesty, or either of them, which belonged to any body politic, corporate, or collegiate, or to any feoffee in trust, executor, administrator, husband, guardian, committee, or trustee, or for or on behalf of any infant, lunatic, idiot, feme covert, or other cestuique trust, or to any person whose lands, tenements, or hereditaments were limited in strict or other settlement, or to any person under any other disability or incapacity whatsoever, and which shall have been deposited in the Bank of England, in the name and with the privity of the accountant general of the High Court of Chancery, shall remain in the said Bank of England until such bonds respectively shall be paid off by the said mayor, aldermen, and commons; and the said mayor, aldermen, and commons shall, and they are hereby required to pay off such bonds respectively, in such manner as if the money secured by such bonds respectively had been borrowed by the said mayor, aldermen, and commons, by virtue of the said recited act, made in the forty-third year of the reign of his present Majesty; and until such bonds respectively shall be paid off, the interest thereof respectively shall from time to time be paid by order of the said Court of Chancery to the person or persons who would for the time being have been entitled to the rents, issues, and profits of the lands, tenements, and hereditaments so purchased as aforesaid; and when and as soon as any such bond or bonds shall be paid off by the said mayor, aldermen, and commons, then and

in such case the money arising therefrom shall, in case the same shall amount to the sum of two hundred pounds, with all convenient speed be paid into the Bank of England, in the name and with the privity of the accountant general of the High Court of Chancery, to be placed to his account there, *ex parte* the said mayor and commonalty and citizens of the city of London, to the intent that such money shall be applied under the direction and with the approbation of the said court, to be signified upon an order made upon a petition to be preferred in a summary way by the person or persons who would have been entitled to the rents and profits of the said lands, tenements, or hereditaments, in the purchase or redemption of the land tax, or discharge of any debt or debts, or such other incumbrances, or part thereof, as the said court shall authorise to be paid, affecting the same lands, tenements, or hereditaments, or affecting other lands, tenements, or hereditaments, standing settled therewith to the same or the like uses, intents, or purposes; or where such money shall not be so applied, then the same shall be laid out and invested, under the like direction and appointment of the said court, in the purchase of other lands, tenements, or hereditaments, which shall be conveyed and settled to, for, and upon such and the like uses, trusts, intents, and purposes, and in the manner as the lands, tenements, and hereditaments, which shall be so purchased, taken, or used as aforesaid, stood settled or limited, or such of them as at the time of making such conveyance and settlement shall be existing, undetermined, and capable of taking effect; and in the mean time and until such purchase shall be made, the said money shall, by order of the Court of Chancery, upon application thereto, be invested by the said accountant general, in his name, in the purchase of three pounds *per centum* consolidated, or three pounds *per centum* reduced bank annuities; and in the mean time and until the said bank annuities shall be ordered by the said court to be sold for the purposes aforesaid, the dividends and annual produce of the said consolidated or reduced bank annuities shall from time to time be paid by order of the said court to the person or persons who would for the time being be entitled to the rents and profits of the said lands, tenements, and hereditaments so purchased, in case such purchase or settlement were made."

Application of compensation under 200*l.* and exceeding 20*l.*

Sect. 11. "That if the money which shall arise from paying off any such bond which shall have been so given and deposited for securing the payment of any purchase money for any lands, tenements or hereditaments belonging to any corporation, or to any person or persons under any disability or incapacity as aforesaid, shall be less than the sum of two hundred pounds, and shall exceed or be equal to the sum of twenty pounds, then and in all such cases the same shall, at the option of the person or persons for the time being entitled to the rents and profits of the lands, tenements, or hereditaments so purchased, taken, or used, or of his, her, or their guardian or guardians, committee or committees, in case of infancy or lunacy, to be signified in writing under their respective hands, be paid into the Bank, in the name and with the privity of the said accountant general of the High Court of Chancery, and be placed to his account as aforesaid, in order to be applied as herein-before directed, or otherwise the same shall be paid, at the like option, to two trustees, to be nominated by the person or persons making such option, and approved of by the said mayor for the time being, such nomination and approbation to be signified in writing under the hands of the nominating and approving parties, in order that such principal money and dividends arising therefrom may be applied in any manner herein-before directed, so far as the case be applicable, without obtaining or being required to obtain the direction and approbation of the Court of Chancery."

Application less than 20*l.*

Sect. 12. "That where such money, which shall arise from paying off any such bond which shall have been given to secure any such purchase money, shall be less than twenty pounds, then and in all such cases the same shall be applied to the use of the person or persons who would, for the time being, have been entitled to the rents and profits of the lands, tenements, and hereditaments so purchased, in such manner as the said mayor, aldermen, and commons shall think fit; or in case of infancy or lunacy, then such money

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47 Geo. 3, c. lxviii.

shall be paid to his, her, or their guardian or guardians, committee or committees, to and for the use and benefit of such person or persons so entitled respectively."

Court of Chancery may direct bonds to be given up.

Sect. 13. "That it shall and may be lawful to and for the said Court of Chancery, upon a petition or petitions to be preferred to the said court in a summary way by the person or persons who shall be entitled to the principal money secured by such bonds respectively, his, her, or their guardian or guardians, committee or committees, to direct such bonds respectively to be delivered to such person or persons, guardian or guardians, committee or committees."

Titles deficient, money paid into Bank of England.

Sect. 14. "That in case any person or persons to whom any sum or sums of money shall have been awarded for the purchase of any lands, tenements, or hereditaments by virtue of the said recited act of the forty-third year of the reign of his present Majesty, shall have refused to accept the same, or shall not have been able to make a good title to the premises, to the satisfaction of the said mayor, aldermen, and commons, or in case such person or persons, to whom such sum or sums of money shall have been so awarded as aforesaid, could not be found, or if the person or persons entitled to such lands, tenements, or hereditaments were or was not known or discovered, and in case the said mayor, aldermen, and commons shall, in consequence thereof, and by virtue and in pursuance of such act of the forty-third year of his present Majesty, have ordered the said sum or sums of money so awarded as aforesaid to be paid into the Bank of England in the name and with the privity of the accountant general of the Court of Chancery, to be placed to his account, to the credit of the parties interested in the said lands, tenements, and hereditaments (describing them), subject to the order, controul, and disposition of the said Court of Chancery, then and in every such case the said Court of Chancery, on the application of any person or persons making claim to such sum or sums of money, or any part thereof, by motion or petition, shall be and is hereby empowered, in a summary way of proceeding or otherwise as to the same court shall seem meet, to order the same to be laid out and invested in the public funds, and to order distribution thereof, or payment of the dividends thereof, according to the respective estate or estates, title or interest of the person or persons making claim thereunto, and to make such other order in the premises as to the said court shall seem just and reasonable."

Title doubtful, interest of money paid to person in possession of premises when bought.

Sect. 15. "That where any question shall arise touching the title of any person to the purchase money secured by any such bond given and deposited in the Bank of England, or to the interest payable upon any such bond, or to any money paid into the said Bank of England in the name and with the privity of the accountant general of the Court of Chancery, in pursuance of the said recited acts, made in the forty-third and forty-fourth years of the reign of his present Majesty, or either of them, for the purchase of any lands, tenements, or hereditaments, or of any estate, right, or interest in any lands, tenements, or hereditaments purchased in pursuance of such acts, or either of them, or to any bank annuities to be purchased with any such money, or the dividends or interest of any such bank annuities, the person or persons who shall have been in possession of such lands, tenements, or hereditaments, at the time of such purchase, and all persons claiming under such person or persons, or under the possession of such person or persons, shall be deemed and taken to have been lawfully entitled to such lands, tenements, or hereditaments according to such possession, until the contrary shall be shown to the satisfaction of the said Court of Chancery; and the interest due upon any such bond, and also any such bond, or the principal sum due thereon, and the dividends or interest of any bank annuities to be purchased with any such money arising from the paying off of any such bond or otherwise, paid into the said bank, and also the capital of such bank annuities, shall be paid, applied, and disposed of accordingly, unless it shall be made to appear to the said court that such possession was a wrongful possession, and that some other person or persons was or were lawfully entitled to such lands, tenements, or hereditaments, or to some estate or interest therein."

Court of Chancery may order expense

Sect. 16. "That where, by reason of any disability or incapacity of the

person or persons, or corporation, entitled to any lands, tenements, or hereditaments so purchased, the purchase money for the same, or the bond for such purchase money, shall have been required to be paid into or deposited in the Bank of England, in the name and with the privity of the accountant general of the Court of Chancery, and to be applied to the purchase of other lands, tenements, or hereditaments, to be settled to the like uses in pursuance of this act, it shall and may be lawful to and for the said Court of Chancery to order the expenses of all purchases made in pursuance of the said recited acts, made in the forty-third and forty-fourth years of the reign of his present Majesty respectively, or so much of such expenses as the said court shall deem reasonable, to be paid by the said mayor, aldermen, and commons, out of the monies received by virtue of the said recited acts, made in the forty-third and forty-fourth years of the reign of his present Majesty respectively, or to be received by virtue of this act, who shall from time to time pay such sums of money accordingly for such purposes as the said court shall direct."

of purchases to be paid.

Sect. 17. "That all and every book or books, in which any entry or entries of any proceeding or proceedings shall have been made by any person or persons acting by and under the authority of the said recited acts, made in the forty-third and forty-fourth years of the reign of his present Majesty or either of them (such entry or entries being made in such book or books according to the directions of, and made evidence by, such two last-mentioned acts, or one of them) shall be and be deemed to be good and sufficient evidence of such proceedings in any court whatsoever, any thing herein contained to the contrary thereof in anywise notwithstanding."

Entries under former acts good.

Sect. 18. "That there shall be and continue to be at all times hereafter, at or upon the said Coal Exchange and hereditaments, a free, open and public market, for the sale of coals brought into the port of London."

Coal Exchange to be an open market.

Sect. 19. "That such market shall be and continue to be holden on every Monday, Wednesday and Friday in the week, in each and every year, (Good Friday, Christmas Day and Fast Days by proclamation, only excepted) from twelve of the clock at noon until two of the clock in the afternoon in each and every day; and that it shall be lawful to and for the said mayor, aldermen and commons, to continue and retain the present clerk or clerks, and other officer or officers, to such market, with such salary or salaries for his or their trouble and attendance there, as to the said mayor, aldermen and commons, shall seem just and reasonable, and from time to time to remove or displace him or them, and to nominate and appoint other clerk or clerks, officer or officers, in his or their stead."

Market days.

Clerk and officers to be nominated.

Sect. 20. "That for the purpose of defraying the several charges and expenses for establishing and holding such market, and of the purchase of the said lands, buildings and hereditaments, called 'The Coal Exchange,' and such other lands, tenements and hereditaments, purchased in pursuance of the said recited acts, made in the forty-third and forty-fourth years of the reign of his present Majesty, and for erecting, maintaining and supporting convenient buildings thereon, and for defraying the salaries and allowances of the several clerks and other persons employed in the execution of this act, and for defraying the other charges and expenses of carrying the same into execution, it shall and may be lawful to and for the said mayor, aldermen and commons, to demand and take, or cause to be demanded and taken, of and from each and every master of a ship or vessel laden with coals, cinders or culm, or other person having the care or command thereof, arriving at her moorings within any part of the port of London at or to the westward of Gravesend, the sum of one penny per chaldron (or ton, in case the same shall be sold by weight) and no more, for every chaldron or ton of coals, cinders or culm contained in such ship or other vessel; and such sum of one penny per chaldron or ton of all such coals, cinders and culm, shall and may be collected, levied, recovered, and paid in such and the like manner, and by, with and under such powers, authorities and provisions, as any other duty or duties, or imposition or impositions, on coals, now payable to the said mayor, aldermen and commons of the city of London, or to the said mayor and commonalty and citizens of the said city of London, is or are, or

Duty on coals, cinders and culm.

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47 Geo. 3, c.lxviii.

may be collected, levied, recovered and paid respectively, and such sum of one penny per chaldron or ton, when so paid for any such coals, shall be charged to the purchaser of the coals besides and in addition to the charges and expenses of the metage of such coals."

Duty to be reduced when more than sufficient for the purposes of this act.

Sect. 21. "That the costs, charges and expenses incident to and incurred in obtaining and passing this act, shall be paid and discharged by and out of the money to be received by virtue of this act, and when and as soon as such costs, charges and expenses, and the costs, charges and expenses of purchasing the several buildings, lands, tenements and hereditaments for the said market, and of making any buildings, erections and other conveniences thereto, and the money borrowed or raised by virtue of the said recited acts, made in the forty-third and forty-fourth years of the reign of his present Majesty respectively, and the interest thereof, shall have been paid off and discharged, and the said duty of one penny per chaldron or ton of coals, cinders and culm shall be more than sufficient for maintaining, repairing and supporting the said market, and of the several buildings, erections and conveniences thereto, and for paying the said several annuities granted by virtue of such acts respectively, and the salaries and other payments and allowances to the clerk or clerks, and other officers and persons employed in the execution of this act, and for defraying the several other charges and expenses of carrying the same into execution, then and in every such case the said mayor, aldermen and commons shall, and they are hereby required to reduce such duty to such sum of money as shall be sufficient for such several purposes; and it shall and may be lawful to and for the said mayor, aldermen and commons, again to raise such duty to any sum not exceeding the sum granted by this act, when and so often as it shall be necessary for the purposes thereof; and such duty, when so reduced or again raised, shall be collected, levied and recovered in such and the same manner as the duty granted or continued by this act can or may be collected, levied and recovered."

Duty on coals, &c. charged with annuities granted by 43 and 44 Geo. 3.

Sect. 22. "That the said duty or duties on coals, cinders and culm, granted or continued and made payable by this act, shall be and the same is hereby charged and made chargeable with the annuities which shall be payable in respect of such sum or sums of money as have been borrowed and raised under or by virtue of the said recited acts, made in the forty-third and forty-fourth years of the reign of his present Majesty respectively, for the purposes of those acts respectively."

What a ton.

Sect. 23. "And whereas certain coals coming from Scotland and other places have been and are usually sold by weight, it is therefore enacted, that for the purpose of ascertaining the weight of such coals usually sold by weight, one hundred and twelve pounds avoirdupois weight shall be deemed and taken to be one hundred weight, and twenty hundred shall be deemed and taken to be one ton."

Masters of ships to account for coals in them.

Sect. 24. "That each and every master of a ship or vessel laden with coals, or other person having the care and command thereof, shall, and he is hereby required, within twenty-four hours after his ship or other vessel shall have arrived at or to the westward of Blackwall, or at her moorings for delivery within any part of the said port of London at or to the westward of Gravesend, and not before, to deliver or cause to be delivered to the clerk of the said market, or other officer appointed to receive the same, at his office in the place appointed for holding such market, a true and perfect copy of the certificate or certificates directed to be given by every fitter or other person vending or delivering coals to each and every master of a ship or vessel on board of which such fitter, or other person vending or delivering coals, shall have loaded any coals, in pursuance of an act made in the ninth year of the reign of Queen Anne, intituled, 'An Act to dissolve the present and prevent the future combinations of coal owners, lightermen, masters of ships, and others, to advance the price of coals in prejudice of the navigation, trade and manufactures of this kingdom, and for the further encouragement of the coal trade;' and if such ship or vessel shall not come from any port or place where, by the said act, such certificate or certificates is or are required

to be given, then and in such case each and every master of such ship or vessel, having the care or command thereof, shall deliver or cause to be delivered an account of the quantity, and name or names, or description or descriptions of the coals on board of such his ship or vessel, to the clerk or other officer of the said market; and in case it shall happen that such fitter's certificate or certificates shall at any time be accidentally lost, or in case any such ship or vessel shall have been originally loaded or entered outwards for exportation, and shall afterwards change her destination, and arrive or come to her moorings as aforesaid, without any such fitter's certificate or certificates having been obtained or provided, then and in either of such last-mentioned cases, each and every such master of such ship or vessel shall deliver or cause to be delivered a like account of the quantity, and name or names, or description or descriptions of the coals on board of such his ship or vessel, to such clerk or other officer of the said market, together with an affidavit to accompany such account, and to be sworn by such master before any of his Majesty's justice or justices of the peace for the county, city, town, or place, where the same shall be sworn (and which oath any such justice or justices are hereby authorised to administer) in which affidavit such master shall state and verify such circumstances either of the accidental loss of any such certificate, or of any such ship having been originally entered outwards, and having afterwards changed her destination, and arrived as aforesaid, without any such certificate having been obtained or provided (as the case may be); and such clerk or other officer is hereby required to receive and register such certificate or certificates, account or accounts, together with the affidavit or affidavits accompanying any such account or accounts as aforesaid, upon payment or tender of the sum herein directed to be demanded and taken by the said mayor, aldermen and commons, for every chaldron (or ton of coals, in case the same shall be sold by weight) contained in such ship or other vessel, in a proper book or books to be kept for that purpose; and if any such master of any such ship or other vessel, or other person having the care or command thereof as aforesaid, shall refuse or neglect to deliver, or cause to be delivered in manner aforesaid, within twenty-four hours after such ship or other vessel shall have arrived or come to her moorings as aforesaid, a true and perfect copy of such certificate or certificates, or such true account as aforesaid, where any such ship or other vessel shall not come from any port or place where, by the said act, such certificates are required to be given, or a like true account, together with such affidavit accompanying the same as aforesaid, in case either of any such accidental loss of any such certificate as aforesaid, or of any such change in the destinatien of any such ship or vessel originally loaded or entered for exportation without any such certificate having been obtained or provided as aforesaid; or if any such master of any such ship or vessel, or other person, having the care or command thereof, shall deliver or cause to be delivered any such copy of such certificate or certificates, or any such account or accounts, or any such affidavit or affidavits as aforesaid, before such ship or other vessel shall have arrived or come to her moorings as aforesaid, or shall knowingly and wilfully deliver in any false or inaccurate account of the quantity, or name or names, description or descriptions of the coals in such ship or other vessel, every such master or other person, having the care or command of such vessel, so offending, shall, for every such offence, forfeit and pay the sum of fifty pounds; and if any such clerk or other officer shall refuse or neglect to receive and register any such copy or copies of such certificate or certificates, or any such account or accounts, or any such affidavit or affidavits accompanying any such account or accounts as aforesaid, upon payment or tender of such sum as aforesaid, or shall make any such registry, knowing that such ship or other vessel had not arrived or come to her moorings as aforesaid, then, and in every such case, every such clerk so offending shall, for every such offence, forfeit and pay any sum not exceeding twenty pounds."

Clerk of the market to register the same.

Penalty for false accounts or entries.

Sect. 25. "That the clerk of such market shall, and he is hereby required, previous to the opening of the market next after the receipt of the copy of such certificate or certificates, or of any such account or accounts as afore-

Accounts fixed up in market.

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47 Geo. 3, c. lxviii.

said, to fix up in some conspicuous part or parts within the said market a true and perfect copy thereof, in fair and legible characters, and with the words 'For Sale' expressed therein; and in case any copy or copies of such certificate or certificates, or any such account or accounts as aforesaid shall be received by such clerk during the hours of holding such market, and before one hour previous to the close thereof, then and in such case such clerk shall, and he is hereby required to fix up in manner aforesaid a true and perfect copy thereof, in fair and legible characters, and with the words 'For Sale' expressed thereon; and if such clerk shall refuse or neglect to fix up such copy or copies in manner aforesaid, or within the time aforesaid, such clerk so offending shall, for every such offence, forfeit and pay any sum not exceeding twenty pounds."

Coals sold in market during market hours, &c.

Sect. 26. "That if any owner or master of any ship, or other vessel, laden with coals to be unloaden in any part of the said port of London, at or to the westward of Gravesend aforesaid, or other person or persons whosoever, shall sell or dispose of any coals contained in any such ship or other vessel, or shall agree or contract for the sale of any such coals contained in any such ship or other vessel, before such copy or copies of such certificate or certificates, or such account or accounts as aforesaid, shall have been fixed up in such market in manner aforesaid, or if the said coals shall be sold in any other place or places than in the said market, or on any other days, or within any other hours than those appointed for holding the same, then and in every such case, every such sale, purchase, contract, or agreement for sale or purchase, shall be, and the same is and are hereby declared to be null and void, to all intents and purposes whatsoever, and the several person or persons so offending shall, for every such offence, forfeit and pay the sum of one hundred pounds."

Coals for government may be delivered without sale in market, the ship master sending clerk of market copy of fitter's certificate, and affidavit of coals being so loaded and freighted.

Sect. 27. "That when any ship or vessel, laden with coals, shall have arrived at or to the westward of Blackwall, or at her moorings for delivery, within any part of the said port of London, at or to the westward of Gravesend, which ship or vessel shall have been loaded or freighted for or on the account of government, who shall have purchased the whole of the cargo of coals contained in any such ship or vessel, at the port where such ship or vessel shall have been so loaded or freighted, then and in every such case, if the master or other person having the care or command of such ship or vessel, shall within twenty-four hours after such ship or vessel shall have arrived or come to her moorings as aforesaid, deliver or cause to be delivered to the clerk or other officer of the said market, a true copy of the fitter's certificate of the coals contained in such ship or vessel, or in case it shall happen that such fitter's certificate or certificates shall have been accidentally lost, or in case such ship or vessel shall not come from any port or place where by the said recited act, made in the ninth year of the reign of Queen Anne, such certificate or certificates is or are required to be given, the master or other person having the care or command of such ship or vessel shall, within the time aforesaid, deliver or cause to be delivered an account of the quantity and name or names, or description or descriptions of the coals on board of such his ship or vessel, to such clerk or other officer of the said market; and to every such certificate and account an affidavit shall be annexed and delivered therewith, which affidavit shall have been sworn by such master, or by such other person having the care or command of such ship or vessel, before any one or more of his Majesty's justices acting for the counties of Middlesex or Surrey, or city of London, (and which oath any such justice is hereby authorised to administer), and in such affidavit such master, or other person having the care or command of such ship or vessel; shall verify such copy of such fitter's certificate or certificates, account or accounts as aforesaid, and shall also set forth and verify such circumstances of such ship or vessel having been so loaded or freighted as aforesaid, and also such circumstances of any accidental loss which may have happened of any such certificate or certificates, it shall and may be lawful to unload and deliver such ship or vessel, for or on account of government, without the copy of the said certificate or certificates, account or accounts, being fixed up in the said market,

47 Geo. 3, c. lxviii.

or the said coals being in any manner exposed, or subject to be exposed, or put up for sale in the said market, and no person or persons whosoever shall (provided such master or other person having the care or command of any such ship or vessel, shall have delivered such certificate or certificates, account or accounts, and have made such affidavit, and delivered the same in manner aforesaid) be subject or liable to any penalty or penalties whatsoever for or in respect of such copy of such certificate or certificates, account or accounts, not being fixed up in the said market, or for or in respect of the coals contained in any such ship or vessel not being exposed or put up for sale, or sold in such market, or be subject or liable to any other penalty or penalties whatsoever for or in respect of the coals contained in any such ship or vessel being unloaded or delivered in manner aforesaid, any thing herein contained to the contrary thereof in anywise notwithstanding"

Repealing parts of 3 Geo. 2, c. 26, and 11 Geo. 2, c. 15.

Sect. 29. "And whereas it would tend greatly to the opening of the said market for the sale of coals, and to the preventing of monopolies, if certain parts of two several acts, made in the third and eleventh years of the reign of King George the Second, were repealed; be it therefore enacted, that so much of the act, made in the third year of the reign of King George the Second, intituled 'An Act for the better regulation of the coal trade,' as directs, 'that all bargains or contracts for coals between buyer and seller, at the market of Billingsgate, or other place of sale within the bills of mortality, shall, by the crimp or factor who had the disposal of such coals, be fairly entered, with the conditions thereof, in the pocket or other book of such crimp or factor, subscribed by the seller and the buyer, and witnessed by the said crimp or factor, of which bargain or contract the said crimp or factor shall at the same time deliver, *gratis*, a copy by him attested to the seller and buyer respectively; and the said entries so made and subscribed, and the said copies so given and attested, shall be admitted as evidence on trials in any court of law whatsoever; and if any crimp or factor shall neglect or refuse to enter such bargain or contract, and to subscribe and attest the same, or shall refuse to give copies thereof as aforesaid, he shall, for every such offence, forfeit and pay the sum of 50*l.*;' and so much thereof as directs, 'that all lightermen, and other buyers of or contractors for coals, on board of any ship or vessel in the port of London, shall, at the time of the delivery of such coals, either pay for the same in ready money, or for such part thereof as shall not be so paid for, shall give their respective promissory note or notes of their hands for payment thereof, expressing therein the words "value received in coals," payable at such day or days, time or times, as shall for that purpose be agreed upon between such lighterman, or other buyer of or contractor for coals, and the master or owner of such ship or vessel, or his agent or factor on his behalf; and that all such notes, in case of non-payment at the respective days and times therein mentioned, shall and may be protested or noted in such manner as inland bills of exchange may now be, and in default of such protesting or noting by any indorsee, and notice thereof given by such indorsee to the respective indorsor or indorsors, within twenty days after such failure of payment, such respective indorsor or indorsors, to whom such notice shall not be given, shall not be chargeable with or liable to answer or pay such sum of money as shall be mentioned to be payable in or by such note or notes, or any part thereof;' and so much thereof as directs, 'that all such lightermen, or other buyers of or contractors for coals, who shall refuse to give their note or notes for coals to them respectively delivered, and shall refuse to insert the said words "value received in coals," and every such master who shall take any such note from any dealer in coals, in which note the words "value received in coals" are not expressly inserted, such lightermen, buyers of or contractors for coals, and masters, shall, for every such refusal, or acceptance, respectively forfeit and pay the sum of 100*l.*' shall be, and the same is and are hereby repealed and declared to be null and void to all intents and purposes whatsoever: and so much of an act made in the eleventh year of the reign of King George the Second, intituled, 'An Act to empower the court of Lord Mayor and Aldermen of the city of London to set the price upon all coals, commonly called sea coals, imported into the port of London from Newcastle, and the

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47 Geo. 3, c. lxviii.

ports adjacent thereto, for the space of one year; and to oblige, for the term therein mentioned, fitters and others vending and loading ships with sea coals at Newcastle, and the ports adjacent thereunto, to deliver such coals to any masters of ships applying for the same; and for further obliging buyers and sellers of sea coals at Billingsgate, or other place of sale within the bills of mortality, to sign their contracts for coals, and for the admeasurement of all carriages whatsoever used in loading ships with coals in the port of Newcastle, and members thereunto belonging,' as directs, 'that if any buyer or seller of coals at Billingsgate, or other places of sale within the bills of mortality, being thereunto required, shall refuse or neglect to sign the contracts in such manner as by the said recited act is directed, that then and in such case every such buyer and seller respectively, so refusing or neglecting, shall, for every such offence, forfeit the sum of 50*l.* one moiety thereof to his Majesty, his heirs and successors, and the other moiety to such person or persons as shall sue for the same in any of his Majesty's courts of record at Westminster, within the space of six months after such offence committed;' and so much thereof as directs, 'that every master of a ship carrying coals as aforesaid, shall, after every respective voyage made by him, produce to his owner or owners (when required) a copy of such contract or contracts, signed by the crimp or factor in whose book the said contract is or shall be entered as aforesaid, and in case of refusal, such master so refusing shall forfeit and pay the sum of 50*l.* to be recovered and disposed of as aforesaid,' shall be, and the same is and are hereby repealed, and declared to be null and void to all intents and purposes whatsoever."

Sales entered with clerk of market.

Sect. 29. "That all bargains or contracts for coals between buyer or buyers and seller or sellers shall, by the crimp, factor, or other person having the disposal of such coals (in case any such crimp, factor, or other person, shall be employed for the disposal of such coals) be fairly entered, with the conditions thereof, and price of such coals, in a book to be kept by such crimp, or factor, or other person as aforesaid, subscribed by such buyer or buyers, and by the said crimp or factor, or other person as aforesaid, not merely with the initials of their names, but with their names written at full length, of which bargain or contract such crimp or factor, or other person as aforesaid, shall at the same time deliver *gratis* a copy by him attested to the seller or sellers and buyer or buyers respectively (in case, but not otherwise, of such buyer or buyers or seller or sellers respectively demanding such copy) and a true and perfect copy of such bargain or contract, and the price of such coals, shall be delivered by such crimp or factor to the clerk of the said market, within one hour after the close of the market on that day; and every such copy shall be by such clerk entered in a book or books to be kept for that purpose; and every such book shall be open for the perusal or inspection of any person or persons whomsoever, on demand, at any time or times during the hours such market shall be open; and if any such buyer or buyers shall subscribe his or their name or names to any such bargain or contract in such factor's book, otherwise than in manner aforesaid, or if any crimp or factor, or other person, having the disposal of such coals as aforesaid, shall neglect or refuse to enter such bargain or contract, or the price of such coals, fairly, accurately, and honestly, without fraud or covin, or to subscribe the same, or shall neglect or refuse to give copies thereof in manner or within the time aforesaid, or if any such clerk shall refuse or neglect to enter such contract or bargain, or the price of such coals as aforesaid, in such book or books in manner aforesaid, or shall not permit the perusal or inspection thereof to any person or persons whomsoever, during such hours as aforesaid, then and in such case, every such person or persons so offending shall, for every such offence, forfeit and pay the sum of 100*l.*;

Persons may sell own coals without factor.

and in case any person or persons shall sell his, or her, or their coals, which it shall and may be lawful to and for such person or persons to do, without the intervention of such crimp, factor, or other person as aforesaid, then and in such case every such sale, bargain, or contract for the purchase of coals, with the conditions thereof, and the price of such coals, shall be fairly written on paper, and shall be signed by the seller or sellers, and buyer or buyers, with their respective names written at full length, and such paper, when so

signed, or a true and perfect copy thereof, shall be delivered by such seller or sellers to the clerk of such market within one hour after the close of the market on that day, and such clerk shall, and he is hereby required to enter such paper, or such copy thereof, in a book or books to be kept for such purpose, which book or books shall be open for the inspection and perusal of any person or persons whomsoever, on demand, at any time or times during such hours as such market shall be open; and if any such buyer or seller shall sign or subscribe his or their name or names to any such bargain or contract otherwise than in manner aforesaid, or if any such seller or sellers shall refuse or neglect to enter such bargain or contract with such clerk, in manner or within the time aforesaid, or if any such clerk shall refuse or neglect to enter any such bargain or contract in such book or books in manner aforesaid, or shall not permit the inspection and perusal thereof to any person or persons whomsoever on demand, during such hours as aforesaid, every such person so offending shall, for every such offence, forfeit and pay any sum not exceeding 100*l.* nor less than 20*l.* and if any buyer or buyers, or other person on his, her, or their behalf, shall demand, take, or receive any abatement, deduction, or allowance (by whatever name or by whatever means such abatement, deduction, or allowance shall be called or made) from the price so delivered to or entered with the clerk of such market, or shall practise or make use of any art, covin, or device, so as to obtain any such abatement, deduction, or allowance from the price so delivered to and entered with the clerk of such market, or if any ship owner, crimp, factor, vender or seller of coals, or any person on his, her, or their behalf, shall give, grant, or allow any abatement, deduction, or allowance from the price so delivered to and entered with the clerk of such market (by whatever name or by whatever means such abatement, deduction, or allowance shall be called or made, so that the full price so delivered to and entered with the clerk of such market shall not be received for such coals by such vender or seller, then and in every such case, every such buyer, ship owner, crimp, factor, vender, seller, and other persons so offending shall, for every such offence, forfeit and pay any sum not exceeding 100*l.* nor less than 20*l.* provided always, that the commission to any crimp, or factor, or other person having the disposal of coals, and the usual discount and scorage allowed to buyers, shall not be or be deemed to be any such abatement, deduction, or allowance from such price as aforesaid."

How firm of co-partners signed.

Sect. 30. "That when any person shall on his own account, or on the account of himself and any copartner or copartners, buy, or enter into any bargain or contract for the purchase of coals in the said market, or shall enter into any agreement respecting the terms in which any cargo of coals sold in shares in the said market is to be delivered, then if such person so buying, contracting, or agreeing, shall, at some time previous to such buying, contracting, or agreeing, have delivered to the clerk of the said market a paper, containing (in case of such buyer being a copartner with any other person or persons) as well the usual firm or signature of such buyer and his copartner or copartners, as also the true Christian and surnames, and places of abode, at full length, of himself and of such his copartner or copartners, or containing (in case of such buyer not being a copartner with any other person or persons) the usual signature of such buyer, and also his true Christian name or names, and surname, and place of abode, at full length, then and in any such case, any such person so buying, contracting, or agreeing, and having previously delivered such paper, shall be at liberty, if he thinks fit, to sign and subscribe, with such his own usual signature, or in such usual firm, or with such usual signature of himself and his said copartner or copartners, (as the case may be), any bargain or contract made in the said market for the purchase of any coals, or any such agreement as is hereinafter required respecting the terms in which any cargo sold in shares in the said market is to be delivered, (instead of being in such case obliged to subscribe such bargain, contract, or agreement with his own name, or with the name of himself and his copartner or copartners at full length); and in like manner, if any factor, who shall sell or enter into any bargain or contract for the sale of coals in the said market, or shall sign his name as witness to

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47 Geo. 3, c. lxviii.

any such agreement respecting the terms of delivery of any cargo sold in shares, shall previously to such selling, or contracting, or signing, or attesting such agreement, have delivered to the clerk of the said market a paper, containing (in case of such factor being a copartner with any other person or persons) as well the usual firm or signature of such factor and his copartner or copartners, as also the true Christian and surnames or places of abode in full length of himself and of such his copartner or copartners, or containing (in case of such factor not being a copartner with any other person or persons) the usual signature of such factor, and also his true Christian name or names, and surnames, and place of abode, at full length; then and in any such case, any such factor so selling, or contracting, or signing, or attesting any such agreement, and having previously delivered such paper, shall be at liberty, if he thinks fit, to sign or subscribe with such his own usual signature, or in such usual firm, or with such usual signature of himself and his said copartner or copartners, (as the case may be,) any bargain or contract made in the said market for the sale of any coal, or any such agreement as is hereinafter required respecting the turns in which any cargo sold in shares in the said market is to be delivered instead of being in such case obliged to sign or subscribe such bargain, or contract, or agreement with his own name, or with the names of himself and his copartner or copartners at full length; and if any person shall receive a paper or authority, in writing, from and as the clerk or agent of any other person or persons, to buy or enter into bargains or contracts on the behalf of such other person or persons for the purchase of coals in the said market, and to enter into agreements on the behalf of such other person or persons respecting the turns of delivery of any cargo which shall be sold in shares in the said market, and if such clerk, agent, or person, shall, previously to his buying on the behalf of such other person or persons, deliver in to the clerk of the said market such paper or authority, in writing, and which paper or authority, in writing, shall be signed and subscribed with the Christian and surnames, and places of abode, at full length, of each and every person or persons on whose behalf such authority shall be given, and also with the usual firm or signature of any copartner on whose behalf any such authority shall be given, or with the usual signature of any person, not being a copartner, on whose behalf any such authority may be given, (as the case may be,) and shall also contain the name and place of abode, at full length, of the person who shall be so authorised thereby; then and in every such case it shall and may be lawful to and for any such clerk, agent, or person who shall have been so authorised, and who shall have previously delivered in to the clerk of the said market such paper or authority, in writing, to such effect, and so signed and subscribed as aforesaid, to enter into and sign or subscribe on the behalf and in the name or names of such other person or persons who shall have given such authority as aforesaid, any bargain or contract for the purchase of any coals in the said market, or any such agreement as is hereinafter required, in case of any cargo being sold in shares in the said market; and such clerk, agent, or person so authorised, and who shall have previously delivered such paper as aforesaid, shall be at liberty, if he thinks fit, to sign or subscribe any such bargain, contract, or agreement as aforesaid with the usual signature or firm of the person or persons on whose behalf he shall so buy or enter into such bargain, contract, or agreement, without being obliged to sign the name or names of such person or persons at full length, any thing herein contained to the contrary notwithstanding; and the clerk of the said market shall, and he is hereby required to enter every such paper in a book or books to be kept for such purpose, which book or books shall be open for the inspection or perusal of any person or persons whomsoever, on demand, during such hours as the said market shall be open; and if any such buyer or factor shall deliver to the said clerk of such market any false or imperfect paper or account of the firm or signature, or of the Christian and surname or names, or place or places of abode, of himself, or of himself and his copartner or copartners, (as the case may be,) or if any such clerk, agent, or other person as aforesaid, shall deliver to the said clerk of the said market any false or imperfect paper, or any

other than such paper or authority in writing, to such effect, and so signed and subscribed as aforesaid, every such person so offending shall, for every such offence, forfeit and pay any sum not exceeding 20*l.*; and if any such clerk of the said market shall refuse or neglect to enter, or copy, or cause to be entered or copied any such paper in such book or books in manner aforesaid, or shall not permit the inspection or perusal thereof to any person or persons whomsoever, on demand, during such hours as aforesaid, such clerk so offending shall, for every such offence, forfeit and pay any sum not exceeding 20*l.*"

Not less than 21 chaldrons of coals to be sold.

Sect. 31. "That after the cargo of any ship or other vessel shall have been entered with the clerk of the said market in manner aforesaid, the coals contained in such cargo shall be and be deemed to be upon sale during the times for holding the said market as hereinbefore mentioned; and if the factor, agent, or other person having power or authority of selling the said cargo of coals, or of any part or parts thereof, shall give any undue preference in the sale thereof, or refuse or decline to sell the same, or any part or parts thereof, to any person or persons whomsoever, who shall be desirous of purchasing not less than twenty-one chaldrons thereof, (payment for such coals being then and there tendered with sufficient security for the payment of demurrage, in case of detention in the delivery,) such factor or agent, or other person so offending, shall forfeit and pay, for every such offence, the sum of 100*l.*"

Entries of proceedings under act good evidence.

Sect. 32. "That all entries made by the clerk of such market in such book or books, in pursuance of the directions of this act, shall be evidence in all cases, suits, and actions, touching or concerning any thing done in pursuance of this act."

Preventing sale of one sort of coals for another.

Sect. 33. "That if any vender or venders of or dealer or dealers in coals, shall knowingly sell one sort of coals for and as a sort which they really are not, within the said port of London, or within the respective cities of London or Westminster, or the respective liberties thereof, or within such part or parts of the respective counties of Middlesex, Surrey, Kent, and Essex, as is or are situate within the distance of twenty-five miles from the Royal Exchange aforesaid, every such vender or venders of, or dealer or dealers in coals, shall forfeit and pay, for every such offence, the sum of 20*l.* per chaldron so sold; and such vender or venders of, or dealer or dealers in coals, shall not be subject or liable to any penalty imposed by the said recited act, made in the ninth year of the reign of her Majesty Queen Anne, intituled, 'An Act to dissolve the present, and prevent the future combination of coal owners, lightermen, masters of ships, and others, to advance the price of coals, in prejudice of the navigation, trade, and manufactures of this kingdom, and for the further encouragement of the coal trade,' or by the said recited act, made in the third year of the reign of his late Majesty King George the Second, intituled, 'An Act for the better regulation of the coal trade,' on every person who shall knowingly sell one sort of coals for and as a sort which they really are not: provided always, that no vender or venders of, or dealer or dealers in coals, shall be subject to such penalty for or in respect of any number of chaldrons exceeding twenty-five chaldrons, for the same offence." (*a*)

No meter appointed to ship until part of coals sold.

Sect. 34. "And whereas great inconvenience has arisen from the appointment of a meter to a ship or other vessel for the delivery of her cargo of coals before the same was ready for delivery, be it therefore further enacted, that no meter shall be appointed to any ship or other vessel, for the delivery of her cargo of coals, until after the account of the sale of such cargo of coals shall have been entered with the clerk of the market, or until the conclusion of the market, in which the account of the sale of three score chaldrons at the

(*a*) As to whether to sue in the superior courts or to proceed before a justice for the penalty, see *post*, 717, n.

The offence of selling coals of a different description than those contracted for, on the 3 Geo. II. c. 26, s. 4, is complete where the coals are delivered and not where they are coutracted for. *Butterfield* v. *Windle*, 4 *East*, 385.

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47 Geo. 3, c. lxviii.

least of the coals contained in such ship or other vessel shall have been so entered with the clerk of the said market, in manner herein directed."

Coal ships damaged may be unloaded without ship meter.

Sect. 35. "That when any ship or vessel laden with coals shall have arrived within any part of the said port of London, at or to the westward of Gravesend, and such ship or vessel shall, after she shall have arrived as aforesaid, happen to be or become so damaged or injured as to render it prudent or necessary to remove without delay the coals contained in such ship or vessel out of such ship or vessel, then and in such case nothing herein contained shall extend or be construed to extend so as to hinder or prevent the immediate unloading and removing the coals with which any such ship or vessel shall be laden, from out of such ship or vessel into any lighters or barges, or other craft, without waiting for the appointment or arrival of any ship meter, and without any person or persons being subject or liable to any penalty or penalties whatsoever for or in respect of such removal of any such coals."

Meter may appoint assistant out of fellowship porters.

Sect. 36. "That it shall and may be lawful to and for any meter employed to admeasure or deliver, or to superintend the admeasurement or delivery of any coals from any such ship or vessel as aforesaid, to appoint, from time to time, one of the fellowship porters to be such meter's man, or to assist such meter in the admeasurement or delivery of such coals, and from time to time to dismiss such person so appointed at his pleasure, and to appoint any other fellowship porter to be such meter's man in the room of the person so dismissed; and no person so appointed by any meter to be such meter's man, or to assist such meter in the delivery of the coals from any such ship or vessel, shall be entitled to any pay or wages or allowance for any detention, or to any other benefit under this act, except such person shall be one of the persons called fellowship porters; and that every such person so to be appointed meter's man, or assistant to any such meter, shall (provided he be a fellowship porter, but not otherwise) have and be entitled to receive and be paid by the undertaker of any such ship or vessel, or by the master or owner (where no undertaker shall be employed) the same wages or sum of 3s. for every twenty chaldrons of coals admeasured and delivered, and shall have and be entitled to receive and be paid by the master or owner of any such ship or vessel, the same sum or allowance per day for detention money, and shall also have and be entitled to receive and be paid all such other emoluments as shall or ought to be paid, awarded, or allowed to any coalheaver or whipper employed together with such meter's man in the delivery of any such ship or vessel; and that such undertaker shall have and be entitled to charge and receive, and be paid and allowed the same profit or allowance and emolument upon and in respect of such meter's man, as shall or ought to be paid or allowed to such undertaker upon or for any coalheaver or whipper paid and employed by such undertaker together with such meter's man."

Meters and coalheavers unnecessarily detained on board entitled to detention money.

Sect. 37. "That if any meter, meter's man, coalheaver, or whipper, shall, by reason of the delivery of a less quantity of coals than at the rate of forty-two chaldrons a day, from the appointment of such meter to deliver such ship or vessel, be detained on board any ship or vessel by reason of the whole of the coals not being delivered thereout, over or beyond such number of days as the whole of the cargo thereof would have been delivered in, supposing such coals had been delivered at the rate of forty-two chaldrons a day, then and in such case the master or owner of every such ship or other vessel, shall pay to every such meter, meter's man, coal whipper, or heaver, such sum or sums of money, not exceeding 7s. per day, as or by way of detention money for every day that such ship or vessel shall have been detained beyond such number of days as aforesaid, as any one or more of his Majesty's justices of the peace for the city of London, or counties of Middlesex, Essex, Kent, or Surrey, according to the jurisdiction, shall award, on the application of such meter, meter's man, coalheaver, or whipper, over and above all costs and expenses of such application, provided that it shall appear to such justice or justices, that such detention did not arise from the default of the meter, or meter's man, coal whipper, or coalheaver respectively; and every such application to any such justice or justices shall be made by such meter,

meter's man, coal heaver, or whipper, within three days next after the day on which the delivery of the whole of the cargo of such ship or vessel shall have been completed; and if the sum or sums of money which shall, upon any such application, be awarded by such justice or justices to be paid as detention money, for or on account of any such detention and costs by any such shipmaster or owner, to any such meter, meter's man, coalheaver, or whipper, shall not be immediately paid accordingly, such sum or sums shall be levied by distress and sale of the goods and chattels of such shipmaster or owner, by warrant under the hand and seal of such justice or justices, and the overplus of the money, if any, raised by such distress and sale, (deducting the money so awarded and ordered to be paid, and the costs and charges of making such distress and sale,) shall be rendered to the owner of the goods and chattels so distrained; and for want of distress, and in case the money so awarded and ordered to be paid shall not be immediately paid, it shall and may be lawful to and for such justice or justices to commit such master or owner to the common gaol or house of correction for the city or place for which such justice shall act, there to remain without bail or mainprize for any term not exceeding six calendar months, unless such sum or sums, and all reasonable costs attending the recovery thereof, shall be sooner paid; and every such award, order, and proceeding of any such justice or justices shall be final, binding, and conclusive; and that no such proceedings shall be quashed or vacated for want of form only, or be removed by *certiorari*, or any other writ or process whatsoever, into any of his Majesty's courts of record at Westminster or elsewhere."

Money paid by ship master or owner for detention by coal buyer to be repaid by him.

Sect. 38. "That when any sum or sums of money shall be directed by any such justice or justices of the peace to be paid by any shipmaster or owner to any such meter, meter's man, coalheaver, or whipper, as and by way of detention money for any detention which shall have been occasioned by, or have arisen from the conduct of any coal buyer or buyers, or his, her, or their agent or agents, or for any costs attending the application for any such detention money, and such sum or sums of money shall have been paid accordingly, then and in every such case, such coal buyer or buyers shall repay, or cause to be repaid to such shipmaster or owner, such sum or sums as such shipmaster or owner shall, in consequence of any such direction, have paid unto any such meter, meter's man, coalheaver, or whipper, for any detention so occasioned by such coal buyer or buyers, or his, her, or their agent or agents, and for any such costs; and in case of any neglect or refusal in such coal buyer or buyers, his, her, or their agent or agents, to make such repayment, it shall and may be lawful to and for any one or more of his Majesty's justices of the peace for the city of London, or counties of Middlesex, Essex, Kent, or Surrey, according to the jurisdiction, on the application of such shipmaster or owner, to order such coal buyer to repay to such shipmaster or owner any such sum or sums, or any part or parts thereof, which shall have been paid by such shipmaster or owner to such meter, meter's man, coalheavers, or whippers, in pursuance of the direction of such justice or justices, for any such detention and costs, provided such detention shall appear to such justice or justices to have been occasioned by, or to have arisen from the default of such coal buyer or buyers, or his, her, or their agent or agents; and every such application to any such justice or justices shall be made by such shipmaster or owner within ten days next after any such detention money and costs shall have been awarded and paid by such shipmaster or owner; and if the sum or sums of money which shall, upon any such application, be ordered by such justice or justices to be repaid to such shipmaster or owner by such coal buyer or coal buyers, shall not be immediately repaid accordingly, such sum or sums shall be levied by distress and sale of the goods and chattels of such coal buyer or buyers, by warrant under the hand and seal of such justice or justices, and the overplus of the money (if any) raised by such distress and sale, (deducting the money so ordered to be repaid, and the costs and charges of making such distress and sale,) shall be rendered to the owner of the goods and chattels so distrained; and for want of distress, and in case the money so ordered to be repaid shall not be accordingly immediately repaid, it shall and

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may be lawful to and for such justice or justices to commit such coal buyer or buyers to the common gaol or house of correction for the city or place for which such justice or justices shall act, there to remain without bail or mainprize, for any time not exceeding six calendar months, unless such sum or sums, and all reasonable costs attending the recovery thereof, shall be sooner paid."

Coal buyer not liable to detention money unless meter attend at his request.

Sect. 39. "That no coal buyer or buyers shall be subject or liable to the payment of any sum or sums of money whatsoever as detention money, for or in respect of the detention of any such meter, meter's man, coalheaver or coalheavers, on the day on which a meter shall be appointed to any such ship or vessel, unless such meter, meter's man, coalheaver or coalheavers respectively, shall be requested by such coal buyer or buyers, or his or their agents, to attend, and shall actually attend in consequence of such request on board such ship or vessel during that day; any thing herein contained to the contrary notwithstanding."

Coal buyers or master or owner may appeal to sessions.

Sect. 40. "That if any such coal buyer or buyers, who shall be dissatisfied with or feel himself or themselves aggrieved by any such last mentioned order of any such justice or justices for the repayment of any such sum or sums to such ship owner or master, or if any such ship owner or master shall be dissatisfied with or feel himself aggrieved by the determination of any such justice or justices, who shall on any such last mentioned application think proper to decline making any order for any such repayment, it shall and may be lawful to and for any such coal buyer or buyers, or master or owner respectively, to appeal to the justices of the peace assembled at the next general quarter sessions or general sessions to be holden for the county, city, or place, where such order for repayment shall be made, or refused to be made, on giving immediate notice of such appeal, and finding sufficient security to the satisfaction of such justice or justices (making or declining to make such order) for prosecuting the said appeal with effect, and for abiding the determination of the court therein; and such justices in such general quarter sessions or general sessions shall hear and determine the matter of such appeal, and may either confirm or annul the said order or determination, or may make such other order or determination in the matter of such appeal, and award such costs to either party as to them the said justices shall seem just and reasonable; and the decision of the said justices therein shall be final, binding, and conclusive; and no such proceedings shall be quashed or vacated for want of form only, or be removed by *certiorari*, or any other writ or process whatsoever, into any of his Majesty's courts of record at Westminster or elsewhere, any law or statute to the contrary thereof in anywise notwithstanding."

Ship masters not to bring actions against coal buyers for detention money.

Sect. 41. "That no action, suit, or other proceeding whatsoever, shall be commenced or prosecuted by any such ship owner or master against any such coal buyer or buyers, in any of his Majesty's courts of record at Westminster, or in any other court or courts of law or equity, for the recovery of, or otherwise respecting any sum or sums of money which shall have been paid by any such ship owner or master respectively, for any such detention or costs as aforesaid."

No person to be coal undertaker without license from court of aldermen.

Sect. 42. "That no person whosoever shall carry on, or exercise or follow the trade, business, or employ of a coal undertaker, or of providing coalheavers or whippers for unloading coals from any ship or vessel within the said port of London, unless he or she shall have previously obtained a license to carry on such business from the court of lord mayor and aldermen of the city of London, which court is hereby authorised to grant such license to such person or persons as shall, at the time of soliciting the same, produce before such court a recommendation, signed by two of his majesty's justices of the peace, acting as such, for the city, county, town, or place in which such person or persons reside; and every person so licensed shall pay for his or her license the sum of 20*s.* and no more; and every such license shall be granted for, and remain in force for the term of one year, to be computed from the day of the date thereof, and no longer; and the Christian and surnames, and the place of abode of every person so licensed, shall, within

twenty-four hours after the granting such respective licenses, be correctly entered in a book to be kept for that purpose at the mansion house of the city of London; and such book shall at all suitable times be open for inspection, gratis, of any person or persons whatsoever applying to inspect the same; and all and every person or persons who shall carry on, exercise, or follow the said trade of a coal undertaker, without having obtained such license, and procured the same to be entered as aforesaid, or who shall carry on, exercise, or follow such trade for any longer or other term than shall be expressed in any such license so obtained, and procured to be entered as aforesaid, shall, for every coalheaver or whipper so provided by him or her, forfeit and pay the sum of 10*l.*, and the whole of such penalty shall go to the informer."

Coal undertaker misconducting himself may be suspended and name erased.

43. "That if complaint shall be made to the said lord mayor, or to the sitting alderman or aldermen for the time being of the said city of London, of or relating to the conduct of any such licensed coal undertaker in his or her said trade or business, the said mayor or sitting alderman or aldermen, shall and may cause him or her to be brought before him or them, and if upon hearing the said complaint, it shall appear to the said mayor or sitting alderman or aldermen, that the said coal undertaker shall have acted corruptly or improperly, or have offended in any manner against the provisions or true intent and meaning of this act, then and in such case it shall and may be lawful to and for the said mayor, or sitting alderman or aldermen, to suspend such coal undertaker from carrying on his or her trade or business of undertaker, until the holding or sitting of the then next court of the said lord mayor and aldermen; and if upon such complaint being brought and heard before the said court of lord mayor and aldermen, at such their then next sitting, it shall appear to the said court that such coal undertaker shall have acted corruptly or improperly, or have offended in manner aforesaid, then and in such case it shall and may be lawful to and for the said court of lord mayor and aldermen to cause the name of such coal undertaker to be erased from the said book of licensed coal undertakers; and if any such undertaker shall, either during such time for which he or she shall be so suspended, or after the time of such erasure of his or her name being so made from such book, carry on, exercise, or follow the said trade of a coal undertaker, every such person so offending shall, for every coalheaver provided by him or her either during the interval of such suspension, or subsequently to such erasure, forfeit and pay the sum of 100*l.*, and the whole of such penalty shall go to the informer."

Coal undertaker to take an oath.

Sect. 44. "That if any coal undertaker, or other person providing any coalheaver or coalheavers for the purpose of unloading coals from any ship or other vessel within the said port of London, shall provide any such coalheaver or coalheavers, without having first taken before the lord mayor, or one of the aldermen of the city of London, the oath following (which they are hereby empowered to administer); that is to say:—

Oath.

I, A. B. do swear, that I will well and truly exercise the business or employ of a coal undertaker or provider of coalheavers, and so long as I shall continue to exercise that business, I will in all things conform myself to the directions of an act of parliament, made in the forty-seventh year of the reign of King George the Third, intituled, "An Act for repealing the several acts for regulating the vend and delivery of coals within the cities of London and Westminster, and liberties thereof, and in certain parts of the counties of Middlesex, Surrey, Kent, and Essex, and for making better provision for the same."

every such coal undertaker, or other person as aforesaid, shall, for every such coalheaver so provided by him, her, or them, forfeit and pay the sum of 10*l.*, and the whole of such penalty shall go to the informer."

Victuallers no to be coal undertakers.

Sect. 45. "That if any licensed victualler, alehousekeeper, or innkeeper, concerned or interested, directly or indirectly, either in his or her own name, or in the name or names of any other person or persons whomsoever, or by way of partnership or agreement, to receive any part of the profits of such trade or trades, shall, directly or indirectly, exercise the business or employ of a coal undertaker, or of providing any coalheaver or coalheavers, or any shovels,

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baskets, or other implements for unloading any coals from any ship or other vessel within the said port of London, every such victualler, alehousekeeper, or innkeeper shall, for every such coalheaver, shovel, basket, or other implement provided by him or her, forfeit and pay the sum of 10*l.*, and the whole of such penalty shall go to the informer."

Implements for unloading coal ships provided by ship master.

Sect. 46. "That the master, or owner or owners of every ship or vessel from which any coals shall be unloaded or delivered within the said port of London shall, and he and they is and are hereby required to provide and find, at his and their own expense, all such shovels, baskets, and other implements, as shall be requisite and proper for the unloading or delivery of the coals from any such ship or vessel; and no such shovel, basket, or other implement, shall be let out for hire by or to any person or persons whomsoever, save and except by a licensed coal undertaker or undertakers, to any such shipmaster or owner, masters or owners, his or their agent or agents, who shall employ such coal undertaker or undertakers; and if any person or persons whosoever, not being a coal undertaker or undertakers duly licensed as aforesaid, shall let out to hire any shovel or shovels, basket or baskets, or other implement or implements, for the unloading of any such ship or vessel, to any person or persons whomsoever, or if any licensed coal undertaker shall let out to hire any shovel or shovels, basket or baskets, or other implement or implements, for the unloading or delivery of any such ship or vessel to any person or persons whomsoever, save and except to the master or owner of any such ship, or to his agent or agents, every such person so offending shall, for every such shovel, basket, or other implement so let out, forfeit and pay the sum of 10*l.*"

Wages to be given to undertakers, coalheavers, and meter's men.

Sect. 47. "That every coal undertaker shall receive and have from the master, or owner or owners of any ship or vessel in the port of London, for every chaldron of coals delivered by the coalheavers by him or her provided for that purpose, the sum of 1*d.*, in full compensation for his or her trouble; and that the several coalheavers and meter's men shall be entitled to and receive from the undertaker, or from the master when no undertaker is employed, for every twenty chaldrons of coals by them delivered, the sum of 3*s.* each, in full for their respective wages or pay."

Court of aldermen may increase the wages of coal undertakers, &c.

Sect. 48. "That it shall and may be lawful to and for the said court of lord mayor and aldermen of the city of London from time to time to increase the several sums payable to the coal undertakers, and also the wages or hire payable for labour to the ship coal meters, meter's men, and coalheavers respectively, and from time to time to reduce the same, when it shall appear reasonable and equitable to them so to do; and if any such shipmaster or owner, or his agent or agents, or any other person or persons whosoever, shall pay or cause to be paid to any such coal undertaker, or if any such master, owner, undertaker, or any other person or persons whosoever, shall pay or cause to be paid to any such coalheaver, ship coal meter, or meter's man, any greater or less sum, or at or after any greater or less rate than is hereby or may be hereafter so settled or appointed by the said court of lord mayor and aldermen, to be paid or payable to such undertakers, meters, meter's men, or coalheavers respectively, every such master, undertaker, or other person so offending, shall, for every such offence, forfeit and pay the sum of 10*l.*"

Coalheavers paid, how.

Sect. 49. "That the hire and wages of coalheavers or whippers, and meter's men, shall be really and *bonâ fide* paid by the masters or owners of ships, or their agents, to the undertaker, when any undertaker shall be employed; and such undertaker shall pay and divide, or cause to be paid and divided, such hire and wages so received by him for that purpose, among the said meter's men and coalheavers or whippers; and when no undertaker shall be employed, then such masters or owners respectively shall pay or divide such hire or wages, really and *bonâ fide*, unto or amongst such meter's men and coalheavers respectively; and if any such master or owner shall pay, or if any such undertaker shall pay or cause to be paid to any such coalheaver or meter's man, such wages or pay, or any part thereof, by way of barter or exchange, in any coals, goods, wares, merchandize, meat, drink, lodging, or

materials for wearing apparel, or with any other matter or thing whatsoever, other than current money, or shall make any deduction or abatement from or out of such wages or pay, under pretence of furnishing baskets, shovels, or other implements used in the unloading of coals, or for or under any other pretence whatsoever, every such person so offending shall, for every such offence, forfeit and pay the sum of 10*l.*, and the whole of such penalty shall go to the informer."

Coalheavers not to be paid at alehouse, &c.

Sect. 50. "That the undertaker shall pay or cause to be paid the hire and wages of the coalheaver or coalheavers employed by him, unto and amongst all such coalheavers, at his accounting-house, or other convenient place for that purpose; and where no undertaker is employed, the shipmaster or owner shall himself pay and divide the same equally amongst the coalheavers on board the ship or vessel in which they shall have been employed; and if any such master or owner where no undertaker is employed shall pay, or if any such undertaker shall pay or cause to be paid to any such coalheaver any such hire or wages, or any part thereof, at any alehouse, victualling house, or inn, or in any other description of place than as aforesaid, every such person so offending shall, for every such offence, forfeit and pay the sum of 20*l.*"

Undertakers may advance to coalheavers one half of wages earned.

Sect. 51. "That the person or persons who shall be employed as the undertaker or undertakers for the delivery or unloading of coals from any ship or vessel within the said port of London, shall, and such coal undertaker or undertakers is and are hereby directed and required from time to time, during the time of the delivery of such ship or vessel, to advance to all or any of the respective coalheavers or whippers employed by such undertaker or undertakers in the delivery of such ship or vessel, who shall request the same, one half of the wages already earned by and then due to any of such respective coalheavers or whippers for work done in or towards the delivery of such ship or vessel previous to the making of any such request: provided such coalheavers or whippers respectively shall attend to receive the same between the hours of five and seven of the clock in the evening."

Undertakers to pay coalheavers within a limited time after ship's delivery.

Sect. 52. "That all and every such coal undertaker and undertakers shall, and he or they is and are hereby directed and required, after the delivery of the cargo of coals out of any such ship or vessel shall be completed, and at or before seven of the clock in the evening of the day on which such delivery shall be finished, in case such delivery shall be completed before five of the clock in the evening, or at or before seven of the clock of the evening of the next day after the completion of such delivery, to pay or cause to be paid to all and every of the respective coalheavers or whippers employed in the delivery of such ship or vessel, who shall apply in reasonable time, and attend to receive the same, the whole of the money or wages due or remaining due to each of such coalheavers and whippers respectively so applying and attending to receive the same, for working in the delivery of such ship or vessel; but whenever the day next after the day on which the delivery of any such ship or vessel shall be finished, shall happen to be a Sunday, Good Friday, Christmas Day, or a fast day by proclamation, then and in such case the whole of such respective wages so due or remaining due shall be paid by such coal undertaker or coal undertakers to all and every such respective coalheavers or whippers who shall apply in reasonable time and attend to receive the same, at or before nine of the clock of the day on which such delivery shall be completed, whether such delivery shall be finished at or before five of the clock in the evening on such day or not; and if any such coal undertaker or undertakers shall not, at or before such time or respective times as hereinbefore for that purpose appointed, according to the several cases hereinbefore specified, pay or cause to be paid to any such coalheaver or whipper, who shall apply in a reasonable time and attend to receive the same, the whole of such money or wages due or remaining due to such coalheaver or whipper as aforesaid, every such coal undertaker so offending shall, for every such offence, forfeit and pay any sum not exceeding 20*l.*"

Undertakers may deduct money advanced to coalheavers.

Sect. 53. "That nothing herein contained shall extend or be construed to extend so as to hinder or prevent any such coal undertaker or undertakers from deducting any money which shall be so advanced by him, her, or them,

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during the time of the delivery of any ship or vessel, to any such coalheaver or whipper, or respective coalheavers or whippers, in part of his or their respective wages, when such undertaker or undertakers shall finally settle with and pay off any such coalheaver or whipper, or coalheavers or whippers respectively, after the delivery of such ship or vessel shall have been completed."

Undertakers not to give nor masters take reward for preference to particular gang of coalheavers.

54. "That if any undertaker or basket-man, or any publican to whose house coalheavers may resort, or any person or persons on his, her, or their behalf, shall give or grant, or promise to give or grant, any money, or other gift or reward, to any master or masters, owner or owners, of any ship or vessel laden with coals in the port of London, for any permission or privilege to procure coalheavers, or for the said master or masters, owner or owners, to employ any particular coal undertaker, or gang or gangs of coalheavers, for the unloading any such ship or vessel, or if any such master or masters, owner or owners, shall take or receive any such money, or other gift or reward, for any such purpose, from such undertaker, basket-man, publican, or other person or persons, on his, her, or their behalf, every such master, owner, undertaker, basket-man, publican, or other person, so offending, shall, for every such offence, forfeit and pay the sum of 20*l.*"

Ship meters to give certificates of coals delivered into each lighter.

55, "That each and every meter superintending the admeasurement or delivery of any coals from any ship or other vessel into any lighter, barge, or other craft, shall, and he and they is and are hereby required to give and deliver to the lighterman or other person having the care or management of the lighter, barge, or other craft into which the coals from such ship or other vessel shall be admeasured or delivered, before such lighter, barge, or other craft shall quit such ship or other vessel, a certificate or certificates of the quantity of coals admeasured or delivered, into such lighter, barge, or other craft; and each and every certificate shall be numbered, beginning with number one for the first certificate delivered, and so on in an arithmetical progression ascending, whereof the common excess or difference shall be always one, until the whole cargo of coals contained in such ship or other vessel shall be delivered; and every such certificate shall be witnessed by the master or mate of such ship or other vessel, and shall be made in the following form:— (*a*)

Number [here insert the number of the certificate.]

I, A. B. do hereby certify, that I have delivered from on board the [here insert the name of the ship or other vessel, and also the master's christian and surname] *master, from* [here insert the name of the port where the coals were put on board] *of* [here insert the name by which the coals are known] *coals,* [here insert the number of chaldrons] *chaldrons, in the room,* [or, *rooms if more than one,*] *number* [here specify the number of the room, reckoning from the head to the stern] *of the lighter* [or, *barge, or other craft*] *called the* [here insert the name of the lighter, barge, or other craft] *number* [here insert the number of the lighter, barge, or other craft, and the name of the lighterman] *lighterman, on account of* [here insert the name of the buyer of the coals, or the person for whose use such coals are delivered, as shall be required.]

A. B. meter

Witness, C. D. master [or, *mate.*]

Port of London [here insert the day of the month, and the month and year in which such coals were delivered.]

And in case such coals shall be sold by weight, the word tons shall be inserted in such certificate or certificates, in lieu of the word chaldrons; and in the making out such certificate or certificates, no figure shall be made use of, but each and every word shall be legibly written at length (save and except the date of the year, which may be written in figures); and every such lighterman, or other person having the care or management of such lighter, barge,

(*a*) Where the vender of coals himself inserts in the vender's ticket the description of them, it is not necessary in an action for penalties under the 47 Geo. III. c. lxviii. to produce the ship meter's certificate as required by this 55th section. *Reeve* v. *Starey*, 4 *Car.* & *P.* 17.

or other craft, shall, upon the delivery of such certificate, pay to the meter or other person superintending the delivery of such coals, the sum of 3*d.* for each and every such certificate; and if any meter or other person superintending the admeasurement or delivery of such coals, shall refuse or neglect to give or deliver such certificate, signed with his own name, and in his own handwriting, and drawn in manner aforesaid, to the person or persons having the care or management of such lighter, barge, or other craft, or shall wilfully give or deliver the same with a wrong or false number of the certificate inserted therein, or with a wrong or false name of the ship or other vessel, or of the master, or of the port where the coals were put on board such ship or other vessel, or of the name or names, sort or sorts of the coals, or with a wrong or false account of the quantity of coals admeasured or delivered into any room of such lighter, barge, or other craft, inserted therein, or with a wrong or false name or names of the lighterman, or of the buyer or other person for whose use such coals are delivered, or with a wrong or false month or date thereof, or of the year, or without the signature of such master or mate thereto, or make use of any fraud, covin, or device, by which the same shall be wrong or false; or if any such master or mate shall refuse or neglect to sign any such certificate when true and accurate, or shall sign any such certificate, knowing the whole or any part or parts thereof to be wrong or false, or if any such lighterman or other person having the care or management of such lighter, barge, or other craft, shall not wait a reasonable time after the coals shall have been so admeasured or delivered for the purpose of receiving such certificate or certificates, or shall refuse or neglect to receive the same, or shall, on the delivery of every such certificate, refuse or neglect to pay the meter or other person superintending the admeasurement or delivery of such coals the aforesaid sum of 3*d.* for each and every such certificate, then and in every such case every such meter or other person superintending the admeasurement or delivery of such coals so offending, and every such master or mate so offending, and each and every such lighterman or other person having the care or management of such lighter, barge, or other craft, so offending, shall, for every such offence, forfeit and pay any sum not exceeding 10*l.*"

Lightermen to deliver certificate to wharfinger.

Sect. 56. "That each and every lighterman, or other person having the care or management of any lighter, barge, or other craft laden with coals, in the said port of London, shall, and he is hereby required to deliver *gratis*, before any part of the said coals shall be taken out of any such lighter, barge, or other craft, to the holder or holders of the wharf or other landing place where such coals are intended to be delivered, or to his, her, or their servant, the certificate of the quantity of coals measured or weighed into such lighter, barge, or other craft, and herein directed to be given to such lighterman or other person by the meter admeasuring or weighing the coals from any ship or other vessel in the said port of London, into such lighter, barge, or other craft, for the inspection of all those persons who may be interested in the purchase or delivery of such coals; and if any such lighterman or other person having the care or management of any such lighter, barge, or other craft, to whom any such certificate shall have been delivered by such ship meter, shall refuse or neglect to deliver the same in manner aforesaid to such wharfinger or holder of such wharf, or other landing place, such lighterman or other person so offending shall, for every such offence forfeit and pay any sum not exceeding 20*l.*; or if any holder or holders of a wharf or other landing place, wharfinger or wharfingers, to whom such certificate shall have been delivered, shall refuse or neglect to permit any person concerned in the purchase or delivery of such coals at all reasonable times to inspect such certificate, every such holder or holders of a wharf or other landing place, wharfinger or wharfingers, so offending, shall, for every such offence, forfeit and pay any sum not exceeding 20*l.*; or if any such lighterman, holder of the wharf, or other person, shall wilfully erase, deface, alter, or destroy such certificate, or be aiding or assisting therein, or permit or suffer the same to be done, every such person so offending shall, for every such offence, forfeit and pay any sum not exceeding 20*l.*"

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47 Geo. 3, c. lxviii.

Ship meters to keep accounts of coals delivered; and

Sect. 57. "That each and every such meter admeasuring or weighing, or attending the admeasurement or weighing of any coals from any ship or other vessel within the said port of London, into any lighter, barge, or other craft, or on any quay or landing place, shall keep a book or books, and shall enter therein the name of the ship or other vessel, and the several quantities of coals delivered by him or them, from such ship or other vessel, together with the day of the month and year on which such several quantities shall have been delivered, and the name and number or numbers marked or described on the lighter or lighters, barge or barges, or other craft, and the several quantities of coals delivered into each room or division of such respective lighter, barge, or craft, or the name of the quay or landing place into or upon which such coals have been delivered; and such entry or entries shall, when all the coals contained in such ship or other vessel shall have been delivered, be signed by such meter or meters, and witnessed by the master or other person having the care or charge of such ship or other vessel; and such meter or meters shall, and he and they is and are hereby required to deliver, or cause to be delivered, *gratis*, a copy of the respective entries from such book or books to the clerk of the said market, with the factor or factors' name or names inscribed thereon, within twenty-four hours after the unloading thereof of coals; and every such clerk is hereby required to receive and preserve all such copies of the entries contained in such book or books; and if any such meter shall make a false entry or entries in such book or books of the name of such ship or other vessel, or of the quantity of coals delivered thereout, or of the day, or month, or year, or of the name or names, or number or numbers of the lighter or lighters, barge or barges, or other craft, or of the several quantities of coals delivered into each room or division of each respective lighter, barge, or other craft, or of the name of any quay or landing place into or upon which the coals from such ship or other vessel shall have been delivered, or shall not deliver or cause to be delivered such copies of the entries contained in such book or books to such clerk within the time aforesaid, or if the master or other person having the care or charge of such ship or other vessel shall refuse or neglect to witness such entry or entries, when true and correct, or shall knowingly witness any such false entry or entries, or if any such clerk shall refuse or neglect to receive and preserve such entry or entries, book or books, or shall refuse or not permit the inspection or perusal thereof to any person or persons whomsoever on demand, at any time or times during such days and hours as such market shall be kept open, every such person so offending, shall, for every such offence, forfeit and pay any sum not exceeding 20*l*."

give copy to clerk of market.

Penalty for preventing vat from being filled according to directions of meter.

Sect. 58. "That if any ship owner or owners, master or masters, mate or mates, coal undertaker or undertakers, buyer or buyers of coals, or his or their agents, or any coalheaver or whipper, or any other person or persons whosoever, shall, directly or indirectly, in any manner prevent or attempt to prevent any meter, who shall be engaged in the admeasurement or delivery, or in superintending the admeasurement or delivery of any coals from any ship or vessel within the said port of London, from having the vat or other measure filled according to the directions of such meter employed in the admeasurement or delivery of such coals from on board such ship or vessel, every such person or persons so offending shall, for every such offence, forfeit and pay any sum not exceeding 20*l*."

Spout or stage for shooting coals from ships to be provided by master or owner, and its dimensions.

Sect 59. "That the stage or spout, by which any coals shall be shot from any such ship or vessel within the port of London, into any lighter, barge, or other craft, shall be provided by the master or owner of such ship or vessel, and that every such stage or spout used for such purpose, and so to be provided as aforesaid, shall be of not less than the respective dimensions following, that is to say, five feet six inches wide at the top, four feet six inches wide at the bottom, and ten inches high at the sides, and of a proper length, as the case may require; and if any such master or owner shall neglect to provide for his ship or vessel such stage or spout, of such respective dimensions as aforesaid, or shall not use or cause to be used such stage or spout when it shall be necessary or proper to use such stage or spout for the shooting or delivering of any coals from any such ship or vessel into any lighter, barge, or other

craft, within the said port of London, then and in every such case every such master or owner so offending shall, for every such offence, forfeit and pay any sum not exceeding the sum of 10*l*."

Cargo of coals sold to different buyers how delivered.

Sect. 60. "That when the whole of the cargo of coals contained in any such ship or vessel shall be purchased by and sold in shares to different buyers in the said market, or their clerks or agents who shall have been lawfully authorised as aforesaid, and who shall have previously delivered in such authority in writing to the clerk of the said market as aforesaid, on the behalf of any such different buyers respectively, then and in such case such different buyers or their clerks or agents so authorised, and who shall have delivered in such paper to the clerk of the said market as aforesaid, shall and he and they is and are hereby respectively required within one hour after the close of the market on the day when such purchase shall be made, to sign an agreement specifying the turns in which each of such different buyers is to receive his particular share of such cargo, and which agreement shall also be attested and subscribed with the name of the factor or factors, or seller or sellers of such coals as the witness or witnesses thereto, and such factor or factors, seller or sellers of such coals shall deliver in or cause to be delivered in at the sea coal meter's office such agreement when so signed and subscribed, at or before three of the clock in the afternoon of the day on which such cargo shall be purchased; and the principal clerk for the time being of such office shall deliver or cause to be delivered such agreement to the ship meter who shall be appointed to measure or superintend the admeasurement and delivery of such cargo, and such meter shall immediately upon his arrival on board such ship or vessel deliver such agreement to the master or mate of such ship or vessel; and each of such respective buyers shall be entitled to have and shall have the several quantities of coals purchased by or on the behalf of such buyers respectively, delivered to them out of such ship or vessel in and according to the turns expressed in such agreement so delivered to such master or mate; and when and as soon as the delivery of such cargo from on board such ship or vessel shall be completed, such master or mate shall and he is hereby required immediately to re-deliver or cause to be re-delivered such agreement to such meter, and such meter shall and he is hereby required within twenty-four hours after such re-delivery of the same to him, to deliver or cause to be delivered such agreement to the clerk of the said market, at the office of the said market, and such clerk of the said market shall and he is hereby required to file every such agreement on a file or files to be kept for that purpose, which file shall be open for the search or inspection of any person or persons on demand during such hours as the said market shall be opened; and if any such person or persons so buying any such share on his own account or the account of himself and his copartner or copartners, or as the clerk or agent on the behalf of any other person or persons as aforesaid, shall refuse or neglect to sign such agreement as aforesaid, or if any such factor or other seller shall refuse or neglect to subscribe the same as aforesaid, or shall not deliver or cause to be delivered any such agreement which shall have been so signed into the said sea coal meter's office, at or before three of the clock in the afternoon of the day on which such cargo shall be purchased, or if such principal clerk of such office shall refuse or neglect to deliver or cause to be delivered such agreement so left at such office to such meter so appointed to such ship or vessel, or if such meter shall refuse or neglect to deliver immediately upon his arrival on board such ship or vessel such agreement so received by him to such master or mate of such ship or vessel, or if any such master or mate to whom such agreement shall have been delivered shall refuse to permit any person or persons applying for that purpose at any time before the whole of the cargo shall have been delivered to inspect such agreement, which shall have been so signed and delivered to such master or mate, or if any such master or mate or any other person or persons whatsoever, shall in any manner obstruct or attempt to obstruct the admeasurement or delivery of such cargo in or according to such turns, or if any such master or mate to whom any such agreement shall have been delivered shall not immediately after the delivery

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47 Geo. 3, c.lxviii.

of such cargo from on board such ship or vessel shall be completed, re-deliver or cause to be re-delivered such agreement to such meter, or if such meter to whom any such agreement shall have been so re-delivered shall not within twenty-fours after the re-delivery thereof to him deliver or cause to be delivered such agreement to the said clerk of the said market, at his office in the said market, or if such clerk of the said market shall refuse or neglect to file or cause to be filed any such agreement on such file or files in manner aforesaid, or shall not permit any person or persons whomsoever, on demand, to search for and inspect any such agreement during such hours as aforesaid, every such buyer, clerk, agent, factor, or seller, master or mate, meter, or other person so offending, shall forfeit and pay for every such offence any sum not exceeding the sum of 20*l.*; and if any lighterman or other person having or pretending to have, or assuming the care or management of any lighter, barge, or other craft, shall without the consent and permission of the buyer or buyers, or his or their agent whose turn it is to load according to the aforesaid agreement, load or direct or suffer to be loaded any such lighter, barge, or other craft, with any quantity whatever of coals from any such ship or vessel out of or in violation of the turn or order of working or delivery which shall have been agreed upon by and amongst the different buyers of the cargo of such ship or vessel, or their respective agents as aforesaid, every such lighterman or other person so having or assuming the management of such lighter, barge, or other craft, shall for every such offence forfeit and pay any sum not exceeding the sum of 20*l.*"

Lightermen may carry on partnership with coal dealers.

Sect. 61. "That it shall and may be lawful to and for any lighterman or lightermen to enter into copartnership with any woodmonger or woodmongers or other person or persons whomsoever in the trade or business of a coal dealer or coal dealers, and to carry on as copartner or copartners with such person or persons such trade or business of a coal dealer or dealers, and to keep, use, and employ, as such copartners, their own lighters, barges, or other craft, in and for the carrying of coals to and from any such ship or other vessel in the River Thames, and to and from any wharf, dock, creek, or other places whatsoever, on or near the said River Thames, without being subject to any penalty or penalties for any such joint trading together, any act, statute, bye law or ordinance whatsoever to the contrary thereof in any wise notwithstanding: provided nevertheless, that nothing herein contained shall extend or be construed to extend so as to authorise or empower any lighterman or lightermen to be or become jointly interested with any woodmonger or woodmongers, or other person or persons whomsoever, (not being a lighterman or lightermen,) in the trade or business of carrying in lighters for hire any sort or description of goods whatsoever, other than and except only such coals as may be lightered by them in their said trade of coal dealers."

Not less than five chaldrons and one vat, or some multiple of that quantity, to be delivered into any barge or room of a barge.

Sect. 62. "And whereas it would tend greatly to the prevention of fraud, if certain particular quantities of coals only were permitted to be loaded into barges, lighters, or other craft, from ships and other vessels discharging their cargoes of coals in the said River Thames, be it therefore further enacted, that if any meter delivering coals shall load or permit or suffer to be loaded from any such ship or other vessel in the River Thames into any lighter, barge, or other craft, a less quantity than five chaldrons and one vat or twenty-one vats, or any quantity between five chaldrons and one vat or twenty-one vats, and ten chaldrons and two vats or forty-two vats, or any quantity between ten chaldrons and two vats or forty-two vats, and fifteen chaldrons and three vats or sixty-three vats, or any quantity between fifteen chaldrons and three vats or sixty-three vats, and between twenty-one chaldrons or eighty-four vats or otherwise, so that there shall be a less quantity than five chaldrons and one vat or twenty-one vats, or than some multiple of five chaldrons and one vat or twenty-one vats, in any such lighter, barge, or other craft, or in any room or rooms, division or divisions thereof, save and except for the clearance of such ship or other vessel when the cargo is reduced to a less quantity than five chaldrons and one vat or twenty-one vats, or if any lighterman or other person having the care or management of such lighter, barge, or other craft, shall without the

permission or consent of such meter take away his or their lighter, barge, or other craft from any such ship or other vessel, so as to prevent the same from being loaded with the quantity herein directed, then and in every such case every such meter so offending, and every such lighterman or other person so offending shall for every such offence forfeit and pay any sum not exceeding 20*l.*"

But coals may be loaded in bulk.

Sect. 63. "That nothing herein contained shall extend or be construed to extend to prevent the shooting or delivery of coals in bulk from any such ship or vessel into any partitioned or divided lighter, barge, or other craft, in case the lighterman or other person having the care or management of such lighter, barge, or craft, shall desire to have his coals so loaded in bulk: provided nevertheless, that the quantity of coals so to be loaded or delivered in bulk shall always consist of five chaldrons and one vat or twenty-one vats, or some multiple of five chaldrons and one vat or twenty-one vats, so that there shall not be any quantity less than five chaldrons and one vat or twenty-one vats, or than some multiple of five chaldrons and one vat or twenty-one vats, in any such lighter, barge or other craft so loaded in bulk, save and except for the clearance of such ship or vessel when the cargo is reduced to a less quantity than five chaldrons and one vat or twenty-one vats."

Meter not to deliver coals into open barges, or into rooms of barges having coals in them.

Sect. 64. "That if any meter or other person shall shoot or deliver, or shall permit, suffer, or cause to be shot or delivered from any ship or other vessel in the port of London, any coals into any open or undivided lighter, barge, or other craft, or into any room or division of any divided lighter, barge, or other craft, containing any coals obtained or received from any other ship or vessel, or from any other lighter, barge, or craft, or from any other place whatsoever, save and except from the ship or other vessel from which such meter or other person shall be shooting or delivering coals, or shall be in anywise aiding or assisting therein, then and in every such case every such meter and every such other person shall for every such offence forfeit and pay any sum not exceeding 20*l.*"

Except into empty rooms.

Sect. 65. "That nothing herein contained shall extend or be construed to extend so as to prevent or hinder the shooting and delivery of coals into any empty room or rooms of any lighter, barge, or other craft, or into the vacant or unloaded end or part of any open or undivided lighter, barge, or other craft."

Barges having clearance of ship on board, similar coals may be added,

Sect. 66. "That as often as it shall happen that any lighter, barge, or craft, or any room of any divided lighter, barge, or other craft, which may have been loaded by the room, shall by reason of its having been loaded with the clearance of any such ship or vessel, contain any quantity less than five chaldrons and one vat or twenty-one vats, or any quantity which shall not be some multiple of five chaldrons and one vat or twenty-one vats, then and in such case nothing hereinbefore contained shall extend or be construed to extend to prevent the shooting or delivery from any other or different ship or vessel into such lighter, barge, or craft, or room of any such lighter, barge, or craft, so containing such deficient clearance of such former ship any quantity of coals, provided that such additional coals be of the same kind or description of coals as those which may have been cleared out of such first ship, and provided the certificate or certificates of the meter or meters from the ship from whence such lighter, barge, or other craft shall have been in part loaded, be previously produced to the meter on board the ship from which such lighter, barge, or other craft shall be so filled up, and provided likewise that such lighter, barge, or other craft, or such room when so filled up, shall contain either five chaldrons and one vat or twenty-one vats of coals, or some multiple of five chaldrons and one vat or twenty-one vats."

on production of certificate from former ship.

Penalty on ship meters delivering certificates without measuring coals.

Sect. 67. "That if any ship meter shall give a certificate for the delivery of any parcel or quantity of coals from any ship or other vessel within the said port of London, without having duly and truly measured the same, or superintended the admeasurement of the whole of such coals by the vat, such meter so offending shall for every such offence forfeit and pay any sum not exceeding 20*l.*"

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47 Geo. 3, c. lxviii.

Penalty on giving gifts to ship meters.

Sect. 68. "That if any ship owner or owners, master or masters, buyer or buyers of coals, or any vender or venders of or dealer or dealers in coals, or any person or persons on his, her, or their behalf, shall give or grant or promise to give or grant any money or any coals, or any other gift or reward to any ship meter or meters employed in the admeasurement of coals from or out of any ship or vessel laden with coals within the said port of London, for or on account of such meter or meters having measured or being about to measure any coals from any such ship or vessel for such buyer or buyers, vender or venders, dealer or dealers, or if any such ship meter or meters shall take or receive any such money, coals, or other gift or reward from any such owner or owners, master or masters, buyer or buyers, vender or venders, dealer or dealers, or other person or persons on his, her, or their behalf, then and in such case every such owner, master, buyer, vender, dealer, meter, and other person so offending, shall for every such offence forfeit and pay the sum of 100*l.*: provided always, that nothing herein contained shall extend to subject or render liable to the said penalty of 100*l.* any ship owner or ship owners, master or masters, buyer or buyers of coals, or vender or venders of or dealer or dealers in coals, or any person on his, her, or their behalf, for giving or granting or promising to give or grant any of the several sums of money specified in the schedule in this act contained, and for the several purposes therein mentioned; but such several sums in such schedule specified shall be paid and payable by the several persons therein mentioned to such ship meter or meters, any thing hereinbefore contained to the contrary thereof notwithstanding."

Sums specified in schedule not deemed gifts.

Remeasurement of coals by the vat.

Sect. 69. "That in case any purchaser or purchasers, vender or venders of coals, or his, her, or their servant or servants, or other person or persons acting by or under the authority of such purchaser or purchasers, vender or venders, respectively, shall be dissatisfied with the measure of any coals admeasured from any ship or other vessel, and shall within one hour after the delivery of such coals into the lighter, barge, or other craft belonging to or sent by the purchaser or purchasers thereof, and before such lighter, barge, or other craft, shall have left the ship or other vessel from whence such coals shall have been delivered, signify to the meter on board such ship or other vessel, his, her, or their desire, to have the same remeasured, then and in every such case it shall and may be lawful to and for the purchaser or purchasers, vender or venders, of such coals, his, her, or their servant or servants, or other person or persons acting by or under the authority of such purchaser or purchasers, or vender or venders, to leave, or cause a notice to be left, in writing, at the sea coal meter's office, desiring that such coals may be remeasured, and specifying the lighter, barge, or other craft, containing such coals so required to be remeasured, and where such lighter, barge, or other craft, is then lying, and on the receipt of such notice, two deputy meters from such office shall forthwith attend to remeasure such coals, and shall accordingly forthwith remeasure such coals by the vat, in the presence of the ship meter who shall have so measured such coals into such lighter, barge, or other craft, and in the presence of the vender or venders, or purchaser or purchasers of such coals, his, her, or their servant or servants respectively, or other person or persons acting by or under the authority of such vender or venders respectively, in case they or any of them shall attend to see the same remeasured; and in case the clerk at such sea coal meter's office shall neglect or refuse to send such two deputy meters, or in case such two deputy meters shall neglect or refuse to attend within six hours after such notice in writing left as aforesaid, or to remeasure such coals in manner aforesaid, provided the aforesaid lighter, barge, or other craft, be not taken away or removed from the ship or vessel from which such lighter, barge, or other craft, was loaded, then and in every such case such clerk, and every such deputy coal meter so offending shall, for every such offence, forfeit and pay any sum not exceeding 5*l.*; and for such remeasurement the person or persons so requiring such coals to be remeasured shall pay the coal meters attending such remeasurement at and after the rate of sixpence for every chaldron of coals so remeasured; and the vat for remeasuring such coals

shall be placed and affixed for the purpose of being used for such remeasurement at the costs and charges of the person or persons so desiring such remeasurement; and in case the coals so remeasured shall either not amount to or exceed the quantity mentioned in the certificate of the ship meter, as required by this act, the coal meter who shall have measured the coals from the ship or other vessel into such lighter, barge, or other craft, shall, in case such deficiency or excess shall exceed four bushels, and not exceed seven bushels in any five chaldrons and one vat so remeasured, forfeit and pay for every five chaldrons and one vat so deficient or exceeding, the sum of 3*l.* and also the expenses of the placing and affixing such vat, and all other expenses attending such remeasurement; and in case such deficiency or excess shall exceed seven bushels, and not exceed ten bushels in any five chaldrons and one vat so remeasured, then and in such case such meter shall, for every such five chaldrons and one vat so deficient or exceeding, forfeit and pay the sum of 5*l.* and also such expenses of fixing the said vat, and such other expenses attending such re-admeasurement; and in case such deficiency or excess shall amount to more than ten bushels in any five chaldrons and one vat so remeasured, then and in such case such meter shall, for every such bushel in such five chaldrons and one vat so deficient or exceeding, forfeit and pay the sum of 20*s.* and also such expenses attending the re-admeasurement; such expenses to be settled and determined by the justice or justices before whom the said respective penalties may be recovered, and to be levied by distress and sale of the goods and chattels of the offender or offenders, by warrant under the hand and seal of such justice or justices, rendering, the overplus (if any) after deducting all such expenses attending such re-admeasurement, and the costs and charges of such distress and sale, to the owner or owners of such goods and chattels: provided always, that nothing herein contained shall extend or be construed to extend to subject or make liable any such meter to any of the said penalties for having given less measure than the quantity mentioned in the said certificate, unless and except only where the coals which shall be so found deficient upon remeasurement shall have been so remeasured by the desire of the purchaser or purchasers of such coals, or his or their agent or agents; nor to subject or make liable any such meter to any of the said penalties for having given greater measure than the quantity expressed in such certificate, unless and except only where the coals which shall be so found upon remeasurement to exceed the quantity mentioned in such certificate shall have been so remeasured by the desire of the vender or venders of such coals, or his or their agent or agents."

Ship meters may be suspended if convicted of any penalty for delivering false measure.

Sect. 70. "That when upon any such re-admeasurement taking place, any such meter shall, for the first time, incur and become subject to pay any such penalty for any such offence, in having admeasured from any such ship or vessel into any lighter, barge, or other craft, either a greater or less quantity of coals than the quantity mentioned in the said certificate, then and in such case such meter so for the first time offending and incurring such penalty, shall not be permitted tc act or serve again in the capacity or office of meter, unless or until he shall have duly paid such penalty so incurred by him for such his first offence, upon payment whereof he shall be permitted to continue in, or shall be restored to, his situation in the sea coal meter's office; and in case any such meter shall a second time incur and become subject to pay any such penalty for any such offence, in having admeasured from any ship or vessel into any lighter, barge, or other craft, a greater or less quantity of coals than the quantity expressed in the said certificate, then and in such case every such meter so for the second time offending and incurring such penalty, shall be suspended and incapable of acting or serving as a meter for any time not exceeding one calendar month, at the pleasure of the principal meters; but nevertheless at the end of the period for which he shall be so suspended, such meter shall be restored to his situation in the sea coal meter's office, and be permitted again to act therein, provided he shall have duly paid such penalty so incurred by him for such his second offence; and in case any such meter shall for the third time incur and be-

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47 Geo. 3, c. lxviii.

come subject to pay any such penalty for any such offence, in having admeasured from any such ship or vessel into any lighter, barge, or other craft, a greater or less quantity of coals than the quantity mentioned in the said certificate, then and in such case such meter so for the third time offending and incurring such penalty, shall be absolutely incapacitated or otherwise suspended for any length of time from acting in such office or capacity of meter, at the pleasure of the principal meters."

Coals, remeasured by vender found correct, vender to pay for detention of lighter.

Sect. 71. "That when any such coals shall be so remeasured by the desire of the vender or venders of such coals, or his or their agent or agents, and upon such remeasurement taking place, the meter who shall have measured such coals shall be found not to have incurred any penalty in respect of the measure of such coals, then and in every such case such vender or venders, or his or their agent or agents, who shall have desired such remeasurement on the behalf of such vender or venders, shall, and he and they is and are hereby required to pay, or cause to be paid, to the owner or owners of the lighter, barge, or other craft, in which such coals shall have been so remeasured, such sum or sums of money, not exceeding 2*s.* 6*d.* per hour, as and by way of a compensation for the time during which such lighter, barge, or craft, shall have been detained in consequence of such remeasurement, as any one or more of his Majesty's justices of the peace of the city of London, or counties of Middlesex, Essex, Kent, or Surrey, according to the jurisdiction, shall award, on the application of such owner or owners of such lighter, barge, or other craft, over and above all costs and expenses of any such application; and every such application to any such justice or justices shall be made by such owner or owners of such lighter, barge, or other craft, within three days next after the day on which such remeasurement shall take place, and if the sum or sums of money which shall, upon any such application, be awarded by such justice or justices to be paid by any such vender or venders, or his or their said agent or agents, to any such owner or owners, by way of such compensation for such detention of his or their lighter, barge, or other craft, shall not be immediately paid accordingly, then and in every such case, such respective sum or sums of money shall and may be levied by distress and sale of the goods and chattels of such vender or venders, or of his or their said agent or agents, by warrant or warrants under the hand and seal of such justice or justices, and the overplus of the money (if any) raised by any such distress and sale, after deducting the money so awarded and ordered to be paid, and the costs and charges of making any such distress and sale, shall be rendered to the owner or owners of the goods and chattels so distrained; and for want of distress, and in case the money so awarded and ordered to be paid to any such owner or owners of any such lighter, barge, or other craft, shall not be immediately paid, it shall and may be lawful to and for such justice or justices to commit such vender or venders, or his or their said agent or agents, to the common gaol or house of correction for the city or place for which such justice or justices shall act, there to remain without bail or mainprize for any term not exceeding three calendar months, unless such sum or sums, and all reasonable costs attending the recovery thereof, shall be sooner paid, and every such award, order, and proceeding of any such justice or justices shall be final, binding, and conclusive, and no such proceeding shall be quashed or vacated for want of form only, or be removed by *certiorari*, or other writ or process whatsoever, into any of his Majesty's courts of record at Westminster or elsewhere."

Sect. 72. "And whereas by the said several acts made for more effectually preventing the frauds and abuses committed in the admeasurement of coals within the city and liberty of Westminster, and that part of the duchy of Lancaster adjoining thereto, and the several parishes of Saint Giles in the Fields, Saint Mary-le-Bone, and such part of the parish of Saint Andrew, Holborn, as lies in the county of Middlesex, which acts were further continued, with divers alterations and amendments, by the said recited act, made in the forty-second year of the reign of his present Majesty, until the 24th day of June, 1817, and from thence to the end of the then next session of parliament, his Majesty, his heirs and successors, were empowered to

42 Geo. 3, c. 80.

nominate and appoint two persons, by the name of 'The principal land coal meters for the city and liberty of Westminster,' and in case of the death or removal of the persons so nominated or appointed to appoint others in their room or stead; and such nomination and appointment have from time to time been made accordingly; be it therefore enacted, that John Baker, of Northumberland Street, Westminster, Gentleman, and Alexander Tulloch, of Saint Alban's Street, Westminster, Gentleman, the two persons last so nominated and appointed by his present Majesty, and now holding and exercising, by virtue of such or some of such acts, the office of principal land coal meters for the city of Westminster, shall remain and continue such principal land coal meters, for the purpose of admeasuring coals within the city and liberty of Westminster, and for that part of the duchy of Lancaster adjoining thereto, and for the several parishes of Saint Giles in the Fields, Saint Mary-le-Bone, and for such part of the parish of Saint Andrew, Holborn, as lies in the county of Middlesex, and for other purposes in this act mentioned (save and except he or they shall die or be removed from such office or offices by his Majesty, his heirs and successors, which removal his Majesty, his heirs and successors, is and are hereby empowered to make,) until the 24th day of June, 1817, and from thence to the end of the then next session of parliament, when the same, or any other person or persons may be nominated and appointed by his Majesty, his heirs and successors, as principal land coal meter or land coal meters."

Principal land meters for Westminster to continue in office.

Sect. 73. "And whereas by an act made in the seventh year of the reign of his present Majesty, intituled, 'An Act to prevent frauds and abuses in the admeasurement of coals sold by wharf measure, within the city of London, and the liberties thereof, and between Tower Dock and Limehouse Hole, in the county of Middlesex;' which act was continued with divers alterations and amendments by the said recited act, made in the thirty-eighth year of the reign of his present Majesty, until the 1st day of June, 1812, and from thence to the end of the then next session of parliament, certain persons have been from time to time nominated and appointed as the principal meters or managers of the office called by the name of 'The land coal meter's office for the city of London, and between the Tower of London and Limehouse Hole, in the county of Middlesex;' be it therefore enacted, that William Anderson, of Gracechurch Street, London, John Hawkins, of Hackney, in the county of Middlesex, and John Ratray, of Islington, in the same county, shall be and remain and continue, and they are hereby appointed the principal meters or managers of the land coal meter's office for the city of London, and between the Tower of London and Limehouse Hole, in the county of Middlesex, for the purpose of admeasuring coals sold by wharf measure within the city of London, and the liberties thereof, and between Tower Dock and Limehouse Hole, in the county of Middlesex, and also for other purposes in this act mentioned, for and during their joint lives, (save and except he or they shall happen to be dismissed from such office or offices,) and upon the death or dismissal of any one of them, the said William Anderson, John Hawkins, and John Ratray, the number of principal meters or managers of the said land coal meter's office for the city of London, and between Tower Dock and Limehouse Hole, in the county of Middlesex, shall be reduced to two; and that in all future times, from and after such death or dismissal of any one of them, the said William Anderson, John Hawkins, and John Ratray, the number of principal meters or managers for the said city of London and the liberties thereof, and between Tower Dock and Limehouse Hole, shall be and continue to be not more nor less than two; and upon and from and after such death or dismissal of any one of them, the said William Anderson, John Hawkins, and John Ratray, the two others, or survivors of them, the said William Anderson, John Hawkins, and John Ratray, shall respectively remain and continue the two principal meters or managers for the said city of London, and between the Tower of London and Limehouse Hole, in the county of Middlesex, until he or they shall die, or happen to be dismissed from such office; and when or in case either of such two others, or survivors of them, the said William Anderson,

Principal meters for London to continue.

Upon death of one of the three principal meters for London, number reduced to two.

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47 Geo. 3, c. lxviii.

Vacancy happening, court of common council to have the appointment

John Hawkins, and John Ratray, shall die, or happen to be dismissed from such office, and so from time to time and at all times thereafter, when and as often as any principal meter for the said city of London, and between the Tower of London and Limehouse Hole, in the said county of Middlesex, shall die, or be dismissed or suspended from such office, or shall become incapable of acting in the execution of such office, or the time for which any such principle meter or manager shall be nominated and appointed to such office shall expire, then and in every such case, it shall and may be lawful to and for the said lord mayor, aldermen, and commons, in common council assembled, to nominate and appoint any other person a principal land coal meter or manager, in the room or stead of every such principal land coal meter who shall die, be so dismissed or suspended, or be incapable of acting in the execution of his office, or whose time limited for the execution of such his office shall expire."

46 Geo. 3, c. 32.

Sect. 74. "And whereas by the said recited act, made in the forty-sixth year of the reign of his present Majesty, intituled, 'An Act for more effectually preventing of frauds and abuses in the admeasurement and delivery of coals, within the several parishes lying between the parishes of Egham and Rotherhithe, both inclusive, in the county of Surry, Joseph Burnett, of the parish of Streatham, in the said county of Surry, Gentleman, and Francis Bigg, of the parish of Saint Mary, Newington, in the said county of Surry, Gentleman, were nominated 'principal land coal meters for executing the provisions of the said act, for and during the term of twenty-one years next ensuing from the commencement of the said act;' be it therefore enacted,

Principal meters for Surry to continue.

that the said Joseph Burnett and Francis Bigg, or the survivor of them, so appointed by virtue of the said act as such principal land coal meters, or meter, shall remain and continue such principal land coal meters or meter for the admeasurement of coals sold by wharf measure within the several parishes of Egham, Thorpe, Chertsey, Weybridge, Walton-on-Thames, West Moulsey, Thames Ditton, Kingston, Richmond, Mortlake, Barnes, Croydon, Mitcham, Putney, Wandsworth, Battersea, Lambeth, Christchurch, Newington, Saint George in the Borough of Southwark, Saint Saviour's, Saint Olave, Saint Thomas, Saint John, Saint Mary Magdalen, Bermondsey, and Saint Mary, Rotherhithe, all in the said county of Surry, and for other purposes in this act mentioned, (save and except he or they shall be suspended or removed from such office or offices), until the 16th day of June, which will be in the year of our Lord 1827, and from thence to the end of the next session of parliament."

His Majesty to appoint principal land coal meters for Westminster.

Sect. 75. "That when and as or in case any principal land coal meter or principal land coal meters for the city and liberties of Westminster, and for that part of the duchy of Lancaster adjoining thereto, and for the several parishes of Saint Giles in the Fields, Saint Mary-le-Bone, and for such part of the parish of Saint Andrew, Holborn, as lies in the county of Middlesex, shall die, or shall be incapable of acting in the execution of his or their office or offices, or shall be removed therefrom as aforesaid, or the time limited for the execution of such office or offices shall expire, it shall and may be lawful to and for his Majesty, his heirs and successors, to nominate or appoint any other person as a principal land coal meter, in the room or stead of every such principal land coal meter who shall die, be so dismissed, removed, or be incapable of acting in the execution of his office, or whose time limited for the execution of his office shall expire, and so, *toties quoties*, as often as any such case shall happen."

Principal land coal meters for Westminster punishable by justices for neglect.

Sect. 76. "That it shall and may be lawful to and for the justices of the peace for the county of Middlesex, or city and liberty of Westminster, in general or quarter sessions assembled, and they are hereby authorised and required to inquire into, and hear and determine any complaint of fraud or misbehaviour of the principal land coal meter or principal land coal meters for the time being, for the city and liberty of Westminster and that part of the duchy of Lancaster adjoining thereto, and for the said several parishes of Saint Giles in the Fields, Saint Mary-le-Bone, and for such part of the parish of Saint Andrew, Holborn, as lies in the county of Middlesex, or any

or either of such principal land coal meters, in the same manner as they are by law authorised to inquire into, hear and determine misdemeanors; and if any such principal land coal meter shall be found guilty of any fraud, neglect or misbehaviour, he shall forfeit and pay for the use of his Majesty, his heirs and successors, such fine as such court before whom such complaint shall be made shall think fit, not exceeding 20*l.*, together with such costs as the court shall think proper to award and direct."

Labouring coal meters for Westminster subject to control of justices.

Sect. 77. "That each and every labouring coal meter, deputy, agent, or servant of the several and respective principal land coal meters for the city and liberty of Westminster and for that part of the duchy of Lancaster adjoining thereto, and for the several parishes of Saint Giles in the Fields, Saint Mary-le-Bone, and for such part of the parish of Saint Andrew, Holborn, as lies in the county of Middlesex, shall be, and he and they is and are hereby declared to be subject to the power, jurisdiction and controul of the said justices of the peace for the said county of Middlesex, or for the city and liberty of Westminster, in general or quarter session assembled, and shall and may be dismissed and suspended by the said court from the execution and emoluments of his or their office or offices, upon complaint and proof of any fraud, default or neglect, or other misbehaviour in the management or execution thereof, all which complaints may be heard and determined in a summary way."

Land coal meters for city of London subject to lord mayor and aldermen.

Sect. 78. "That each and every manager or principal land coal meter for the city of London and liberties thereof, and between the Tower of London and Limehouse Hole, in the county of Middlesex, and each and every labouring land coal meter within such district shall, and he and they is and are declared to be subject to the power, jurisdiction and controul of the lord mayor and aldermen of the said cityof London, and shall and may be dismissed and suspended by the said court from the execution and salaries or wages of their said respective offices, upon complaint and proof of any fraud, neglect, default, or other misbehaviour in the management or execution thereof; all which complaints shall and may be heard and determined by the said court in a summary way."

Common council to appoint labouring land coal meters for London, of whom not less than forty-five.

Sect. 79. "That it shall and may be lawful to and for the lord mayor, aldermen and commons of the said city of London, in common council assembled, to nominate and appoint any number of persons, not less than forty-five, to be the labouring land coal meters for the said city of London and the liberties thereof, and between Tower Dock and Limehouse Hole, in the county of Middlesex; and that when and as any such labouring land coal meter for such district or limits shall die, or shall be incapable of serving in such office, or shall be dismissed or suspended therefrom, then and in every such case it shall and may be lawful to and for the said lord mayor, aldermen and commons of the said city of London, in common council assembled, to nominate and appoint any other person as a labouring land coal meter in the room and stead of every such labouring land coal meter who shall die, be so dismissed or suspended, or be incapable of acting in the execution of his office, and so *toties quoties*, as often as any such case shall happen."

Principal meters for London may suspend labouring meters, provided they report the cause to the lord mayor or court of aldermen within seven days.

Sect. 80. "That it shall and may be lawful to and for the principal land coal meters or meter for the city of London and liberties thereof, and between the Tower of London and Limehouse Hole, in the county of Middlesex, to suspend from their office any labouring land coal meter or meters, serving in such district, who shall appear to such principal meter to have conducted himself or themselves corruptly or improperly in the execution of his or their office; but nevertheless such principal land coal meter or meters shall, and he and they is and are hereby required, within seven days after any such suspension taking place, to report the cause of such suspension to the lord mayor of the city of London, or to the court of lord mayor and aldermen of the city of London; and it shall and may be lawful to and for the said lord mayor or the said court, upon such complaint being brought and heard before the said lord mayor or the said court, either to order any

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47 Geo. 3, c. lxviii.

such labouring meter so suspended to be discharged, or to order him to be reinstated in his office and restored to the salary or wages thereof."

Principal and labouring meters for Surry subject to control of Quarter Sessions.

Sect. 81. "That the said Joseph Burnett and Francis Bigg, and each and every principal land coal meter for the time being, for the several parishes lying between the parishes of Egham and Saint Mary, Rotherhithe, both inclusive, in the said county of Surry, and each and every his and their deputies, labouring meters, or servants, acting under them in the admeasurement of coals, or in the execution of any other duties required by this act, shall be, and they and each and every of them is and are hereby declared to be subject to the power, jurisdiction and control of any general courts of quarter sessions to be holden within the said county of Surry, and shall and may be dismissed and suspended by the said courts from the execution and emoluments of their said respective offices, on complaint and proof of any fraud, default, neglect, or other misbehaviour in the management or execution thereof; all which complaints shall and may be heard and determined by the said courts in a summary way."

After death of principal meters for Surry, churchwardens of different parishes to have the appointment.

Sect. 82. "That in case of the death of either of them the said Joseph Burnett and Francis Bigg before the expiration of the said term or time for which they have been and are nominated and appointed as aforesaid, the said office shall be managed by the survivor of them (unless previously dismissed or suspended in manner aforesaid) during the remainder of the said term; and that then, upon and from and after the expiration of such term, or in case both the said Joseph Burnett and Francis Bigg shall die, or be dismissed or suspended, before the expiration of the said term, then, upon and from and after such death, dismissal or suspension of both of them, the said Joseph Burnett and Francis Bigg, and also from time to time and at all times thereafter, when and as often as any principal land coal meter for the said several parishes lying between the parishes of Egham and Saint Mary, Rotherhithe, both inclusive, in the said county of Surry, shall die, or shall be incapable of acting in the execution of his office, or shall be dismissed or suspended therefrom as aforesaid, or the time limited for the execution of such office shall expire, then upon the happening of any such vacancy it shall and may be lawful to and for such churchwardens as hereinafter mentioned, or the major part of them, in manner hereinafter directed, to elect, nominate and appoint any other person to be and act as principal land coal meter in the room or stead of every such principal land coal meter who shall die, be so dismissed, suspended, or be incapable of acting in the execution of his office, or whose time limited for the execution of his office shall expire, and so *toties quoties*, as often as any such case shall happen; and every such person so to be nominated and appointed principal meter for such limits in the said county of Surry, in the room or stead of any such other principal meter, shall be elected, nominated and appointed by such persons, and in manner and form following; that is to say, the churchwardens of the said several and respective parishes lying between the parishes of Egham and Saint Mary, Rotherhithe, both inclusive, in the said county of Surry, shall, by notice in writing, specifying the occasion, and signed by one of the deputies in the land coal meter's office for such several parishes within the said county of Surry, and left at the dwellinghouse or usual place of abode of each such churchwarden, as soon as the same can be done after any such vacancy shall happen, be summoned to meet and assemble at the said land coal meter's office, at twelve o'clock at noon, on a day to be mentioned in the said notice, not exceeding seven days from the date thereof, at which meeting some person shall be chosen and appointed to succeed to the office of principal land coal meter for the limits aforesaid, and such person as shall at the hour of two of the clock of that day be elected by the majority of persons, being churchwardens of the said parishes, as shall be then and there assembled, shall be and is hereby declared to be principal land coal meter for putting this act in execution within such several parishes in the said county of Surry; and every such person so to be elected, nominated or appointed as aforesaid, shall be, remain and continue principal meter for the

said several parishes, within the said county of Surry, for and during the term of twenty-one years next ensuing from and after the time of such his election, nomination and appointment, unless he shall be sooner dismissed or suspended, or be incapable of acting in the execution of his office."

Principal meters may be re-elected.

Sect. 83. "That whenever the term or time for which any principal land coal meter for any of such several and respective districts shall have been appointed shall expire, then and in such case nothing herein contained shall extend, or be construed to extend, so as to hinder or prevent any such principal land coal meter, whose term or time limited for the execution of his office shall so expire, from being re-nominated, re-appointed, or re-elected to his office of principal meter."

Principal meter's offices to be kept open.

Sect. 84. "That if any principal land coal meter, or principal land coal meters, shall refuse or neglect to open and keep open, or cause to be opened and kept open, his or their respective office or offices every day (Sundays, Good Fridays, Christmas Days, and fast days by proclamation only excepted) in every year from the 25th day of March to the 29th day of September, from the hour of five in the morning until the hour of nine in the evening, or from the 29th day of September to the 25th day of March in every year, from the hour of six in the morning to the hour of six in the evening, every such principal land coal meter shall, for every such offence, forfeit and pay any sum not exceeding 20*l.*"

Principal land coal meters to take an oath for performance of duty.

Sect. 85. "That no person shall be capable of acting as a principal land coal meter in the execution of this act, until he shall have taken and subscribed, before two or more of his Majesty's justices of the peace for the said county of Middlesex, or city and liberty of Westminster, or for the city of London, or for the said county of Surry (as the case may be) within their respective jurisdictions, an oath (which oath such respective justices are hereby authorised and required to administer) in the following words:

Oath.

"*I, A. B. do swear that I will honestly, truly, faithfully, and impartially according to the best of my skill and judgment, execute the office of principal land coal meter for the city and liberty of Westminster and for that part of the duchy of Lancaster adjoining thereto, and for the several parishes of Saint Giles in the Fields, Saint Mary-le-Bone, and for such part of the parish of Saint Andrew, Holborn, as lies in the county of Middlesex,* [or, *for the city of London, and for all the wharfs situate between the Tower of London and Limehouse Hole, in the county of Middlesex,* or, *for the several wharfs situate within the several parishes lying between the parishes of Egham and Saint Mary, Rotherhithe, both inclusive, in the county of Surry,* as the case may be.] *So help me God.*"

Principal meters for Westminster and Surry to appoint a sufficient number of labouring meters.

Sect. 86. "That the said principal land coal meters for the time being, for the city and liberty of Westminster and for that part of the duchy of Lancaster adjoining thereto, and for the several parishes of Saint Giles in the Fields, Saint Mary-le-Bone, and for such part of the parish of Saint Andrew, Holborn, as lies in the county of Middlesex, and the said principal land coal meters for the time being for the said several parishes lying between the parishes of Egham and Rotherhithe, both inclusive, in the county of Surry, shall, and the said several and respective principal land coal meters are hereby respectively directed and required, from time to time and at all times, to nominate, appoint and employ, within their said respective districts, a sufficient number of labouring land coal meters for the purpose of admeasuring coals, and for executing such other duties within their said respective districts as are by this act required to be done by land coal meters."

Labouring coal meters to take an oath.

Sect. 87. "That no person shall be capable of acting as a labouring land coal meter in the execution of this act until he shall have taken and subscribed before any one or more of his Majesty's justices of the peace for the said county of Middlesex, or for the city and liberty of Westminster, or for the city of London, or for the said county of Surry, as the case may be, within their respective jurisdictions, an oath (which oath such respective justices are hereby authorised and required to administer) in the words following:

Oath.

"*I, A. B. do swear, that I will honestly, truly, faithfully, and impartially, to the best of my skill and judgment, execute the office of one of the labouring land coal*

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47 Geo. 3, c. lxviii.

meters for the city and liberty of Westminster and for that part of the duchy of Lancaster adjoining thereto, and for the several parishes of Saint Giles in the Fields, Saint Mary-le-Bone, and for such part of Saint Andrew, Holborn, as lies in the county of Middlesex, [or, *for the city of London, and for all the wharfs situate between the Tower of London and Limehouse Hole, in the county of Middlesex,* or, *for the several wharfs situate in the several parishes lying between the parishes of Egham and Saint Mary, Rotherhithe, both inclusive, in the county of Surry,* as the case may be] *; and that I will truly and impartially inspect and measure, or see measured or loaded, all such coals between buyer and seller, and execute such other duties as are by law required to be done by a labouring land coal meter, without favour or hatred. So help me God."*

"And the said justice or justices respectively, who shall administer such oaths, is and are hereby required to certify the same to the next general quarter sessions of the peace to be holden for the said city of London, or for the county of Middlesex, or for the city and liberty of Westminster, or for the said city of London, or for the said county of Surry (as the case may be) after the taking of such oaths or affirmation respectively, there to remain on record."

Labouring coal meters to attend at their stations.

Sect. 88. "That in order to prevent confederacy, the stations for the several and respective labouring land coal meters shall, once at least in every month, be changed by such several and respective principal land coal meters, and the said several labouring land coal meters shall, and they and he is and are hereby required to attend at the several wharfs, warehouses, and other places, within their respective districts, at which he or they shall be stationed by the said respective principal land coal meters, each and every day (Sundays, Good Friday, Christmas day, and fast days by proclamation only excepted) in each and every year, from the 25th day of March to the 29th day of September, from the hour of five in the morning until nine in the evening, and from the 29th day of September to the 25th day of March from the hour of six in the morning until six in the evening; and if upon notice being given to any such labouring coal meter or meters so stationed, or notice being left in writing at his or their office or offices, or place or places of abode, to attend at any wharf, warehouse, or other place to be named in such notice, within the limits of his or their station or stations, in order to measure or see measured any coals, or to execute any other duty required by this act to be done by a land coal meter at any such wharf, warehouse, or other place; or if notice requiring the attendance of a labouring coal meter or meters at a wharf, warehouse, or other place, to be named in such notice, for the purpose of measuring or to see measured any coals, or to execute any other duty required of labouring meters by this act, shall be given at the office of one of the said respective principal land coal meters nearest to such wharf, warehouse, or other place, and such labouring coal meter or meters shall not attend pursuant to such notice within the space of two hours from giving the same, and do his duty according to the true intent and meaning of this act, then and in every such case such labouring coal meter and the principal land coal meter at whose office such notice was given as aforesaid, shall, for every such offence, forfeit and pay the sum of 5*l*."

Notice to be given.

Penalty for non-attendance.

Principal meters for Westminster to pay not less than 20*s*. per week to labouring meters.

Sect. 89. "That the principal land coal meter or meters for the time being for the city and liberty of Westminster, and that part of the duchy of Lancaster adjoining thereto, and the several parishes of Saint Giles in the Fields, Saint Mary-le-bone, and such part of the parish of Saint Andrew, Holborn, as lies in the county of Middlesex, shall and such principal land coal meters or meter for the time being for such district are and is hereby directed and required to pay or cause to be paid not less than 20*s*. *per* week to each and every of the labouring land coal meters who shall, at any time hereafter, serve in the employ and within the district of such principal land coal meters or meter as and for the weekly wages of each and every of such labouring coal meters, for and during the time that each and every of such labouring meters shall hereafter so serve in the employ and within the district of the said principal land meters; and if any such principal meter or meters shall refuse to pay or cause to be paid to any such labouring meter, demanding the

said several parishes, within the said county of Surry, for and during the term of twenty-one years next ensuing from and after the time of such his election, nomination and appointment, unless he shall be sooner dismissed or suspended, or be incapable of acting in the execution of his office."

Principal meters may be re-elected.

Sect. 83. "That whenever the term or time for which any principal land coal meter for any of such several and respective districts shall have been appointed shall expire, then and in such case nothing herein contained shall extend, or be construed to extend, so as to hinder or prevent any such principal land coal meter, whose term or time limited for the execution of his office shall so expire, from being re-nominated, re-appointed, or re-elected to his office of principal meter."

Principal meter's offices to be kept open.

Sect. 84. "That if any principal land coal meter, or principal land coal meters, shall refuse or neglect to open and keep open, or cause to be opened and kept open, his or their respective office or offices every day (Sundays, Good Fridays, Christmas Days, and fast days by proclamation only excepted) in every year from the 25th day of March to the 29th day of September, from the hour of five in the morning until the hour of nine in the evening, or from the 29th day of September to the 25th day of March in every year, from the hour of six in the morning to the hour of six in the evening, every such principal land coal meter shall, for every such offence, forfeit and pay any sum not exceeding 20*l.*"

Principal land coal meters to take an oath for performance of duty.

Sect. 85. "That no person shall be capable of acting as a principal land coal meter in the execution of this act, until he shall have taken and subscribed, before two or more of his Majesty's justices of the peace for the said county of Middlesex, or city and liberty of Westminster, or for the city of London, or for the said county of Surry (as the case may be) within their respective jurisdictions, an oath (which oath such respective justices are hereby authorised and required to administer) in the following words:

Oath.

"*I, A. B. do swear that I will honestly, truly, faithfully, and impartially according to the best of my skill and judgment, execute the office of principal land coal meter for the city and liberty of Westminster and for that part of the duchy of Lancaster adjoining thereto, and for the several parishes of Saint Giles in the Fields, Saint Mary-le-Bone, and for such part of the parish of Saint Andrew, Holborn, as lies in the county of Middlesex,* [or, *for the city of London, and for all the wharfs situate between the Tower of London and Limehouse Hole, in the county of Middlesex,* or, *for the several wharfs situate within the several parishes lying between the parishes of Egham and Saint Mary, Rotherhithe, both inclusive, in the county of Surry,* as the case may be.] *So help me God.*"

Principal meters for Westminster and Surry to appoint a sufficient number of labouring meters.

Sect. 86. "That the said principal land coal meters for the time being, for the city and liberty of Westminster and for that part of the duchy of Lancaster adjoining thereto, and for the several parishes of Saint Giles in the Fields, Saint Mary-le-Bone, and for such part of the parish of Saint Andrew, Holborn, as lies in the county of Middlesex, and the said principal land coal meters for the time being for the said several parishes lying between the parishes of Egham and Rotherhithe, both inclusive, in the county of Surry, shall, and the said several and respective principal land coal meters are hereby respectively directed and required, from time to time and at all times, to nominate, appoint and employ, within their said respective districts, a sufficient number of labouring land coal meters for the purpose of admeasuring coals, and for executing such other duties within their said respective districts as are by this act required to be done by land coal meters."

Labouring coal meters to take an oath.

Sect. 87. "That no person shall be capable of acting as a labouring land coal meter in the execution of this act until he shall have taken and subscribed before any one or more of his Majesty's justices of the peace for the said county of Middlesex, or for the city and liberty of Westminster, or for the city of London, or for the said county of Surry, as the case may be, within their respective jurisdictions, an oath (which oath such respective justices are hereby authorised and required to administer) in the words following:

Oath.

"*I, A. B. do swear, that I will honestly, truly, faithfully, and impartially, to the best of my skill and judgment, execute the office of one of the labouring land coal*

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and for which the same shall be sold, and such meter is hereby authorised and required to demand of the wharfinger or other person with whom the ship certificate of any such coals shall be left, at any wharf or place for the sale of any such coals, such ship certificate, for the purpose of perusing and inspecting the same; and such meter shall, and he is hereby required to countersign such ticket or tickets, if such meter shall be satisfied that such coals are of the sort they are described to be in such ticket or tickets, but shall not countersign the same without being so satisfied, any thing herein contained to the contrary notwithstanding; and such meter shall, and he is hereby also authorised and required when the whole quantity of coals contained in any lighter, barge or other craft, shall have been delivered thereout, to write or indorse on the back of the certificate of such coals the word 'delivered;' and if any such wharfinger or other person shall refuse or neglect to produce and deliver to any such meter such ship certificate on demand, then and in every such case every such wharfinger or other person so offending shall, for every such offence, forfeit and pay any sum not exceeding 5*l.* and if any such meter shall countersign any such ticket or tickets, without having first inspected such coals, and also such ship certificate, and without having reasonable ground to be satisfied that such coals are of the sort described in such vender's ticket, or if any such meter shall not, immediately after the whole of the coals contained in any such lighter, barge, or other craft shall have been delivered thereout, demand or call for such certificate of such coals, or shall not immediately on such certificate being produced, indorse the same in manner aforesaid, then and in every such case every such meter so offending shall, for every such offence, forfeit and pay any sum not exceeding 5*l.*"

Regulation as to coals sold by pool measure.

Sect. 93. "That all coals sold as and for pool measure, and to be sent in any cart, waggon, or carriage, from any wharf or place within any of the respective limits of any of the said respective offices, shall be loaded in sacks, in the presence of one of the labouring land coal meters of the district, which labouring meter is hereby authorised and required to watch and inspect the filling or loading of the sacks wherein such coals shall be loaded, and it shall and may be lawful to and for such meter to measure the dimensions of all or any of such sacks, used in any such loading, before such sacks shall be filled or loaded; and such meter shall and he is hereby authorised and required, when any room or rooms of coals, in any lighter, barge, or craft, are or is to be sold and sent from any such wharf or other place, as and for pool measure by any land carriage, to see that the coals so loaded and sent are in fact taken out of the particular room or rooms so sold, and likewise that the whole of the coals contained in any such particular room or rooms so sold, are in fact entirely emptied out of such room or rooms, and loaded and sent away to the purchaser or purchasers of the coals contained in such room or rooms; and in case such meter shall find any sack or sacks used for the loading of any such coals is or are of less dimensions than required by this act, or in case it shall appear to such meter, according to the best of such meter's judgment, that any sack or sacks used in loading any such coals do or doth not contain, when loaded, each the quantity of three bushels of coals, or in case such meter shall observe that any such coals sold as the coals of any particular room or rooms shall not in fact be taken out of such particular room or rooms so sold or to be sold, or that the whole of the coals contained in such particular room or rooms shall not be entirely emptied out of the same, then and in every such case it shall and may be lawful to and for such meter to refuse to countersign the ticket or tickets by this act directed to be delivered by or on the behalf of all and every vender and venders of such coals to the purchaser or purchasers thereof; and if any wharfinger, coal porter, or other person or persons shall in any manner obstruct, hinder or prevent such meter in or from the performance of any such duty or duties so required of such meter by this act, then and in every such case every such person so offending shall, for every such offence, forfeit and pay any sum not exceeding 5*l.*"

Pool measure coals when sent by a waggon.

Sect. 94. "That all and every vender or venders of, or dealer or dealers in, any coals sold and sent as and for pool measure from any ship, vessel,

same, the sum of 20*s.* at least, at the end of each and every week of the time during which such labouring meter shall serve in his or their employ within such district, as and for the weekly wages of such labouring meter, then and in every such case every such principal land coal meter so offending shall, for every such offence, forfeit and pay any sum not exceeding 20*l.*"

Principal meters for Surry to pay not less than 20*s.* per week to labouring meters, between Nine Elms and Dock Head.

Sect. 90. "That the principal land meters or meter for the time being for the said several parishes lying between the parishes of Egham and Rotherhithe, both inclusive, in the county of Surry, shall, and such principal meters or meter for the time being for such district are and is hereby directed and required to pay or cause to be paid not less than 20*s. per* week to each and every of the labouring coal meters, who shall at any time hereafter serve under such principal meters or meter at any station, or place or places, within any of such parts of the limits or district of such principal meters or meter as lie between Nine Elms and Dock Head, both inclusive, as and for the weekly wages of each and every of such respective labouring coal meters, for and during the time that each and every of such labouring coal meter shall hereafter so serve in the employ of such principal meters or meter, on any station, or place or places, within any of such parts of the limits or district of such principal meters or meter, as lie between Nine Elms and Dock Head aforesaid, both inclusive; and if any such principal meter or meters for such district shall refuse to pay or cause to be paid to any such labouring meter demanding the same, the sum of 20*s.* at least, at the end of each and every week of the time during which such labouring meter shall serve in his or their employ within any such parts of such district as lie between Nine Elms and Dock Head aforesaid, both inclusive, as and for the weekly wages of such labouring meter, then and in every such case every such principal meter so offending shall, for every such offence, forfeit and pay a sum not exceeding 20*l.* provided always, that nothing herein contained shall extend or be taken to extend so as in any manner to fix or limit the wages to be paid by such principal meters or meter to any labouring meter in their employ, who shall serve or be stationed within such parts of their district as are situate either below Dock Head or above Nine Elms aforesaid, in the said county of Surry."

Coal meters not to be interested in the sale of coals.

Sect. 91. "That if the said principal land coal meters, or any of them, or any of the persons to be employed under them respectively, shall at any time or times hereafter, during his or their respective continuance in their office or employment aforesaid, be directly or indirectly interested or concerned in the sale of any coals whatsoever, otherwise than in the discharge of their said respective offices, such principal land coal meters so offending shall, for every such offence, forfeit and pay the sum of 100*l.* and such deputy coal meter and labouring coal meter respectively shall, for every such offence, forfeit and pay the sum of 50*l.* and being thereof respectively convicted before the said court of Lord Mayor and Aldermen, or before either of the said courts of quarter sessions for the said county of Middlesex or Surry (according to the jurisdiction as aforesaid) shall de dismissed from his or their said respective office or employment, and be for ever disabled from holding or executing the same, or any other under this act."

Land coal meter may demand sight of ship certificate.

Sect. 92. "That all coals whatsoever sold and to be sent in any cart, waggon, or other land carriage, from any wharf, warehouse, or other place or places within the limits or districts of any of the said respective land coal meters, and also all coals whatsoever sold, and to be sent by gang labour from or over any wharf or other place where any land meter shall be stationed, situate within any of such respective limits or districts, shall, previously to such coals being so sent away, be carefully inspected and examined by one of the principal or labouring land coal meters within their respective limits or districts, in order that such principal or labouring land coal meter may see and be satisfied that such coals (in case of such coals being sent away in any cart, waggon, or other carriage) are of the sort or description mentioned in the ticket or tickets by this act directed to be delivered by or on the behalf of all and every vender and venders of such coals to the purchaser or purchasers thereof, or may see and be satisfied that such coals (in case of such coals being to be delivered by gang labour) are of the sort or description as

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occupiers, is and are hereby required and directed to pay to the principal meter or meters for the time being of the land coal meter's office, within the limits of which any such wharf, warehouse, or other place shall be situate, at and after the rate of 1s. for every five chaldrons and one vat so bought and sent to the purchaser or purchasers thereof, as and for a compensation for the trouble of inspecting or superintending the loading and sending away such coals; and such money shall be repaid by the purchaser or purchasers of such coals to the vender or venders thereof."

Coals sold by pool measure to be delivered without the intervention of a meter.

Sect. 96. "That nothing herein contained shall extend or be construed to extend so as to hinder or prevent any purchaser or purchasers of any coals sold as and for pool measure, from sending such coals to the premises of such purchaser or purchasers, or to any landing place which such purchaser or purchasers shall appoint (provided such landing place or premises be not a coal wharf or place where any meter shall by virtue of this act be stationed,) or from having such coals unloaded and delivered at such premises or landing place, either by gang labour, or in any other manner, except in or by means of any cart, waggon, or other land carriage, without the presence, intervention, or inspection of any land meter; and without being subject or liable to the payment of any sum or sums of money whatsoever to any land meter, for or in respect of such coals; but in case such purchaser or purchasers shall require the care or attendance of a land meter, then he, she, or they shall have and be entitled to such attendance, upon sending notice of such his, her, or their desire to the land meter's office, within the limits of which such premises or landing place, where such coals may be so carried, shall be situate, and in such case such purchaser or purchasers shall pay and be charged for the attendance of such meter, at and after the aforesaid rate of one shilling for every five chaldrons and one vat of such coals."

Coals sent by water may be re-measured in case fraud is suspected.

Sect. 97. "That if any purchaser of any coals sold and sent to such purchaser by any lighter, barge, or other craft, from any place within the limits of any of the offices of the said respective land meters, shall think or suspect that the full and lawful measure of any such coals has not been sent, and shall before the lighterman or other person having the care or management of such lighter, barge, or other craft shall have delivered up to the purchaser, or to his, her, or their servant, such lighter, barge, or other craft, and quitted the charge thereof, and before bulk shall be broken of such coals, signify his or her desire to have such coals remeasured, then and in every such case the lighterman or other person sent with the lighter, barge, or craft, in which the said coals shall be brought, shall either continue at the landing place or premises of the purchaser of the said coals, with the said lighter, barge, or other craft, until such coals are remeasured, or shall leave such lighter, barge, or other craft properly fastened and made secure at such landing place or premises, or as near thereto as can be, and permit the same so to remain there until such coals are remeasured, under the penalty of ten pounds on the owner and proprietor, and forty shillings on the lighterman or other person sent with such lighter, barge, or other craft, and the said purchaser shall immediately send or cause to be sent to the vender of the said coals, or to his or her wharf, notice in writing that the said coals are going to be remeasured, and also send notice in writing thereof to any one of the offices of the said respective land coal meters aforesaid, and thereupon a principal meter, or one of the labouring meters, (not being the meter under whose inspection any such coals may have been originally loaded,) shall, within two hours next after such notice in writing left at the office of any such land coal meter, attend from such office where such notice shall be so left, to remeasure the said coals, and shall accordingly remeasure the same with the bushel measure, in presence of the vender and purchaser of the said coals, or their agents or servants, if any of them shall attend for the purpose of seeing such coals remeasured; and in case it shall appear upon the remeasurement of such coals by such principal or labouring coal meter as shall attend for the purpose of remeasuring such coals, that such coals do not amount to the quantity for which they were sold, then and in such case if such coals shall have been sold as and for pool measure, the vender of such

lighter, barge, or other craft, or from any wharf, warehouse, or other place within the respective limits or districts of the said principal land coal meters respectively, and to be delivered to the purchaser or purchasers thereof, in any cart, waggon, or other carriage, shall, and he, she, and they is and are hereby required to deliver or cause to be delivered a ticket to the purchaser or purchasers of such coals, or his, her, or their servant or servants, before any part of the coals contained in such cart, waggon, or other carriage, shall be shot or delivered therefrom; and every such ticket or paper shall be in the words and form following; (that is to say),

Vender's ticket to be sent therewith.

"*Mr. A. B.* [here insert the name of the purchaser.]

"*TAKE notice that you are to receive herewith* [here insert the number] *sacks of* [here insert the name of the] *coals,* [here insert the number] *sacks of* [here insert the name of the] *coals. For inspecting the loading and quality of which coals you are, on the receipt of this ticket, in conformity to an act of parliament made in the forty-seventh year of the reign of King George the Third, to pay the undersigned E. F.* [here insert the name of the vender] *the sum of* [here insert the amount of the compensation directed by this act to be given to such principal meter or meters for the inspection of such coals, calculating the same as by this act directed], *being at and after the rate of* 1*s. for every five chaldrons and one vat sold to and to be received by you herewith; and by the same act this ticket is directed to be delivered to you before any of the coals are shot out of the cart or waggon; and that a bushel measure is in such cart or waggon, by which the carman is directed to measure,* gratis, *under the penalty of* 10*l. the coals contained in any one sack which the purchaser or his servant or servants may require, which sack is to contain three bushels heaped up in the form of a cone, the heigth of such cone to be at least six inches, and the outside of the measure to be the extremity of the base of such cone; and that in case of your being dissatisfied with the coals now sent, you are entitled by the same act to have the same remeasured by the bushel measure, provided you immediately and before any more of the coals than one sack shall be shot or delivered from the cart, waggon, or carriage, in which the same are brought, send notice in writing of your desire to have the same remeasured, to any of the land coal meters offices, and also to the vender or venders of such coals. E. F.* [here insert the name of the vender.] *C. D.* [here insert the name of the meter, and the office and place where the office is situated.]

Dated [here insert the day of the month and the month and year when such ticket was signed]."

"And in case any such vender or venders of, or dealer or dealers in coals, shall not deliver or cause to be delivered such ticket as aforesaid, and so countersigned by a meter as aforesaid, to the purchaser or purchasers of such coals, or to his, her, or their servant or servants, before any part of such coals shall be shot or delivered from such cart, waggon, or other carriage laden with any such coals as aforesaid, then and in every such case every such vender or venders shall, for every such offence, forfeit and pay any sum not exceeding 10*l.*; and in case the carman, driver of, or other person attending such cart, waggon, or other carriage, laden with any such coals as aforesaid, to whom such ticket shall have been given by or by the directions of the vender, in order to be delivered to the purchaser, shall (having so first received the same from the vender, or any person by the order of the vender) refuse or neglect to deliver such ticket to the purchaser or purchasers of such coals, or to his, her, or their servant or servants, before any part of such coals shall be shot or delivered from such cart, waggon, or other carriage, every such carman, driver, or other person aforesaid so offending, shall, for every such offence, forfeit and pay any sum not exceeding 10*l.*"

Sum to be paid meter for inspecting coals sold by pool measure.

Sect. 95. "That the vender or venders of, or dealer or dealers in, any coals sold as and for pool measure, and sent in any cart, waggon, or other land carriage, from any wharf, warehouse, or other place within the respective limits or districts of the said respective land coal meters, or any coals sold as and for pool measure, and delivered by gang labour from or over any wharf or other place where any land meter shall be stationed, situate within any of such respective limits or districts, or the occupier or occupiers of any such wharf, warehouse, or other place, from or over which any such coals shall be so sent, shall, and such vender or venders, dealer or dealers, or occupier or

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occupiers, is and are hereby required and directed to pay to the principal meter or meters for the time being of the land coal meter's office, within the limits of which any such wharf, warehouse, or other place shall be situate, at and after the rate of 1*s.* for every five chaldrons and one vat so bought and sent to the purchaser or purchasers thereof, as and for a compensation for the trouble of inspecting or superintending the loading and sending away such coals; and such money shall be repaid by the purchaser or purchasers of such coals to the vender or venders thereof."

Coals sold by pool measure to be delivered without the intervention of a meter.

Sect. 96. "That nothing herein contained shall extend or be construed to extend so as to hinder or prevent any purchaser or purchasers of any coals sold as and for pool measure, from sending such coals to the premises of such purchaser or purchasers, or to any landing place which such purchaser or purchasers shall appoint (provided such landing place or premises be not a coal wharf or place where any meter shall by virtue of this act be stationed,) or from having such coals unloaded and delivered at such premises or landing place, either by gang labour, or in any other manner, except in or by means of any cart, waggon, or other land carriage, without the presence, intervention, or inspection of any land meter; and without being subject or liable to the payment of any sum or sums of money whatsoever to any land meter, for or in respect of such coals; but in case such purchaser or purchasers shall require the care or attendance of a land meter, then he, she, or they shall have and be entitled to such attendance, upon sending notice of such his, her, or their desire to the land meter's office, within the limits of which such premises or landing place, where such coals may be so carried, shall be situate, and in such case such purchaser or purchasers shall pay and be charged for the attendance of such meter, at and after the aforesaid rate of one shilling for every five chaldrons and one vat of such coals."

Coals sent by water may be remeasured in case fraud is suspected.

Sect. 97. "That if any purchaser of any coals sold and sent to such purchaser by any lighter, barge, or other craft, from any place within the limits of any of the offices of the said respective land meters, shall think or suspect that the full and lawful measure of any such coals has not been sent, and shall before the lighterman or other person having the care or management of such lighter, barge, or other craft shall have delivered up to the purchaser, or to his, her, or their servant, such lighter, barge, or other craft, and quitted the charge thereof, and before bulk shall be broken of such coals, signify his or her desire to have such coals remeasured, then and in every such case the lighterman or other person sent with the lighter, barge, or craft, in which the said coals shall be brought, shall either continue at the landing place or premises of the purchaser of the said coals, with the said lighter, barge, or other craft, until such coals are remeasured, or shall leave such lighter, barge, or other craft properly fastened and made secure at such landing place or premises, or as near thereto as can be, and permit the same so to remain there until such coals are remeasured, under the penalty of ten pounds on the owner and proprietor, and forty shillings on the lighterman or other person sent with such lighter, barge, or other craft, and the said purchaser shall immediately send or cause to be sent to the vender of the said coals, or to his or her wharf, notice in writing that the said coals are going to be remeasured, and also send notice in writing thereof to any one of the offices of the said respective land coal meters aforesaid, and thereupon a principal meter, or one of the labouring meters, (not being the meter under whose inspection any such coals may have been originally loaded,) shall, within two hours next after such notice in writing left at the office of any such land coal meter, attend from such office where such notice shall be so left, to remeasure the said coals, and shall accordingly remeasure the same with the bushel measure, in presence of the vender and purchaser of the said coals, or their agents or servants, if any of them shall attend for the purpose of seeing such coals remeasured; and in case it shall appear upon the remeasurement of such coals by such principal or labouring coal meter as shall attend for the purpose of remeasuring such coals, that such coals do not amount to the quantity for which they were sold, then and in such case if such coals shall have been sold as and for pool measure, the vender of such

coals shall in case such deficiency shall exceed four bushels and not exceed ten bushels in any five chaldrons and one vat of coals so remeasured, forfeit and pay for every bushel of coals so found deficient in every five chaldrons and one vat, the sum of forty shillings, and in case such deficiency shall exceed ten bushels in any five chaldrons and one vat so remeasured, then and in such case such vender of such coals shall forfeit and pay for every such bushel so found deficient the sum of five pounds, and shall moreover forfeit all such coals to the intended purchaser or purchasers thereof; but in case any such coals so remeasured and found deficient shall have been sold or delivered as and for wharf measure, then and in such case the vender of such coals shall forfeit and pay for every bushel so found deficient the sum of five pounds, and shall moreover forfeit all such coals to the intended purchaser or purchasers thereof"

By whom expenses of re-measurement paid.

Sect. 98. "That the principal land coal meter or labouring coal meter so remeasuring shall be paid the sum of sixpence for every chaldron of coals so remeasured by him, and so in proportion for any greater or less quantity than a chaldron, and if upon any such remeasurement, the whole of the coals so remeasured shall be found less than the quantity for which the whole of such coals shall be sold, then and in such case the vender or venders of such coals shall, in case such deficiency shall amount to or exceed one bushel, pay the expenses of such re-admeasurement, but if such deficiency shall not amount to one bushel, then and in such case such expenses shall be paid and borne by the purchaser or purchasers of such coals."

Coals sold by pool measure not to be measured by the bushel without the desire of the purchaser.

Sect. 99. "That nothing herein contained shall extend or be construed to extend to require any coals sold as and for pool measure to be measured by the bushel measure previous to such coals being loaded and sent away in any cart, waggon, or other land carriage, from the vender's wharf or other place of sale, save and except by the desire of the purchaser of any such coals."

Coals sold by wharf measure to be measured in the presence of a land coal meter.

Sect. 100. "That all coals sold or loaded to be sold as and for wharf measure, in quantities exceeding eight bushels at or from any place or places within the limits of any of the said respective offices, shall be measured in the presence of one of the said labouring coal meters, (belonging to the office within the limits or district of which the place of sale of such coals shall be situate,) by the bushel measure heaped up as by this act is directed; and the said labouring coal meters shall and may, and he and they is and are hereby authorised and required to fill up any bushel or bushels of any such coals as shall appear to him or them deficient or wanting in measure out of the stock of coals of the person or persons so vending or contracting for the sale of the said coals, or so loading any such coals for sale."

Penalty on meter suffering wharf measure coals to be sent out without being measured as by this act directed.

Sect. 101. "That if any such labouring coal meter shall wittingly or willingly suffer any coals exceeding eight bushels, which shall be sold or loaded to be sold as and for wharf measure, to be sent from any wharf, warehouse, or other place within the limits or district of his office without such coals being measured in the manner herein directed, and shall not give information thereof to the principal land coal meters or coal meter under whom such labouring coal meter shall serve, within two days next after such coals shall have been measured, then and in every such case such labouring coal meter shall for ever thenceforth be rendered incapable of acting as a labouring coal meter, and forfeit and pay any sum not exceeding ten pounds."

Coal meter's payment for wharf measure coals.

Sect. 102. "That the sum of sixpence for every chaldron of coals which shall be sold and delivered as and for wharf measure, at any wharf, warehouse, or place within the limits or district of any of the offices of the said respective land coal meters, and so in proportion for any greater or less quantity than a chaldron, shall be paid by the occupier or occupiers of the wharf, warehouse, or place from which such coals are taken, or by the seller or vender of such coals, to the principal land coal meters or coal meter for the time being, of the office within the limits or district of which the wharf, warehouse, or other place of sale of such coals shall be situate, and thereupon such principal land coal meters or coal meter shall, and they and he is and are hereby required to deliver or cause to be delivered to every seller of such coals, or the carman who shall cart, lead, drive, or carry away the same, a

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47 Geo. 3, c. lxviii.

dealers and carriers of coals shall use for carriage of coals within the limits aforesaid, and no others; and all makers of coal sacks shall make them of the aforesaid dimensions at the least; and that every dealer in and carrier of coals, who shall, from and after the first day of August, one thousand seven hundred and thirty, make use of any other sack or sacks for carriage of coals within the limits aforesaid, shall for every such sack he or they shall so make use of, forfeit and pay the sum of twenty shillings;' and so much thereof as directs, 'that from and after the first day of August, one thousand seven hundred and thirty, all dealers in and sellers of coals by the chaldron or lesser quantity, within the cities of London and Westminster, or within ten miles round the same, shall constantly keep and use, at their respective wharfs, warehouses, and other places for the sale of their coals, a lawful bushel, such as is described in and by an act made in the twelfth year of the reign of her late Majesty Queen Anne, intituled, 'An Act for the speedy and effectual preserving the navigation of the river of Thames, by stopping the breach in the levels of Havering and Dagenham in the county of Essex, and for ascertaining the coal measure,' with which bushel all such dealers in and sellers of coals shall justly measure, or cause all the coals they shall so sell by the chaldron or lesser quantity to be measured, and shall put three bushels of coals, so justly measured, into each sack before described, which said sacks they shall use, and no other, for the carriage of such coals to the buyers thereof; and that all such dealers in and sellers of coals within the said limits, who, from and after the first day of August, one thousand seven hundred and thirty, shall not constantly keep and use such a bushel and such sacks as hereinbefore described, and no other, or shall not so fill their coal sacks from such bushels, or shall otherwise offend against the true intent and meaning of this act, shall for every such offence forfeit and pay the sum of fifty pounds; and if any servant or servants of such dealer or dealers in coals shall, from and after the first day of August, one thousand seven hundred and thirty, fill such coals into sacks without first duly measuring the same by such bushel, such servant or servants shall for every such offence be committed to the house of correction, there to be kept to hard labour for any time not exceeding thirty days, nor less than fourteen days;' and so much thereof as directs, 'that all persons dealing in coals, and using coal bushels and smaller measures, shall, before they presume to use the same, have them fitted for work and use with iron or copper, and after they are so fitted shall carry them to the Guildhall, London, or to the Exchequer Office at Westminster, to be sealed or stamped by the proper officer there, with a steel instrument, on the uppermost iron or copper hoop and strap, which measures shall be by them respectively kept without any alteration, and so used at their respective places of sale of their coals, which places of sale are hereby declared to be the respective wharfs, warehouses, docks, sheds, cellars, or other repositories for the coals of such persons as are dealers therein; and that all persons dealing in coals, who shall, from and after the first day of August, one thousand seven hundred and thirty, alter and make less any such bushel or other measure, or any of the sacks before mentioned, after the same have been sealed or marked as aforesaid, shall for every such offence forfeit and pay the sum of fifty pounds,' shall be, and the same is and are hereby repealed and declared to be null and void to all intents and purposes whatsoever."

Dimensions of sacks.

Sect. 107. "That no sack shall be made use of in the delivery of coals from any ship, vessel, lighter, barge, or other craft, or from any wharf, warehouse, or other place, within the said port of London, or within the said respective cities of London and Westminster, or the respective liberties thereof, or within such part or parts of the said respective counties of Middlesex, Surry, Kent, and Essex, as is or are situate within the distance of twenty-five miles from the Royal Exchange, except such sack shall be made of linen, and shall have been first sealed and marked with white paint in oil, at Guildhall, London, or at the Exchequer Office, Westminster, by the proper officer there, and shall at the time of making use of such sack measure the inside thereof at least four feet and two inches in length by two feet and one

and above the sixpence per chaldron herein allowed to be demanded and taken for the metage charge for coals measured by the bushel, or over and above the one shilling for every five chaldrons and one vat of coals sold by the pool measure for the inspection thereof, or over and above the sixpence for every ton of coals sold by weight; or if any such principal or labouring coal meter shall wilfully permit or suffer to be made false measure of any coals, or shall deliver a meter's ticket for any quantity of coals, the whole of which he shall not have seen measured, or shall countersign any vender's ticket for any coals, without having inspected such coals, or without seeing and taking care that the whole of the coals contained, sold in, and to be delivered out of any particular room or rooms of any lighter, barge, or other craft, shall have been first completely emptied out of, and loaded from such particular room or rooms so sold, then and in every such case every such meter so offending shall for every such offence forfeit and pay any sum not exceeding ten pounds, and be rendered incapable of ever serving thereafter in the office of a coal meter."

Penalty on vender for not delivering a meter's ticket with wharf measure coals.

Sect. 105. "That if any quantity whatsoever of coals, exceeding eight bushels, sold or to be sold as and for wharf measure, shall be sent or driven in any cart, waggon, or other carriage, from any wharf, warehouse, or place, situate within the limits or district of any of the said respective offices, without having been measured by such bushel measure as is herein-after-directed, or without such meter's ticket as aforesaid, so signed and countersigned as aforesaid, having been first obtained, or if such ticket as aforesaid shall not be delivered to the purchaser or purchasers of any such coals, before any part of such coals are shot or delivered upon the premises of such purchaser or purchasers, then and in every such case the vender or venders of such coals shall for every such offence forfeit and pay any sum not exceeding ten pounds."

Repeal of other parts of 3 Geo. 2, c. 26.

Sect. 106. "And whereas it is expedient for the purposes of this act, that certain other parts of the said act, made in the third year of his late Majesty's reign, should be also repealed, by reason that other directions and penalties are provided by this act, in respect of the matters mentioned in such parts of the said act so made in the third year of his late Majesty's reign, be it therefore further enacted, that so much of the said act made in the third year of the reign of King George the Second, intituled, 'An Act for the regulation of the coal trade,' as (after reciting that by ancient custom in the port of London, one chaldron of coals is allowed into every score brought on board ship, and so in proportion for a greater or lesser quantity, which is called ingrain; notwithstanding which, many persons dealing in coals do load the same from on board ship bare measure, without the aforesaid ingrain, to the great injury of the consumer,) directs, 'that all lightermen and other persons dealing in coals who shall, from and after the twenty-fourth day of June, one thousand seven hundred and thirty, sell to any person or persons any parcel or quantity of coals, as and for pool measure, *videlicet*, such measure as is usually given and allowed in the pool or river Thames, including the aforesaid ingrain, and shall not, justly and without fraud, deliver to such person or persons, buyers or consumers thereof, the full quantity of coals so sold and accordingly measured from on board ship to such lighterman or other dealer in coals, by the meter, together with the ingrain thereof, such lighterman or other dealer in coals shall for every such offence forfeit and pay the sum of one hundred pounds;' and so much thereof as directs, 'that from and after the first day of August, one thousand seven hundred and thirty, all coals which shall be landed at any wharf, dock, or other landing place on the river Thames, or any creek or branch adjacent or near thereto, and which shall be carried to any place or places within the cities or suburbs of London or Westminster, or the bills of mortality, in any cart, carr, waggon, or other carriage of any denomination whatsoever, shall be carried to the respective buyers thereof in linen sacks, sealed and marked with white paint in oil, at Guildhall, London, or at the Exchequer Office, at Westminster, by the proper officer there, which sacks shall be full four feet and two inches in length, and six and twenty inches in breadth, after they shall be made; which sacks all

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47 Geo. 3, c. lxviii.

dealers and carriers of coals shall use for carriage of coals within the limits aforesaid, and no others; and all makers of coal sacks shall make them of the aforesaid dimensions at the least; and that every dealer in and carrier of coals, who shall, from and after the first day of August, one thousand seven hundred and thirty, make use of any other sack or sacks for carriage of coals within the limits aforesaid, shall for every such sack he or they shall so make use of, forfeit and pay the sum of twenty shillings;' and so much thereof as directs, 'that from and after the first day of August, one thousand seven hundred and thirty, all dealers in and sellers of coals by the chaldron or lesser quantity, within the cities of London and Westminster, or within ten miles round the same, shall constantly keep and use, at their respective wharfs, warehouses, and other places for the sale of their coals, a lawful bushel, such as is described in and by an act made in the twelfth year of the reign of her late Majesty Queen Anne, intituled, 'An Act for the speedy and effectual preserving the navigation of the river of Thames, by stopping the breach in the levels of Havering and Dagenham in the county of Essex, and for ascertaining the coal measure,' with which bushel all such dealers in and sellers of coals shall justly measure, or cause all the coals they shall so sell by the chaldron or lesser quantity to be measured, and shall put three bushels of coals, so justly measured, into each sack before described, which said sacks they shall use, and no other, for the carriage of such coals to the buyers thereof; and that all such dealers in and sellers of coals within the said limits, who, from and after the first day of August, one thousand seven hundred and thirty, shall not constantly keep and use such a bushel and such sacks as hereinbefore described, and no other, or shall not so fill their coal sacks from such bushels, or shall otherwise offend against the true intent and meaning of this act, shall for every such offence forfeit and pay the sum of fifty pounds; and if any servant or servants of such dealer or dealers in coals shall, from and after the first day of August, one thousand seven hundred and thirty, fill such coals into sacks without first duly measuring the same by such bushel, such servant or servants shall for every such offence be committed to the house of correction, there to be kept to hard labour for any time not exceeding thirty days, nor less than fourteen days;' and so much thereof as directs, 'that all persons dealing in coals, and using coal bushels and smaller measures, shall, before they presume to use the same, have them fitted for work and use with iron or copper, and after they are so fitted shall carry them to the Guildhall, London, or to the Exchequer Office at Westminster, to be sealed or stamped by the proper officer there, with a steel instrument, on the uppermost iron or copper hoop and strap, which measures shall be by them respectively kept without any alteration, and so used at their respective places of sale of their coals, which places of sale are hereby declared to be the respective wharfs, warehouses, docks, sheds, cellars, or other repositories for the coals of such persons as are dealers therein; and that all persons dealing in coals, who shall, from and after the first day of August, one thousand seven hundred and thirty, alter and make less any such bushel or other measure, or any of the sacks before mentioned, after the same have been sealed or marked as aforesaid, shall for every such offence forfeit and pay the sum of fifty pounds,' shall be, and the same is and are hereby repealed and declared to be null and void to all intents and purposes whatsoever."

Dimensions of sacks.

Sect. 107. "That no sack shall be made use of in the delivery of coals from any ship, vessel, lighter, barge, or other craft, or from any wharf, warehouse, or other place, within the said port of London, or within the said respective cities of London and Westminster, or the respective liberties thereof, or within such part or parts of the said respective counties of Middlesex, Surry, Kent, and Essex, as is or are situate within the distance of twenty-five miles from the Royal Exchange, except such sack shall be made of linen, and shall have been first sealed and marked with white paint in oil, at Guildhall, London, or at the Exchequer Office, Westminster, by the proper officer there, and shall at the time of making use of such sack measure the inside thereof at least four feet and two inches in length by two feet and one

47 Geo. 3, c. lxviii.

inch in breadth; and no sack shall be sealed or marked which shall not, at the time of the marking or sealing thereof, measure in the inside thereof four feet and four inches in length, and two feet and two inches in breadth; and if any vender or venders of, or dealer or dealers in, or carrier or carriers of coals, shall use or cause to be used any sack or sacks for delivering or carrying coals within the several and respective cities, liberties, and parts aforesaid, not sealed or marked as aforesaid, or of less length at the time of using the same than four feet and two inches at the least in the inside thereof, or of less breadth than two feet and one inch at the least in the inside thereof, then and in every such case every such vender of or dealer in, or carrier of coals, shall for every such sack so unmarked or deficient in length or breadth, forfeit and pay any sum not exceeding forty shillings, nor less than twenty shillings; and the justice or justices before whom such conviction shall take place, shall cause every such sack found unmarked, or deficient either in length or breadth, to be destroyed: provided always, that the coals to be delivered by gang labour, may be conveyed without the use of such sacks; any thing herein contained to the contrary thereof notwithstanding."

Coals delivered by gang labour need not be in such sacks.

Sect. 108. "That if any labouring coal meter shall use, or knowingly permit or suffer any sack or sacks to be made use of for the measuring or carrying of coals, of less dimensions than the dimensions directed by this act, at any place or places within the limits of the office to which such meter shall belong, then and in every such case every such labouring coal meter shall for every such offence forfeit and pay any sum not exceeding five pounds."

Penalty on meter permitting sacks of less dimensions to be used.(a)

Sect. 109. "That no bushel shall be kept or made use of, for or in the admeasurement of any coals sold within the said port of London, or within the said respective cities of London and Westminster, or the respective liberties thereof, or within such part or parts of the said respective counties of Middlesex, Surry, Kent, and Essex, as is or are situate within the distance of twenty-five miles from the Royal Exchange aforesaid, which shall not be such bushel as is described in and by an act made in the twelfth year of the reign of her late Majesty Queen Anne, intituled, 'An Act for the speedy and effectual preserving of the navigation of the river of Thames, by stopping the breach in the levels of Havering and Dagenham, in the county of Essex, and for ascertaining the coal measure,' and which shall not have been first stamped or marked by the proper officer at the Exchequer Office at Westminster, or at the Guildhall, London, previously to the same being so kept or used; and that every such bushel, previously to being so stamped or marked, shall be fitted for work and use with iron or copper hoops, and shall be so stamped or marked with a steel instrument on the uppermost iron or copper hoop; and that every such bushel shall be kept without any alteration or diminution; and that in making use of such bushel, all coals shall be duly heaped up in such bushel in the form of a cone, such cone to be of the height of at least six inches, and the outside of the bushel to be the extremity of the base of such cone; and that each and every chaldron of coals shall consist of thirty-six of such bushels so heaped, and so in proportion for any lesser quantity; and if any dealer or dealers in, or vender or venders of coals, within such limits as aforesaid, shall keep or make use of, or cause to be kept or made use of, any bushel in the admeasurement of any coals other than such bushel as aforesaid, and so stampt as aforesaid, or shall in anywise decrease or diminish any such bushel stampt as aforesaid, or shall permit his, her, or their servant or servants, or any person or persons whomsoever so to do, then and in every such case such dealer or dealers in, or vender or venders of coals, so offending, shall forfeit and pay for every such offence any sum not exceeding the sum of twenty pounds; and if any such servant or servants, or other person or persons acting by or under the authority of any dealer or dealers, or vender or venders, shall make use of, in admeasuring of any coals, any bushel other than such bushel as aforesaid, stampt as aforesaid, or if any

What bushel measure to be made use of.

12 Ann. c. 17.

(a) The offence is complete in the county where the coals were put into the sack. *Butterfield* v. *Windle*, 4 East, 385.

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47 Geo. 3, c. lxviii.

such servant or servants, or any other person or persons whosoever, shall in any manner decrease or diminish any such bushel stampt as aforesaid, then and in every such case such servant or servants, or such other person or persons respectively, for every such offence, shall be committed to the house of correction by any one or more justice or justices of the peace for the city, county, town, or place where such offence shall be committed, there to be kept to hard labour, for any time not exceeding three calendar months." (And see 5 Geo. IV. c. 74, s. 7, 8; and Weights, &c. Vol. V.)

Regulations of measures smaller than a bushel.

Sect. 110. "That all measures less than such bushel measure as aforesaid, which shall be used by any person or persons dealing in coals, within the said port of London, or within the said respective cities of London and Westminster, or the respective liberties thereof, or within such part or parts of the respective counties of Middlesex, Surry, Kent, and Essex, as is or are situate within the distance of twenty-five miles from the Royal Exchange aforesaid, shall be fitted for work and use with iron or copper, and shall previously to being used in the admeasurement of coals, be sealed or stampt at the Exchequer Office at Westminster, or at the Guildhall, London, by the proper officer, with a steel instrument, on the uppermost iron or copper hoop; and that all such measures so sealed or stampt shall be kept without any alteration, and so used by such dealers in or venders of coals, as shall sell any less quantity or quantities of coals than a bushel of coals; and if such person or persons shall diminish or make less any such less measure than the bushel, or shall make use of any means or device so as to prevent any such measure from holding or containing as much as it would otherwise hold or contain in case such means or device had not been practised, or shall use or cause to be used any such measure when any such means or device have been practised, or shall use or cause to be used any such measure in the admeasurement of coals, not so sealed or stampt as aforesaid, then and in every such case every such person so offending shall for every such offence forfeit and pay any sum not exceeding ten pounds."

Venders of coals sold as wharf measure may have them remeasured.

Sect. 111. "That if any vender or venders of, or dealer or dealers in any coals sold as and for wharf measure, shall be dissatisfied with the measurement which shall have been made of any such coals at any wharf, warehouse, or other place of sale, by or under the inspection of the labouring land coal meter stationed or attending at such wharf, warehouse, or other place, then and in every such case it shall and may be lawful to and for such vender or venders of, or dealer or dealers in coals, before such coals are sent away from such wharf, warehouse, or other place of sale, to send or cause to be sent to the office of the principal land meter, within the limits or district of which such wharf, warehouse, or other place of sale may be situate, notice in writing, signifying the desire of such vender or venders, or dealer or dealers in coals, to have such coals remeasured, and then and in such case such principal meter, or one of the labouring meters, of or from such office where such notice shall be sent (not being the meter under whose inspection the said coals were originally measured) shall, within the space of two hours next after such notice in writing left at such office, attend to remeasure the said coals, and shall accordingly remeasure the same, sack by sack, by the bushel measure, in the presence of such vender or venders of, or dealer or dealers in such coals, or his, her, or their agent or servant, or agents or servants, and for such remeasurement such vender or venders of, or dealer or dealers in coals, shall pay or cause to be paid to such principal coal meter, who shall send such other labouring meter, the sum of sixpence for every chaldron of coals so remeasured; and in case it shall appear upon such remeasurement, that the coals so remeasured shall exceed the quantity for which the same were sold, then and in such case, if such excess shall be equal or amount to, or exceed two bushels in any chaldron so remeasured, the meter who first measured such coals shall for every bushel so exceeding such quantity as aforesaid, forfeit and pay the sum of forty shillings, together with all the expenses of such remeasurement."

Carman to carry a bushel measure in his cart.

Sect. 112. "That if any carman, or driver of any cart, waggon, or other carriage, loaden with coals for sale, or to be delivered to the purchaser or

purchasers thereof, by any vender or venders of, or dealer or dealers in, or carrier or carriers of coals from any ship, lighter, barge, or other craft, or from any wharf, warehouse, or other place within the said port of London, or within the said respective cities of London and Westminster, or the respective liberties thereof, or within such part or parts of the respective counties of Middlesex, Kent, Surry, and Essex, as is or are situate within the distance of twenty-five miles from the Royal Exchange aforesaid, shall not have placed on some conspicuous part of his cart, waggon or carriage, a perfect bushel measure, of the form, size, or dimensions, and so stamped or marked as hereinbefore directed (which measure shall be provided by the vender or venders, dealer or dealers in, or carrier or carriers of such coals,) then and in every such case, every such carman or driver of such cart, waggon, or other carriage, not having such bushel measure so placed therein or thereon, shall for every such offence forfeit and pay any sum not exceeding ten pounds, and the vender or venders of, or dealer or dealers in, or carrier or carriers of such coals, shall forfeit and pay any sum not exceeding twenty pounds: provided always, that coals which shall be carried or conveyed in bulk, or in any cart, waggon, or other carriage, belonging to the purchaser or purchasers of such coals, may be so carried or conveyed without the carman being obliged to carry a bushel measure therewith, or any person or persons being subject or liable to any penalty or penalties in respect thereof, any thing herein contained to the contrary notwithstanding."

Venders to deliver tickets of coals sold by wharf measure.

Sect. 113. "That the vender or venders of or dealer or dealers in coals, sold and sent as and for wharf measure from any ship, vessel, lighter, barge, or other craft, or from any wharf, warehouse, or other place within the said port of London, or within the said respective cities of London or Westminster, or the respective liberties thereof, or within such part or parts of the said respective counties of Middlesex, Surry, Kent, or Essex, as is or are situate within the distance of twenty-five miles from the Royal Exchange, and to be delivered to the purchaser or purchasers thereof, from any cart, waggon, or other carriage, shall and he and they is and are required to deliver or cause to be delivered a printed ticket or paper, and such carman, driver, or other person shall and is required to deliver or cause to be delivered the same ticket so received from such vender to the purchaser or purchasers of such coals, or to his, her, or their servant or servants, before any part of the coals contained in such cart, waggon, or other carriage, shall be shot or delivered therefrom; and every such ticket or paper shall be in the words and form following:—

"VENDER'S TICKET.

"*Mr. A. B.* [here insert the name of the buyer.]

"*TAKE notice, that you are to receive herewith* [here insert the number] *sacks of* [here insert the name of the] *coals* [here insert the number] *sacks of* [here insert the name of the] *coals* [here insert the number] *sacks of* [here insert the name of the] *coals; and that by an act made in the forty-seventh year of the reign of King George the Third, the carman is directed to deliver this ticket before he shoots any of the coals out of his cart or waggon; and that a bushel measure is in such cart or waggon, by which the carman is directed to measure, gratis, (under the penalty of* 20*l.*) *the coals contained in any one sack which the purchaser or his servant may require, which sack is to contain three bushels heaped up in the form of a cone, the outside of the measure being the extremity of the base thereof. C. D.* [here insert the name of the vender.] *E.F.* [here insert the name of the labouring meter in case of the coals being sent from within either of the districts of the said respective offices.] *Dated* [here insert the day of the month and year when such ticket was signed.]"

Penalty on vender not delivering ticket,

"And in case any such vender or venders shall not deliver or cause to be delivered such ticket as aforesaid, to the purchaser or purchasers of such coals, or to his, her, or their servant or servants, before any part of such coals shall be shot or delivered from such cart, waggon, or other carriage, every such vender or venders shall for every such offence forfeit and pay any sum not

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47 Geo. 3, c. lxviii.

Penalty on meters and coal porters if coals sold for wharf measure prove deficient.

ther, it shall appear to such meter as aforesaid that the coals thus remeasured do not amount to the quantity for which they were sold, then if such last-mentioned coals shall have been sold as and for wharf measure, the vender or venders of such coals shall forfeit and pay for every bushel of coals found deficient the sum of 5*l.*, and also forfeit every chaldron of coals so found deficient or wanting in measure to and for the use of the poor of the parish where such coals shall be so remeasured, and the labouring meter under whose inspection the coals were first measured shall for every bushel so deficient forfeit and pay the sum of 20*s.*, and the coal porters who shall have first measured such coals for the vender or venders thereof, shall for every bushel of coals so wanting forfeit and pay the sum of two shillings and sixpence; but if any such coals so remeasured in the manner last mentioned, and so found to amount to less than the quantity for which the same were sold, shall have been sold as and for pool measure, then the vender or venders of such coals shall in case such deficiency shall exceed four bushels and not exceed ten bushels in any five chaldrons and one vat so remeasured, forfeit and pay for every bushel of coals so found deficient in every such five chaldrons and one vat the sum of 40*s.*; and in case such deficiency shall exceed ten bushels in any five chaldrons and one vat so remeasured, then and in such case such vender or venders of such coals shall forfeit and pay for every such bushel so deficient in every such five chaldrons and one vat the sum of 5*l.*: provided nevertheless, that no such coals so sold and sent shall be remeasured, so as to ascertain the whole quantity of such coals taken together, after more than one sack of such coals shall have been shot or delivered from such cart, waggon, or other carriage, into or upon the premises of such purchaser or purchasers, any thing hereinbefore contained to the contrary notwithstanding."

Penalty on meter if coals sold for pool measure prove deficient.

Sect. 118. "That if upon such remeasurement of any coals sold and sent as and for pool measure by any waggon, cart, or other land carriage, and which remeasurement shall have been made in such manner as to ascertain the whole quantity of such coals contained in all the sacks taken together, the coals so remeasured shall be found to be less or more than at the rate of three bushels for each sack, according to the number of sacks specified in the vender's ticket of such coals, then the meter who countersigned such vender's ticket of such coals shall in case such deficiency or excess shall exceed four bushels in any five chaldrons and one vat of such coals so remeasured, forfeit and pay for every such bushel so exceeding or so deficient in every such five chaldrons and one vat the sum of 20*s.*"

By whom the expenses of such remeasurement are to be paid.

Sect. 119. "That if upon any such remeasurement which shall be so made so as to ascertain the whole quantity contained in all the sacks taken together, of any such coals sold and sent as and for wharf or pool measure, the whole of such coals so remeasured shall be found less than the quantity for which the whole of such coals shall be sold, then the vender or venders of such coals shall, in case such deficiency shall amount to or exceed one bushel, repay to the purchaser or purchasers of such coals the expenses of such remeasurement; but if such deficiency shall not amount to one bushel, then such expenses shall be paid and borne by the purchaser or purchasers of such coals; and if upon any such remeasurement which shall be made so as to ascertain the quantity contained in each and every of the particular sacks sent of any coals sold as and for wharf or pool measure, it shall be found that one-fourth part or more of the number of the sacks of such coals sold and sent to the purchaser or purchasers thereof do not contain the quantity of three bushels each respectively, then the vender or venders of such coals shall repay to the purchaser or purchasers of such coals the expenses of the remeasurement thereof; but if the number of such particular sacks so found deficient shall not amount to one-fourth part of the whole number of the sacks of such coals so sold and sent, then and in such case such expenses shall be paid and borne by the purchaser or purchasers of such coals."

Penalty on principal meters not sending a labouring meter to measure coals.

Sect. 120. "That after any such notice as by this act directed shall have been given by or on the behalf of any purchaser or purchasers at any of the said respective land meter's offices, requiring the attendance of any meter from any such offices for the purpose of remeasuring any coals sold either for

other person attending such cart, waggon, or other carriage, his, her, or their desire to have the coals contained in such cart, waggon, or other carriage, or any part of such coals remeasured, then and in every such case the carman or driver of such cart, waggon, or other carriage in which such coals shall be brought, shall and he is hereby required to continue and remain at the house, lodging, or other premises of the purchaser or purchasers of such coals with such coals, and the cart, waggon, or other carriage, until such coals are remeasured; and if any such carman or driver shall drive away or permit or suffer to be driven away such cart, waggon, or other carriage, before the coals contained therein shall be remeasured without the consent of the purchaser or purchasers thereof, or his, her, or their servant or servants, then and in every such case such carman or driver shall for every such offence forfeit and pay any sum not exceeding 10*l.*"

Purchaser to send notice to meter's office if desirous of having coals remeasured.

Sect. 117. "That such purchaser or purchasers, or his, her, or their servant or servants, so desiring such coals contained in such cart, waggon, or other carriage, to be remeasured, shall and he, she, or they is and are hereby required to send or cause to be sent to the vender or venders of the said coals, or to his, her, or their wharf, warehouse, or place of abode, notice in writing that the said coals are to be remeasured, and such purchaser or purchasers, or his, her, or their servant or servants, shall and he, she, or they is and are hereby required forthwith to send notice in writing to any one of the offices of the said respective land coal meters of his, her, or their desire to have such coals remeasured, and thereupon a principal meter or one of the labouring meters (not being the meter under whose inspection the said coals were originally measured) shall within the space of two hours next after such notice in writing left at the office of any such principal coal meter aforesaid, attend from such office where such notice shall be so left at the house, lodging, or other premises of such purchaser or purchasers, as shall be expressed in such notice for the purpose of remeasuring the said coals, and shall accordingly remeasure the same in the presence of the vender or venders and purchaser or purchasers of the said coals, or of his, her, or their agent or servant, agents or servants, if they or any of them shall attend to see the same remeasured; and in case such vender or venders, or purchaser or purchasers, or his, her, or their agent or servant, agents or servants, shall not attend for the purpose of seeing such coals so remeasured, then such meter shall proceed in the remeasuring of such coals in his, her, or their absence; and such meter shall and he is hereby required, at the option of the purchaser or purchasers of such coals, to remeasure such coals either by the distinct sacks so as to ascertain the contents of each particular sack of such coals which shall remain in such cart, waggon, or other carriage, or else to remeasure such coals in such manner, and so as to ascertain the whole quantity of such coals contained in all the sacks taken together; and in case the purchaser or purchasers of such coals shall not either before or immediately upon the arrival of such meter signify or cause to be signified to such meter his or their option or desire as to which of the said two ways he or they would wish such remeasurement to be taken or made in, then and in every such case such meter shall proceed to remeasure such coals in such manner, and so as to ascertain the whole quantity of such coals contained in all the sacks taken together; and for such remeasurement such purchaser or purchasers shall pay or cause to be paid to the principal coal meter or coal meters, of or from the office to which notice shall have been sent as aforesaid, sixpence for every chaldron of coals so remeasured; and in case upon the remeasurement of any such coals which shall be so remeasured as to ascertain the contents of each particular sack thereof, it shall appear to the meter so remeasuring the same that any sack or sacks of such coals shall not contain three bushels, then and in every such case the vender or venders of such coals shall for every sack of coals that shall be so found deficient on such remeasurement forfeit and pay any sum not exceeding 40*s.*, and in case upon the remeasurement of any such coals as aforesaid, which shall be remeasured in such manner as to ascertain the whole quantity of such coals contained in all the sacks wherein the same shall have been sent taken toge-

Purchaser may have contents of each sack remeasured, or else of all the sacks together.

Penalties on vender if deficiency on remeasurement.

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47 Geo. 3, c. lxviii.

house, or other place from which such coals sold by weight shall be sent may be situate, sixpence for every ton of coals so weighed under the meter's inspection, and so in proportion for any greater or less quantity than a ton, and such sum of money shall be repaid to such vender or venders by the purchaser or purchasers of such coals."

Vender's ticket to be sent with coals sold by weight.

Sect. 123. "That the vender or venders of, or dealer or dealers in such coals so sold by weight, within the limits or district of any of the offices of the said respective land meters, shall deliver or cause to be delivered to the purchaser or purchasers thereof, or to his, her, or their servant or servants, immediately on the arrival of the cart, waggon, or other carriage in which such coals shall be sent, and before any such coals shall be unloaded, a paper or ticket in the form following; that is to say,

"*Mr. A. B.* [here insert the name of the buyer.]

"*TAKE notice, that you are to receive herewith* [here insert the number] *tons* [here insert the name of the] *coals: for inspecting which coals you are, in conformity to an act of parliament made in the forty-seventh year of the reign of King George the Third, to repay me, the undersigned* [here insert the name of the seller] *the sum of* [here insert the amount of the inspection charge] *being at and after the rate of sixpence for every ton of coals sold to, and to be received by you herewith.*

(Signed) *C. D.* [here insert the name of the seller.]
(Countersigned) *E. F.* [here insert the name of the meter.]"

"And in case any such vender or venders do not deliver or cause to be delivered such ticket as aforesaid, and so countersigned by a meter as aforesaid, to the purchaser or purchasers of such coals, or to his, her, or their servant or servants, before any part of such coals are unloaded, every such vender shall, for every such offence, forfeit and pay any sum not exceeding twenty pounds; and in case the carman, driver of, or other person attending any such cart, waggon, or other carriage laden with any such coals, to whom any such ticket shall have been given, by or by the orders of the vender, in order to be delivered to the purchaser, shall (having so first received the same from the vender, or any person by the directions of the vender) refuse or neglect to deliver such ticket to the purchaser or purchasers of such coals, or to his, her, or their servant or servants, before any part of such coals shall be unloaded, such carman, driver, or other person so offending shall, for every such offence, forfeit and pay any sum not exceeding twenty pounds."

Coals to be sold either by weight, or by the chaldron or bushel.

Sect. 124. "That all coals whatsoever sold within any of the said several and repective limits of this act, save and except only such coals as shall be sold by weight in manner aforesaid, shall be sold either by the chaldron, such chaldron to consist of thirty-six of such bushels so heaped up as aforesaid, or by the sack, each sack containing three such bushels so heaped up as aforesaid, or else by such bushel as aforesaid, or by the half bushel, peck, or half peck: provided such smaller measure shall be some aliquot part of such bushel measure; any thing herein contained to the contrary notwithstanding."

Principal meters for London to produce upon oath, before the court of common council, their accounts of metage monies, and to pay the same into the chamber of the city.

Sect. 125. "That all and every the principal meter and meters for the time being for the said city of London and the liberties thereof, and between Tower Dock and Limehouse Hole, in the county of Middlesex, shall, and each and every of such principal meter or meters for such district is and are respectively hereby directed and required to produce and deliver in, once or oftener in every month, before the lord mayor, aldermen, and commons of the said city of London, in common council assembled, or before such persons as the said mayor, aldermen, and commons shall for that purpose appoint, a full, true, and accurate account or accounts, in writing, verified by affidavit, of all and every the sum and sums of money which shall from time to time, by virtue of this act, be received by such principal meter or meters for such district, for any metage, inspection, or remeasurement of any coals which shall be measured, remeasured, or inspected by any such principal meter or meters, or by any labouring meter or meters within such district; and every such account so directed to be produced as aforesaid shall, previously to the production thereof, be verified upon oath by such principal meter or meters for

wharf or pool measure, then and in every such case the principal meters or meter for the time being at any of such respective offices or office where such notice shall have been given or sent, is and are hereby authorised and required to send a labouring meter or meters from their respective offices or office for the purpose of making the remeasurement, and such respective labouring meters or labouring meter shall and are and is hereby authorised and required to remeasure any such coals which they shall be so sent to remeasure, whether the purchaser or purchasers of such coals shall or not be desirous of having such remeasurement proceeded in, any thing herein contained to the contrary notwithstanding; and if any such principal meters or meter, after having received any such notice as aforesaid, shall neglect or refuse within the space of two hours after the receipt of such notice to send a labouring meter or meters to the house, lodging, or other premises of such purchaser or purchasers accordingly, or if any labouring land coal meter or meters shall refuse or neglect to remeasure such coals, then and in every such case every such principal land coal meter or meters and labouring land coal meter or meters so offending shall for every such offence forfeit and pay any sum not exceeding 5*l.*; and if any such purchaser or purchasers, or any other person or persons, shall prevent, obstruct, or interrupt, or attempt to prevent any such remeasurement being proceeded in and made by any such labouring land coal meter or meters so sent by any such principal land coal meter or meters in consequence of any such notice, then and in every such case every such purchaser or purchasers, or other person or persons so offending shall for every such offence forfeit and pay any sum not exceeding 10*l.*"

Carman to be paid 3*s.* per hour when stopped for having coals remeasured.

Sect. 121. "That when and as often as any cart, waggon, or other carriage shall be stopped or detained for the purpose, or under pretence of readmeasuring the coals or any part laden thereon, the owner of every such cart, waggon, or other carriage shall be entitled to the sum of three shillings per hour for every hour the cart shall be so detained, and so in proportion for any fraction of an hour, over and above the usual cartage of such coals; which three shillings per hour shall be paid by the vender of the said coals, in case the same, or any part thereof, shall upon the remeasurement thereof, be found deficient in measure, or by the purchaser of such coals, in case the same shall not be remeasured, or shall upon such remeasurement be found to amount to the quantity for which such coals were sold."

Regulation as to coals sold by weight.

Sect. 122. "That all coals which shall be sold by weight at any wharf, warehouse, or other place, within any of the respective limits or districts of any of the said respective offices of the said respective land coal meters, and to be sent in any cart, waggon, or other carriage, to the purchaser or purchasers thereof, shall be sold or weighed by the hundred weight, each hundred weight consisting of one hundred and twelve pounds avoirdupois weight, and twenty such hundred weight shall be and be deemed and taken to be one ton; and all such coals so to be sold shall be weighed and loaded at such wharf, warehouse, or other place of sale, in the presence of one of the labouring land meters, from the office, within the limits or district of which such wharf, warehouse, or other place of sale shall be situate, and such labouring meter is hereby authorised and required to superintend and inspect the weighing and loading of all such coals so sold by weight, in order that such meter may see and be satisfied that in every such loading the full weight of coals is actually given, which shall be expressed in the vender's ticket; and such meter may refuse to countersign the vender's ticket of any such coals, in case such meter shall not see that the full and proper weight shall be given according to the quantity which shall be expressed in such vender's ticket, but such meter shall and he is hereby required to countersign the same, in case the proper weight shall be given according to such quantity of coals expressed in such vender's ticket; and for such inspection of such coals so sold by weight, there shall be paid by the vender or venders thereof, or by the occupier or occupiers of the wharf, warehouse, or other place from whence such coals shall be sent, to the principal land coal meter or meters for the time being, within the limits or district of whose office such wharf, ware-

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47 Geo. 3, c. lxviii.

house, or other place from which such coals sold by weight shall be sent may be situate, sixpence for every ton of coals so weighed under the meter's inspection, and so in proportion for any greater or less quantity than a ton, and such sum of money shall be repaid to such vender or venders by the purchaser or purchasers of such coals."

Vender's ticket to be sent with coals sold by weight.

Sect. 123. "That the vender or venders of, or dealer or dealers in such coals so sold by weight, within the limits or district of any of the offices of the said respective land meters, shall deliver or cause to be delivered to the purchaser or purchasers thereof, or to his, her, or their servant or servants, immediately on the arrival of the cart, waggon, or other carriage in which such coals shall be sent, and before any such coals shall be unloaded, a paper or ticket in the form following; that is to say,

"*Mr. A. B.* [here insert the name of the buyer.]

"*TAKE notice, that you are to receive herewith* [here insert the number] *tons* [here insert the name of the] *coals: for inspecting which coals you are, in conformity to an act of parliament made in the forty-seventh year of the reign of King George the Third, to repay me, the undersigned* [here insert the name of the seller] *the sum of* [here insert the amount of the inspection charge] *being at and after the rate of sixpence for every ton of coals sold to, and to be received by you herewith.*

(Signed) *C. D.* [here insert the name of the seller.]
(Countersigned) *E. F.* [here insert the name of the meter.]"

"And in case any such vender or venders do not deliver or cause to be delivered such ticket as aforesaid, and so countersigned by a meter as aforesaid, to the purchaser or purchasers of such coals, or to his, her, or their servant or servants, before any part of such coals are unloaded, every such vender shall, for every such offence, forfeit and pay any sum not exceeding twenty pounds; and in case the carman, driver of, or other person attending any such cart, waggon, or other carriage laden with any such coals, to whom any such ticket shall have been given, by or by the orders of the vender, in order to be delivered to the purchaser, shall (having so first received the same from the vender, or any person by the directions of the vender) refuse or neglect to deliver such ticket to the purchaser or purchasers of such coals, or to his, her, or their servant or servants, before any part of such coals shall be unloaded, such carman, driver, or other person so offending shall, for every such offence, forfeit and pay any sum not exceeding twenty pounds."

Coals to be sold either by weight, or by the chaldron or bushel.

Sect. 124. "That all coals whatsoever sold within any of the said several and repective limits of this act, save and except only such coals as shall be sold by weight in manner aforesaid, shall be sold either by the chaldron, such chaldron to consist of thirty-six of such bushels so heaped up as aforesaid, or by the sack, each sack containing three such bushels so heaped up as aforesaid, or else by such bushel as aforesaid, or by the half bushel, peck, or half peck: provided such smaller measure shall be some aliquot part of such bushel measure; any thing herein contained to the contrary notwithstanding."

Principal meters for London to produce upon oath, before the court of common council, their accounts of metage monies, and to pay the same into the chamber of the city.

Sect. 125. "That all and every the principal meter and meters for the time being for the said city of London and the liberties thereof, and between Tower Dock and Limehouse Hole, in the county of Middlesex, shall, and each and every of such principal meter or meters for such district is and are respectively hereby directed and required to produce and deliver in, once or oftener in every month, before the lord mayor, aldermen, and commons of the said city of London, in common council assembled, or before such persons as the said mayor, aldermen, and commons shall for that purpose appoint, a full, true, and accurate account or accounts, in writing, verified by affidavit, of all and every the sum and sums of money which shall from time to time, by virtue of this act, be received by such principal meter or meters for such district, for any metage, inspection, or remeasurement of any coals which shall be measured, remeasured, or inspected by any such principal meter or meters, or by any labouring meter or meters within such district; and every such account so directed to be produced as aforesaid shall, previously to the production thereof, be verified upon oath by such principal meter or meters for

such district, before the said lord mayor, or any of the aldermen of the said city of London, and which oath any such magistrate is hereby authorised to administer; and every such principal meter or meters for such district shall, and he and they is and are hereby also directed and required, once or oftener in every month, to pay into the chamber of the said city of London all and every such sum and sums of money which shall be so from time to time, by virtue of this act, received by such principal meter or meters for any such metage, inspection, or remeasurement of any coals within such district, any thing herein contained to the contrary notwithstanding; and if any such principal meter for such district shall not, once or oftener in every month, produce and deliver in before such persons as aforesaid, such account so verified as aforesaid, or shall not, once or oftener in every month, pay into the chamber of the said city of London all and every such sum or sums of money as shall be so from time to time, by virtue of this act, received by such principal meter for any such metage, inspection, or remeasurement of any such coals as aforesaid, then and in every such case every such principal meter shall, for every such offence, forfeit and pay any sum not exceeding twenty pounds."

Application of monies from metage in London district.

Sect. 126. "That out of the monies which shall be so from time to time paid into the said chamber of the said city of London, by such respective principal meters for the said city of London and liberties thereof, and between Tower Dock and Limehouse Hole, in the county of Middlesex, it shall and may be lawful to and for the said lord mayor, aldermen, and commons of the said city of London in common council assembled, and the said mayor, aldermen, and commons, are hereby directed and required, from time to time, to pay or cause to be paid such yearly or other salary, or respective salaries, to each and every of such principal land coal meter or principal land coal meters, for the time being, for the said city of London and the liberties thereof, and between Tower Dock and Limehouse Hole, in the said county of Middlesex, as they the said mayor, aldermen, and commons, in common council assembled, shall from time to time think reasonable; and it shall and may also be lawful to and for the said mayor, aldermen, and commons, and the said mayor, aldermen, and commons, are hereby also directed and required, out of such monies which shall be so from time to time paid into the chamber of the said city, to pay or cause to be paid such weekly wages to each and every of the labouring land coal meters for the said city of London and the liberties thereof, and between Tower Dock and Limehouse Hole, in the said county of Middlesex, as the said mayor, aldermen, and commons, in common council assembled, shall from time to time think proper to appoint: provided nevertheless, that such weekly wages so to be appointed for such labouring land coal meters shall not at any time be less than twenty shillings per week for each and every of such labouring meters: and it shall and may also be lawful to and for the said mayor, aldermen, and commons, in common council assembled, and they are hereby also directed and required to pay, or cause to be paid out of such monies which shall be so from time to time paid into the chamber of the said city by such respective principal meters for such district, the costs, charges, and expenses of maintaining, supporting, and repairing the said land coal meter's office for the city of London, and between the Tower of London and Limehouse Hole, in the county of Middlesex; and such yearly or other salary, or respective salaries, as the said mayor, aldermen, and commons, in common council assembled, shall think reasonable to be paid to each and every of such clerk and clerks, as the said mayor, aldermen, and commons, in common council assembled, shall think proper or necessary to employ in such office, and the costs, charges, and expenses of coals, candles, and furniture for such land coal meter's office, and all such other house expenses, relating to such office, as to the said mayor, aldermen, and commons, in common council assembled, shall seem reasonable and proper: and in case and when and as the aforesaid monies, which shall be so from time to time paid into the chamber of the said city of London by such respective principal meters for such district, shall be more than sufficient for maintaining, repairing, and supporting the said land coal meter's office for the said city of London and the liberties thereof, and between the Tower

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before the mixing thereof, to a quantity not exceeding five chaldrons, wharf measure, then and in every such case such vender or dealer so offending shall, for every such offence, forfeit and pay any sum not exceeding 20*l.*"

47 Geo. 3, c. lxviii.

Different coals may be kept in same warehouse in distinct parcels;

Sect. 131. "That nothing herein contained shall extend, or be taken or construed to extend, so as to hinder or prevent any such vender or venders of, or dealer or dealers in coals, within any of the several and respective limits of this act, from laying or storing up for sale in any warehouse or repository, or other convenient place, any quantities whatsoever of coals, of as many different sorts, names, or descriptions, as he, she, or they shall respectively think fit, provided such different sorts, names, or descriptions of coals be respectively laid and kept in such warehouse or other repository in separate and distinct parcels, and wholly unmixed, and provided no such coals be sold by any other than wharf measure, or without the true name or names of every or any of such sorts of such coals as shall be sold and sent from any such warehouse or other repository being expressed in the vender's ticket to be sent therewith to any purchaser or purchasers; and if any such vender or venders, or dealer or dealers in coals, shall sell or cause to be sold, by any other than by wharf measure, any coals out of any such warehouse or other repository, in which two or more different sorts of coals may be so stored or deposited, or shall not insert, or cause to be inserted, in the vender's ticket to be sent with such coals, the true name or names of each and every sort of such coals as shall be sent from or out of any such warehouse, repository, or other place, to any purchaser or purchasers, then and in every such case, every such vender or dealer so offending, shall, for every such offence, forfeit and pay any sum not exceeding 50*l.*"

but must be sold by wharf measure, and the name expressed in vender's ticket.

Provisions respecting sheds or warehouses where less coals are sold than half a chaldron.

Sect. 132. "That nothing herein contained shall extend, or be construed to extend, so as to hinder or prevent any vender or venders of, or dealer or dealers in coals, within the several and respective limits of this act, who shall keep any coal shed, shop, or warehouse, where coals shall be sold in quantities not greater than half a chaldron, and where no coals shall ever be sold in any quantities exceeding half a chaldron, from mixing or heaping up together, or causing to be mixed or heaped together, in such shed, shop, or warehouse, any quantity or quantities whatsoever of any and as many different sorts, names, or descriptions of coals, as he, she, or they shall respectively think fit, or from selling or causing to be sold such coals when so mixed: provided nevertheless, that such coals when so mixed shall be sold as and for and by the name of 'mixed coals,' and shall not be sold in any quantities exceeding half a chaldron, nor shall be sold at any other place than at the shop, shed, or warehouse, where the same shall have been so mixed."

Sale of coals already mixed not prevented.

Sect. 133. "That nothing herein contained shall extend, or be construed to extend, so as to hinder or prevent any vender or venders of, or dealer or dealers in coals, within the said several and respective limits of this act from selling or causing to be sold any mixed coals whatsoever, which shall have been mixed at any time before the 1st day of September, 1807: provided nevertheless, that such coals shall be sold as and for and shall be described in the vender's ticket to be sent therewith, as and for and by the name of 'warehouse coals.'"

Court of aldermen may make bye-laws to regulate the market.

Sect. 134. "That it shall and may be lawful to and for the court of lord mayor and aldermen of the city of London, from time to time, to make, ordain, and establish such orders, rules, and bye-laws, and from time to time to amend, alter, or repeal the same, or any of them, for the regulating, governing, and managing the said market, and all erections, buildings, works, matters, and things thereunto belonging, and also for the regulating of all officers to be employed in such market, and all other persons coming thereto, or transacting any business therein, as to the said court of lord mayor and aldermen shall seem just and reasonable; and also from time to time, as occasion shall require, to repeal, amend, and alter such rules, orders, and bye-laws, and also to fix and appoint certain reasonable penalties or forfeitures for the non-observance or non-performance, or other breach of any such rule, order, or bye-law, not exceeding the sum of 5*l.* for any one offence; and all such penalties and forfeitures shall and may be recovered by such ways and

47 Geo. 3, c. lxviii.

the name of any or either of such three respective sorts of which such coals so sold shall be mixed or compounded.'

Clearings of coa barges when reduced to five chaldrons, wharf measure, may be mixed together;

Sect. 129. "That when the coals laden on board any lighter or lighters, barge or barges, or other craft or crafts, lying at or near any wharf or wharfs, or other place or places, within the said port of London, shall be so reduced in quantity as that the whole of the coals contained in each and every one such lighter, barge, or craft, shall not exceed five chaldrons, wharf measure, it shall and may be lawful to and for any vender or venders of, or dealer or dealers in coals, within the said port of London, or within the said respective cities of London and Westminster, or the respective liberties thereof, or within such part or parts of the respective counties of Middlesex, Surry, Kent, and Essex, as is or are situate within the distance of twenty-five miles from the Royal Exchange aforesaid, to mix and lay up, or cause to be mixed and laid up, from time to time, in one heap or parcel, in any warehouse, repository, or other convenient place, all or any of such remaining parcels or clearings of coals, out of each and every or any of such lighter or lighters, barge or barges, or other craft or crafts; but no such remaining quantities of coals, when so mixed or heaped up together, or any part or parts thereof, shall, after the mixing thereof, be sold or sent to any purchaser or purchasers, unless such coals be sold by wharf measure, nor unless such coals be sold, and be described in the vender's ticket to accompany the same, as and for and by the name of 'coals of different sorts mixed;' and if any such vender or venders of, or dealer or dealers in coals, shall mix or lay up in any warehouse or other repository, any two or more remaining quantities or clearings of coals out of any such lighters, barges, or other craft, any or either of which remaining quantities or clearings shall exceed five chaldrons wharf measure; or if any such vender or venders of, or dealer or dealers in coals, shall sell or cause to be sold or sent to any purchaser or purchasers, any such remaining coals so mixed and cleared out of any such lighters, barges, or other craft, or any part or parts of such mixed remainders of coals, by, or as, or for any other measure than wharf measure, or without such coals so sold or sent being sold, and also described in the vender's ticket to accompany the same, as and for and by the name of 'coals of different sorts mixed,' then and in every such case every such vender or dealer so offending shall, for every such offence, forfeit and pay any sum not exceeding 50*l.*"

but to be sold and described as 'coals of different sorts mixed.'

Penalties on venders disobeying.

Sect. 130. "That no such vender or venders of, or dealer or dealers in coals, within the said port of London, or within the said respective cities of London and Westminster, or the respective liberties thereof, or within such part or parts of the respective counties of Middlesex, Surry, Kent, and Essex, as is or are situate within the distance of twenty-five miles from the Royal Exchange aforesaid, shall mix or cause to be mixed for sale, or shall knowingly sell, or cause to be sold when mixed, any coals whatsoever of two or more different sorts, names, or descriptions, unless such coals of such two or more different sorts, names, or descriptions shall consist either wholly of Wall's End, Temple's Wall's End, Hebburn Main, Heaton Main, Biggs Main, South Hebburn, Willington, Killingsworth, and Percy Main coals, or wholly of some two or more of such nine sorts of coals, or wholly of Blythe, Hartley, and Coupen Main coals aforesaid, or wholly of any two of such three sorts of coals, or otherwise wholly of coals which shall have been cleared out of any such lighters, barges, or other craft, whose respective loadings shall have been each reduced, before the mixing thereof, to a quantity not exceeding five chaldrons, wharf measure; and if any such vender or dealer shall mix or cause to be mixed for sale, or shall knowingly sell, or cause to be sold when mixed, any coals whatsoever of two or more different sorts, names, or descriptions, which coals, when so mixed, shall not consist either entirely of Wall's End, Temple's Wall's End, Hebburn Main, Heaton Main, Biggs Main, South Hebburn, Willington, Killingsworth, and Percy Main coals, or entirely of some two or more of such nine sorts of coals, or entirely of Blythe, Hartley, and Coupen Main coals, or entirely of some two of such three sorts of coals, or entirely of coals that shall have been cleared out of any such lighters, barges, or other craft, whose respective loadings shall have been each reduced,

No other coals to be mixed.

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47 Geo. 3, c. lxviii.

any person or persons, in such manner as the said committee or committees shall think fit; and that no person or persons who shall be so employed or contracted with, in, or about, or for any of the purposes of this act, nor any person or persons to be set to work by or under them, or any of them, shall, for any act done or to be done in or about the premises, be subject or liable to any action, indictment, or information, upon the statute made in the fifth year of her Majesty Queen Elizabeth, intituled, 'An Act containing divers orders for artificers, labourers, servants of husbandry, and apprentices,' or be liable to be sued for any breach of the custom of London, or for any penalty inflicted by any bye-law of the said city."

5 Eliz. c. 4.

Securities to be entered in a book.

Sect. 140. "That the chamberlain of the said city of London for the time being shall enter in a book or books kept for that purpose, all securities for monies borrowed, or annuities granted, in pursuance of the said acts of the forty-third and forty-fourth years of the reign of his present Majesty, or either of such acts, and all assignments and transfers thereof, expressing in words at length the names, surnames, additions, places of abode, and other descriptions of all such persons as shall from time to time be entitled to such securities, and the sums received upon such securities, and the days whereon the said annuities respectively shall be payable, of which no entry or entries have or hath been made in any book or books; and shall also keep or continue to keep and preserve all and every book or books in which any entry or entries relating to any such monies have been already made, in pursuance of the said acts of the forty-third and forty-fourth years of the reign of his present Majesty, or either of such acts respectively; and all and every person and persons entitled to or interested in such annuities shall, at all seasonable times in the day, have access, with free liberty to inspect all and every such books or book, without fee or reward."

The chamberlain to keep the books provided under 43 & 44 Geo. 3.

Sect. 141. "That the chamberlain of the said city for the time being shall keep, or continue to keep and preserve, all and every book or books in which any monies which, by virtue of the said recited acts of the forty-third and forty-fourth years of the reign of his present Majesty, or either of such acts, shall have been raised or borrowed upon the credit of the duty of coals granted by such acts respectively, shall have been entered or set down, or wherein also any monies paid and disbursed out of the monies received, or the time when, the occasions for which, or the names of the persons to whom the same may have been so paid, shall have been entered and set down in pursuance of such acts or either of them."

Chamberlain to keep accounts of duty on coals, cinders, and culm.

Sect. 142. "That the chamberlain of the said city for the time being shall keep one or more book or books, in which all the monies to be received in respect of the aforesaid duty upon coals, cinders, and culm, by virtue of this act, shall from time to time be entered and set down; and wherein also all the monies to be paid and disbursed out of the monies already received by virtue of the said two last mentioned acts, or either of them, or to be received by virtue of this act, shall from time to time be entered and set down; and such entries shall specify the times when, the occasions for which, and the names of the persons to whom the same shall be so paid."

City to lay accounts before parliament.

Sect. 143. "That the said mayor, aldermen, and commons shall, once in each and every year or oftener, if required, lay before both houses of parliament an account of the produce of the said duty of 1*d.* per chaldron or ton, hereby granted and made payable upon coal, cinders, and culm, and also of all receipts and disbursements received or paid for or on account of the said market, and also an account of the quantity of coals sold in each and every such market, and of the prices thereof."

Chamberlain to keep account of the metage monies.

Sect. 144. "That the chamberlain of the said city for the time being shall keep one or more book or books, in which all the monies to be received by virtue of this act, in respect of the metage, inspection, or remeasurement of any coals measured, inspected, or remeasured within the said city of London and the liberties thereof, between Tower Dock and Limehouse Hole, in the county of Middlesex, shall from time time be entered and set down, wherein also all the monies to be paid and disbursed out of the monies so to be received shall from time to time be entered and set down; and such entries

means as any other penalties or forfeitures may be recovered by virtue of this act: provided always, that no such rule, order, or bye-law, be repugnant to or inconsistent with the laws of that part of the United Kingdom called England, or contrary to the directions and provisions in this act contained."

Bye-laws to be approved by one or more of the judges.

Sect. 135. "That no such order, rule, or bye-law, shall be good, valid, or effectual, nor shall any such order, rule, or bye-law, be amended, altered, or repealed, save and except such order, rule, or bye-law, or any amendment, alteration, or repeal of any such order, rule, or bye-law, shall have been submitted to, and allowed and approved of, from time to time, by the lord high chancellor of Great Britain, the lord keeper or lords commissioners of the great seal, the lord chief justice and the rest of the justices of the Court of King's Bench, the lord chief justice and the rest of the justices of the Court of Common Pleas, and the lord chief baron and the rest of the barons of the Court of Exchequer for the time being, or any one or more of them, who are and is hereby empowered and required, on request from time to time to them or him made by or on behalf of the said court of lord mayor and aldermen, to peruse and examine all such orders, rules, or bye-laws, as shall from time to time be made, amended, altered, or repealed, by the said court of lord mayor and aldermen, in pursuance of this act, and laid before them or him the said lord high chancellor, lord keeper or lords commissioners of the great seal, the lord chief justice and the rest of the justices of the Court of King's Bench, the lord chief justice and the rest of the justices of the Court of Common Pleas, and the lord chief baron and the rest of the barons of the Court of Exchequer for the time being, or any one or more of them, and to alter and amend all such orders, rules, and bye-laws, or any of them, and to allow and approve of, or disallow and disapprove of the same, or any part thereof, or to allow and approve of, or to disallow or disapprove of the repeal of the whole or any part thereof, as to them or him shall from time to time seem proper and expedient, and for doing thereof no fee or reward shall be paid or taken."

Bye-laws to be published.

Sect. 136. "That all such rules, orders, and bye-laws, so to be from time to time made, altered, amended, or repealed, by the said court of lord mayor and aldermen, shall be printed, and such rules, orders, and bye-laws, and the several alterations and amendments made therein, and the repeal thereof respectively, shall also be made public in such other manner as the said court of lord mayor and aldermen shall think proper, and shall from time to time order and direct."

Mayor, &c. to appoint committees.

Sect. 137. "That it shall and may be lawful to and for the said mayor, aldermen, and commons, in common council assembled, from time to time to appoint one or more committee or committees to manage and transact all or any of the matters or purposes, which they the said mayor, aldermen, and commons, in common council assembled, are hereby authorised and required to do, execute, or perform, which committee or committees so to be appointed shall have such or so much of the powers and authorities by this act given to the said mayor, aldermen, and commons, in common council assembled, shall think fit or proper to delegate to such committee or committees."

Persons interested not eligible.

Sect. 138. "That if any person, being a member of any such committee, shall be directly or indirectly interested or concerned in any contract which shall be made or entered into by or on behalf of such committee, for or concerning any of the works to be performed or done in pursuance of this act, or for or concerning any materials to be used or employed therein, every such contract shall be void, and the person who, being a member of such committee, shall be so interested or concerned, shall, for every such offence, forfeit and pay the sum of 100*l.*, to any person or persons who shall sue for the same."

Non-freemen may be employed.

Sect. 139. "That the committee or committees so to be appointed shall and may, and they are hereby authorised and empowered, from time to time, to employ any fit person or persons, whether free of the city or not, in or about any of the works, matters, or things, which they shall cause to be performed or done by virtue or in pursuance of this act, and to contract for the doing and performance of such works, matters, and things, or any of them, with

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47 Geo. 3, c. lxviii.

5 Eliz. c. 4.

any person or persons, in such manner as the said committee or committees shall think fit; and that no person or persons who shall be so employed or contracted with, in, or about, or for any of the purposes of this act, nor any person or persons to be set to work by or under them, or any of them, shall, for any act done or to be done in or about the premises, be subject or liable to any action, indictment, or information, upon the statute made in the fifth year of her Majesty Queen Elizabeth, intituled, 'An Act containing divers orders for artificers, labourers, servants of husbandry, and apprentices,' or be liable to be sued for any breach of the custom of London, or for any penalty inflicted by any bye-law of the said city."

Securities to be entered in a book.

Sect. 140. "That the chamberlain of the said city of London for the time being shall enter in a book or books kept for that purpose, all securities for monies borrowed, or annuities granted, in pursuance of the said acts of the forty-third and forty-fourth years of the reign of his present Majesty, or either of such acts, and all assignments and transfers thereof, expressing in words at length the names, surnames, additions, places of abode, and other descriptions of all such persons as shall from time to time be entitled to such securities, and the sums received upon such securities, and the days whereon the said annuities respectively shall be payable, of which no entry or entries have or hath been made in any book or books; and shall also keep or continue to keep and preserve all and every book or books in which any entry or entries relating to any such monies have been already made, in pursuance of the said acts of the forty-third and forty-fourth years of the reign of his present Majesty, or either of such acts respectively; and all and every person and persons entitled to or interested in such annuities shall, at all seasonable times in the day, have access, with free liberty to inspect all and every such books or book, without fee or reward."

The chamberlain to keep the books provided under 43 & 44 Geo. 3.

Sect. 141. "That the chamberlain of the said city for the time being shall keep, or continue to keep and preserve, all and every book or books in which any monies which, by virtue of the said recited acts of the forty-third and forty-fourth years of the reign of his present Majesty, or either of such acts, shall have been raised or borrowed upon the credit of the duty of coals granted by such acts respectively, shall have been entered or set down, or wherein also any monies paid and disbursed out of the monies received, or the time when, the occasions for which, or the names of the persons to whom the same may have been so paid, shall have been entered and set down in pursuance of such acts or either of them."

Chamberlain to keep accounts of duty on coals, cinders, and culm.

Sect. 142. "That the chamberlain of the said city for the time being shall keep one or more book or books, in which all the monies to be received in respect of the aforesaid duty upon coals, cinders, and culm, by virtue of this act, shall from time to time be entered and set down; and wherein also all the monies to be paid and disbursed out of the monies already received by virtue of the said two last mentioned acts, or either of them, or to be received by virtue of this act, shall from time to time be entered and set down; and such entries shall specify the times when, the occasions for which, and the names of the persons to whom the same shall be so paid."

City to lay accounts before parliament.

Sect. 143. "That the said mayor, aldermen, and commons shall, once in each and every year or oftener, if required, lay before both houses of parliament an account of the produce of the said duty of 1*d.* per chaldron or ton, hereby granted and made payable upon coal, cinders. and culm, and also of all receipts and disbursements received or paid for or on account of the said market, and also an account of the quantity of coals sold in each and every such market, and of the prices thereof."

Chamberlain to keep account of the metage monies.

Sect. 144. "That the chamberlain of the said city for the time being shall keep one or more book or books, in which all the monies to be received by virtue of this act, in respect of the metage, inspection, or remeasurement of any coals measured, inspected, or remeasured within the said city of London and the liberties thereof, between Tower Dock and Limehouse Hole, in the county of Middlesex, shall from time time be entered and set down, wherein also all the monies to be paid and disbursed out of the monies so to be received shall from time to time be entered and set down; and such entries

shall specify the times when, the occasions for which, the names of the persons to whom the same shall be paid."

47 Geo. 3, c. lxviii.

City to lay accounts before parliament.

Sect. 145. "That the said mayor, aldermen, and commons, shall, once in each and every year, or oftener if required, lay before both Houses of Parliament an account of monies to be received by virtue of this act in respect of the metage, inspection, or remeasurement of any coals within such last mentioned district, and also of all disbursements paid for or on account of the said land coal meter's office for such district."

Fines and penalties under 20*l.* recoverable before a justice. (*a*)

Sect. 146. "That all fines, penalties, or forfeitures by this act, or by virtue of the powers and authorities thereof imposed, (the manner of levying and recovering whereof is not hereby otherwise directed), not exceeding 20*l.* shall be sued for within one calendar month after the offence or offences committed; and all such fines, penalties, and forfeitures, shall be levied and recovered before any justice or justices of the peace for the county, city, or place, where the offence shall be committed; and such justice or justices is and are hereby empowered and required, upon information or complaint to him or them made, to grant a summons or warrant to bring before him or them such offender or offenders, at the time and place as shall be in such warrant specified; and if on the conviction of the offenders respectively, either on his, her, or their confession, or on the evidence of any one or more credible witness or witnesses upon oath, (which oath such justice or justices is and are hereby empowered to administer), such fine, penalty, or forfeiture, shall not be forthwith paid, the same shall be levied by distress and sale of the goods and chattels of the offender or offenders, by warrant under the hand and seal of such justice or justices, and the overplus of the money (if any) raised by such distress and sale, after deducting the fine, penalty, or forfeiture, and the costs and charges of making such distress and sale, shall be rendered to the owner of the goods and chattels so distrained; and for want of distress, or in case the fine, penalty, or forfeiture, shall not be forthwith paid, it shall and may be lawful to and for such justice or justices to commit every such offender to the common gaol or house of correction for the county, city, or place where the offence shall be committed, there to remain without bail or mainprize, for any time not exceeding six calendar months, unless such fine, penalty, or forfeiture, and all reasonable charges attending the recovery thereof, shall be sooner paid; and one moiety of all such fines, penalties, and forfeitures, when paid, shall go to the informer, and the other moiety shall go to his Majesty, his heirs and successors, or shall be applied in such manner, for carrying this act into execution, as the justice or justices before whom such conviction shall take place shall direct."

Appeal to quarter sessions.

Sect. 147. "That it shall and may be lawful to and for any person or persons so convicted by any justice or justices of the peace as before-mentioned, of any offence or offences against this act, or against any rule, order, or bye-law made in pursuance thereof, to appeal to the justices of the peace assembled at the next general quarter sessions or general sessions to be holden for the county, city, or place, where such conviction shall be made, on giving immediate notice of such appeal, and finding sufficient security, to the satisfaction of such justice or justices for prosecuting the said appeal with effect, and abiding the determination of the court therein; and such justices, in such general quarter sessions or general sessions, shall hear and determine the matter of such appeal, and may either confirm or quash and annul the said conviction, and award such costs to either party as to them the said justices shall seem just and reasonable; and the decision of the said justices therein shall be final, binding, and conclusive; and no proceedings to be had or taken in pursuance of this act shall be quashed or vacated for want of

(*a*) The penalty of 20*l.* per chaldron for every chaldron of coals of one sort sold as and for another sort, inflicted by this act, is a penalty exceeding 20*l.* and therefore recoverable in the superior courts under this section. *Reeve* v. *Poole*, 4 *B. & Cres.* 155; 1 *C. & P.* 622, S. C.; *Thompson* v. *Poole*, 6 *D. & R.* 29; *aliter* for penalties under the 17th section. *Id.*

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47 Geo. 3, c. lxviii.

form only, or be removed by *certiorari*, or any other writ or process whatsoever, into any of his Majesty's courts of record at Westminster, or elsewhere; any law or statute to the contrary thereof in anywise notwithstanding."

Summoning witnesses.

Sect. 148. "That it shall and may be lawful to and for any such justice or justices of the peace, before whom any such fines, penalties, or forfeitures shall be sued for, to summon before him or them any person or persons who shall, in or by the complaint or information made to him or them, appear to be a necessary witness as to the matters thereby charged, to appear before him or them at a time and place to be specified in the summons; and in case such person so summoned shall not appear according to such summons, then, upon due proof of the service of such summons in manner aforesaid, such person so summoned, and not appearing in compliance therewith, shall forfeit and pay the sum of 20*l.*, to be levied and recovered in such manner, and by such ways and means, as is hereinbefore directed as to other penalties; and it shall and may be lawful to and for such justice or justices to cause such person to be apprehended by warrant under the hand and seal or hands and seals of such justice or justices, and to be brought before him or them, and thereupon, whether such person shall appear upon summons as aforesaid, or shall be apprehended as aforesaid, such justice or justices shall and may proceed to examine him or her upon oath as to the matter of such complaint or information; and in case such person shall refuse to be sworn, or to answer, or to give evidence therein, then and in every such case it shall and may be lawful to and for such justice or justices, by warrant under his hand and seal, or their hands and seals, to commit such person so refusing to be sworn, or to answer, or to give evidence as aforesaid, to the common gaol or house of correction of the city, county, or place, in or for which such justice or justices shall then act, there to remain for any space of time not exceeding three calendar months."

Penalty on persons guilty of perjury.

Sect. 149. "That if any person or persons, upon his, her, or their examination upon oath before any justice or justices of the peace acting in execution of this act, shall wilfully and corruptly give false evidence touching any matter or thing relating to this act, or if any person or persons shall take or make any false oath or affidavit with respect to any matter or thing relating to this act, every such person so offending, and being duly convicted thereof, shall be and is hereby declared to be subject and liable to such pains and penalties as, by any law in force and effect, persons guilty of wilful and corrupt perjury are subject and liable to."

Recovering penalties above 20*l.*

Sect. 150. "That all fines, penalties, or forfeitures, exceeding the sum of 20*l.*, by this act imposed, for any offence or offences committed against this act, shall and may be recovered by action of debt, bill, plaint, or information, in any of his Majesty's courts of record at Westminster, wherein no essoin, protection, wager of law, or any more than one imparlance shall be allowed, by the person or persons who shall inform and sue for the same, within three calendar months after the offence or offences shall be committed; and one moiety of all such fines, penalties, or forfeitures, shall be to and for the use of our sovereign lord the King, his heirs and successors, and the other moiety thereof (together with double costs of suit) shall be to and for the use of the person or persons who shall inform or sue for the same."

Distress not unlawful for want of form, nor parties trespassers *ab initio*.

Sect. 151. "That when any distress shall be made for any sum or sums of money to be levied by virtue of this act, the distress itself shall not be deemed unlawful, nor shall the party or parties making the same be deemed a trespasser or trespassers on account of any defect or want of form in the summons, conviction, warrant of distress, or the proceedings relating thereto, nor shall the party or parties be deemed a trespasser or trespassers *ab initio* on account of any irregularity which shall be afterwards committed by the party or parties distraining; but the person or persons aggrieved by such irregularity shall and may recover full satisfaction for the special damage sustained in an action on the case."

Form of conviction.

Sect. 152. "And for the more easy and speedy conviction of offenders against this act, be it further enacted, that every justice of the peace, before

whom any person shall be convicted of any offence against this act, shall and may cause the conviction to be drawn up according to the following form; *viz.*

"*BE it remembered, that on the day of in the year of our Lord A. B. is convicted before me one of his Majesty's justices of the peace for* [here specify the offence and the time and place when and where committed, as the case may be] *contrary to an act of parliament made in the forty-seventh year of the reign of King George the Third, intituled* [here insert the title of this act]. *Given under my hand and seal the day and year first above written.*
C. D."

Plaintiff not to recover after tender of amends.

Sect. 153. "That no plaintiff or plaintiffs shall recover in any action to be commenced against any person or persons for any thing done in pursuance of this act, unless notice in writing shall have been given to the defendant or defendants twenty-one days before such action, signed by the attorney for the plaintiff or plaintiffs, specifying the cause of such action; nor shall the plaintiff or plaintiffs recover in any such action if tender of sufficient amends hath been made to him, her, or them, or to his, her, or their attorney, by or on the behalf of the defendant or defendants before such action brought; and in case no such tender shall have been made, it shall and may be lawful to and for the defendant or defendants in any such action, at any time before issue joined, to pay into court such sum of money as he, she, or they shall think fit, whereupon such proceeding, order and judgment shall be made and given in and by such court, as in other actions where the defendant is allowed to pay money into court."

Limitation of actions.

Sect. 154. "That no action or suit shall be commenced against any person or persons for any thing done in pursuance of this act after six calendar months next after the fact committed; and every such action or suit shall be brought and tried in the county or place where the cause of action shall arise; and if any such action or suit shall be brought before twenty-one days' notice shall have been given, or after a sufficient satisfaction made or tendered as aforesaid, or after the time limited for bringing the same as aforesaid, or shall be brought in any other county or place than as aforesaid, then the jury shall find for the defendant or defendants, and upon such verdict, or if the plaintiff or plaintiffs shall be nonsuited, or discontinue his, her, or their action or suit, after the defendant or defendants shall have appeared, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, then the defendant or defendants shall recover double costs, and have such remedy for recovering the same as any defendant hath for costs of suit in other cases by law."

Commencement of act.

Sect. 165. "That this act shall commence and take place from and after the 4th day of October, 1807."

Public act.

Sect. 166. "That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices and others, without being specially pleaded."

"THE SCHEDULE TO WHICH THIS ACT REFERS.

PAYMENTS payable to the Deputy Sea Coal or Ship Meters, by Ship Owners, Coal Buyers or Dealers.

By the Ship Owner or Owners.

The sum of three shillings per twenty chaldrons for working at the vat, and so on in proportion for any greater or less quantity.

The sum of three shillings per day for every day that the meters shall be on board of any ship or vessel for the purpose of measuring coals thereout, in lieu of provisions and drink.

The sum of ten shillings and sixpence for travelling expenses, when employed in the admeasurement of coals in any ship or vessel below Greenwich, in the county of Kent.

The sum of one guinea, upon the delivery, for each and every ship or other

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47 Geo. 3, c. lxviii.

vessel, in the room of all allowances in coals, and all other gratuities, by or on the behalf of the ship owners.

By the Buyer or Buyers of, or Dealer or Dealers in, Coals.

For making out and delivering to him, her, or them, or his, her, or their servant or servants, agent or agents, a general bill or account of the coals admeasured or delivered out of any ship or other vessel, on the account of any buyer or buyers, or dealer or dealers in coals, for each and every such bill or account, the several sums following; that is to say, the sum of three pence for any quantity of coals less than fifty chaldrons, specified therein; the sum of six pence for any quantity of coals specified therein equal to fifty and less than one hundred chaldrons; and the sum of nine pence for any quantity of coals specified therein equal to one hundred chaldrons and less than two hundred chaldrons; and for two hundred chaldrons and any greater quantity, the sum of one shilling."

III. Offences as to Coals and Coal Mines.

Firing coal mines.

Death.

By the 7 and 8 Geo. IV. c. 30, s. 5, it is enacted, "that if any person shall unlawfully and maliciously set fire to any mine of coal or cannel coal, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon."

See the general clauses affecting all the provisions of this act, *post*, **Malicious Injuries to Property**, Vol. III.

This act is a re-enactment of the 10 Geo. II. c. 32, s. 6. The 10 Geo. II. is wholly repealed by the 7 and 8 Geo. IV. c. 27, except so much thereof "as relates to wild fowl."

Other offences.

The other offences, as to drowning or obstructing mines, 7 and 8 Geo. IV. c. 30, s. 6; destroying mining engines, &c. *Id.* s. 7; and injuries, by rioters, to mines, &c. *Id.* s. 8, affecting mines in general, will be found treated of under title **Malicious Injuries to Property**, *post*, Vol. III.

As to stealing from mines, see 7 and 8 Geo. IV. c. 29, s. 37, *post*, **Larceny**, and **Mines**, Vol. III.

Conspiracy to raise price.

Independently of the offence at common law, by the 28 Geo. III. c. 53, s. 2, it is enacted, that any number of persons united in covenants or partnerships, or in any way whatsoever, consisting of more than five persons, for purchasing coals for sale or making regulations with respect to the manner of carrying on the said trade in coals, shall be deemed an unlawful combination to advance the price of coals, and every person concerned therein shall be liable to an indictment or information.

Disputes between colliers.

As to disputes between colliers, keelmen, pitmen, and miners, and their masters in general, see *post*, **Servants**, Vol. V.

Colliers and others working coal contrary to their agreements; or not fulfilling their contracts.

By 39 and 40 Geo. III. c. 77, s. 3, reciting "whereas it often happens that colliers and miners, disregarding their agreements, wilfully and obstinately work coal and iron stone in a different manner to what they stipulated, or otherwise abandon the agreement they have entered into, to the great and lasting prejudice of their employers," it is enacted, "that if any person or persons making any bargain, or entering into any contract or agreement in writing, for raising or getting any coal, culm, iron stone, or iron ore, shall wilfully, and to the prejudice of the owner, raise, get, or work, or cause to be raised, got, or worked, any such coal, culm, iron stone, or iron ore, in a different manner to his or their stipulations in respect thereto, and contrary to the directions, and against the will of the owner, or his agent or agents having the care thereof, or shall desist or refuse to fulfil the engagements they have entered into, every person or persons so offending, and being thereof convicted, either by the confession of the party offending, or upon the oath of one or more credible witness or witnesses, before one or more of his Majesty's justices of the peace for the county wherein such offence shall have been committed, shall, for every such offence, on complaint of the owner or owners, or his or their agent or agents, and not otherwise,

Penalty.

forfeit and pay such sum of money, not exceeding 40*s.*, as to such justice or justices shall seem meet, together with the charges previous to and attending such conviction, to be ascertained by such justice or justices who shall convict the offender or offenders; and upon non-payment thereof, such justice or justices shall commit the offender or offenders to the common gaol of the county or place where the offence shall be committed, without bail or mainprize, for any time not exceeding six months, or until the penalty and charges shall be paid; and upon such conviction, every such bargain, contract or agreement shall become void."

30 & 40 Geo. 3, c. 77.

Sect. 4. "And whereas the owners and lessees of coal, iron stone or iron ore, contracting to get the same raised by weight, are often under the necessity of advancing money to the colliers and miners upon the measure thereof in heaps, at or near the colliery or mine work, before the same can be carried to be weighed, and great frauds are practised in the walling and stacking of such coal, iron stone and iron ore, by which the colliers and miners obtain money beyond what they earn or are able to repay, and miners often defraud each other by conveying away iron stone from one heap into another;" it is therefore enacted, "that if any person or persons shall wall or stack, or cause to be walled or stacked, any coal, iron stone, or iron ore, in any false or fraudulent manner, with an intent to deceive his or their employer or employers, or if any person or persons shall take and remove any iron stone or iron ore, with intent to defraud the person or persons who shall have raised the same, and shall be thereof convicted, either by the confession of the party offending, or upon the oath of one or more credible witness or witnesses, before any one or more justice or justices of the peace for the county wherein such offence shall have been committed, it shall and may be lawful for such justice or justices to commit any such person to the house of correction or common gaol for the same county, for any time not exceeding three months."

Fraudulently walling or stacking coal, iron stone, &c.

(No. 1.)

[Commencement as usual, as *ante*, p. 8, (No. 1.)] *on, &c. at, &c. unlawfully, maliciously, and feloniously, did set fire to a certain mine of coal* [or, *cannel coal*] *the property of A. B., there situate: against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual, *ante*, p. 8, to the end.]

Commitment on 7 & 8 Geo. 4, c. 30, s. 5, for setting fire to a coal mine.

(No. 2.)

—— *THE jurors for our Lord the King upon their oath present, that C. D., late of, &c. on, &c. with force and arms, at, &c. unlawfully, maliciously, and feloniously did set fire to a certain mine of coal* [or, *cannel coal*] *the property of A. B., there situate; to the great damage of the said A. B., against the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity.*

Indictment for a like offence.

Cock-Fighting, illegal. *See* Gaming, Vol. II.

Cocoa-Nuts. *See* Excise, Vol. II.

Coffee. *See* Excise, Vol. II.

COUNTERFEITING.

Coin. (a)

Origin of the word.

COIN, in French, signifieth a corner, and from thence hath its name, because in ancient times money was square with corners, as it is in some countries to this day. 1 *Inst.* 207.

The word doth properly signify a wedge, as the Latin *cuneus;* and hath a verb belonging to it in the several languages; and is translated to lawful money; either from the form of a wedge, ingot, or lingot, (*linguetta,*) in which bullion was transported from all antiquity, or else from the instrument, a wedge or chisel, with which in trade these lingots were occasionally cut to the weight required, as they are at this day in the East Indies with shears.

As the legislature has announced its intention to amend and consolidate the present laws relative to coining, it is not deemed worth while to treat largely on this extensive subject.

Herein of,

I. *Counterfeiting Coin*, 722.

II. *Impairing Coin*, 730.

III. *Importing into the Kingdom Counterfeit or Light Money*, 731.

IV. *Exporting Counterfeit Money*, 733.

V. *Frauds relating to Bullion, and Counterfeiting Bullion*, 733.

VI. *Making, Mending, or having in Possession any Instruments for Coining*, 734.

VII. *Receiving, Uttering, or Tendering Counterfeit Coin of this Realm*, 738.

VIII. *Uttering or Tendering Foreign Counterfeit Coin*, 743.

IX. *Receiving or Paying for the Current Coin any more or less than its lawful value*, 745.

X. *Tokens*, 746.

XI. *Forms as to*, 753.



I. Counterfeiting.

Counterfeiting coin.

The descriptions of coin against the counterfeiting of which several enactments have been passed, are;—1st, The King's Money, properly so called;—2d, Foreign Gold, Silver, or Copper Coin;—and, 3dly, The Copper Money of this Realm. These we will consider in the above order. We shall next proceed to enquire into what is a sufficient counterfeiting, and the evidence, &c. and, lastly, as to the searching for and securing base coin, &c.

(1.) The King's money.

(1.) THE KING'S MONEY]—The statute 25 Edw. III. st. 5, c. 2, declares it to be *high treason* "if a man *counterfeit the King's money.*" And as there are no accessaries in treason, it follows that all who, by furnishing the necessary tools, or by any other means, aid or assist in the coining are guilty of the offence as much as he whose hand is employed. *Kel.* 33.

From Lord Hale's researches on the subject of coin, it appears that the coin or money of this kingdom consists properly of gold or silver only, with a certain alloy, constituting what is called *sterling*, coined by the King's authority; and to such money only does the above stat. 25 Edw. III. refer when it mentions "*the King's money*" generally. And, therefore, it seems that where any statute names *money* generally, it must be taken to have the same meaning. 1 *East's P. C.* 149.

(a) See in general as to this offence, 1 *Russ. Cr. & Misd.*; 2 *Chit. C. L.*

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The weight, alloy, impression, and denomination of money made in this kingdom are generally settled by indenture between the King and the master of the mint; but the recent statute 56 Geo. III. c. 68, s. 4, has provided, with respect to the new silver coinage, that the bullion shall be coined into silver coins of a standard and fineness of eleven ounces two pennyweights of fine silver, and eighteen pennyweights of alloy in the pound troy, and in weight after the rate of sixty-six shillings to every pound troy, whether the same be coined in crowns, half-crowns, shillings or sixpences, or pieces of a lower denomination.

56 Geo. 3, c. 68.

Proclamation not necessary.

A proclamation has been sometimes made as a more solemn manner of giving coin currency. But this in general cases is certainly not necessary, and in prosecutions for coin need not be proved. Neither is it necessary in the same case to produce the indentures, though it may be of use in case of any new coin, with a new impression, not yet familiar to the people, to produce either the indentures or one of the officers of the mint cognizant of the fact, or the stamps used, or the like evidence. By the act 37 Geo. III. c. 126, s. 1, relating to the copper coinage, *post*, 726, the King's proclamation is made necessary, and therefore seems to be required in proof of any indictment upon that statute. But in general, whether the coin, upon a question of counterfeiting or impairing it, be the King's money or not is a mere question of fact, which may be found upon evidence of common usage or notoriety. 1 *East's P. C.* 149.

Any coin once legally made and issued by the King's authority continues to be the current coin of the kingdom until recalled, notwithstanding any change in the authority which constituted it.

Penalty on persons marking the edges of any counterfeit coin.

The offence of high treason may also be committed under the stat. 8 & 9 Will. III. c. 26, s. 3, made perpetual by 7 Anne, c. 25, which enacts, "that if any person or persons (other than the persons employed in his Majesty's mint or mints, or such as shall have authority from the lords commissioners of the treasury, or lord high treasurer of England for the time being,) shall, after the said 15th day of May, mark on the edges any the current coin of this kingdom, or if any person or persons whatsoever shall mark on the edges of the diminished coin of this kingdom, or any counterfeit coin resembling the coin of this kingdom, with letters or grainings, or other marks or figures like unto those on the edges of money coined in his Majesty's mint, every such offence shall be, and is hereby adjudged to be, high treason, and the offender and offenders therein, his and their counsellors, procurers, aiders, and abettors, being thereof convicted or attainted according to the order and course of the law of this realm, shall suffer death as in case of high treason."

By 7 Anne, c. 25, the prosecution under this act must be commenced in six months after the offence.

Penalty on altering the impression of shillings, &c.

The penalty of high treason is also incurred by *making shillings or sixpences to resemble guineas or half-guineas, and making halfpence or farthings to resemble shillings or sixpences.* This is provided by stat. 15 Geo. II. c. 28, s. 1, which enacts, "that if any person whatsoever shall, after the 29th day of September, in the year of our Lord 1742, wash, gild, or colour any of the lawful silver coin called a shilling or a sixpence, or any counterfeit or false shilling or sixpence, or add to or alter the impression, or any part of the impression, of either side of such lawful or counterfeit shilling or sixpence, with intent to make such shilling resemble or look like, or pass for a piece of lawful gold coin called a guinea; or with intent to make such sixpence resemble or look like, or pass for a piece of lawful gold coin called a half-guinea; or shall file, or any wise alter, wash, or colour any of the brass monies called halfpennies or farthings, or add to or alter the impression, or any part of the impression, of either side of an halfpenny or farthing, with intent to make a halfpenny resemble or look like or pass for a lawful shilling, or with intent to make a farthing resemble or look like or pass for a lawful sixpence, the person and persons so offending in any of the matters aforesaid, their counsellors, aiders, abettors, and procurers, shall be, and is and are hereby adjudged to be, guilty of high treason."

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Some verbal difference is observable in the wording of some of the statutes on the subject of the coin since the Revolution. The stat. 8 & 9 Will. III. c. 26, speaks of the gold and silver coin "of this kingdom," or "current within this kingdom." The stat. 15 Geo. II. c. 28, as we have seen, expresses by name "guineas and half-guineas," "shillings and sixpences," and is consequently confined to those identical coins. In another part it speaks of counterfeit money generally. The stat. 11 Geo. III. c. 40, as to the copper coin, and the stat. 37 Geo. III. c. 126, s. 2, as to gold and silver coin, describe each as the coin of "this realm," following the words of the more ancient statutes. No stress can be laid upon such verbal differences between statutes passed in *pari materiâ*, further than that the construction which the reason of the thing points out must be such as the words are capable of receiving without violence to their proper or accepted legal signification. 1 *East's P. C.* 157.

Verbal differences in the statutes not material.

Of colouring, gilding, &c. any coin resembling the current coin.

Acts which are only preparatory to, and committed in the progress of, actually counterfeiting the coin, are made high treason by s. 4 of 8 & 9 Will. III. c. 26, which enacts, "that if any person or persons whatsoever, after the said 15th day of May, shall colour, gild, or case over with gold or silver, or with any wash or materials producing the colour of gold or silver, any coin resembling any the current coin of this kingdom, or any round blanks of base metal, or of coarse gold or coarse silver, of a fit size and figure to be coined into counterfeit milled money, resembling any the gold or silver coin of this kingdom, or if any person or persons shall gild over any silver blanks of a fit size and figure to be coined into pieces resembling the current gold coin of this kingdom, all and every such person and persons so offending, their counsellors, procurers, aiders, and abettors, shall be, and is and are hereby adjudged to be, guilty of high treason, and being convicted or attainted thereof, according to the order and course of the laws of this realm, shall suffer death as in case of high treason."

Phillips's case.

It may be observed, that on an indictment on this statute, it is incumbent on the prosecutor to show that the prosecution was commenced within three months; and that proof by parol that the prisoner was apprehended for treason respecting the coin within three months, will not be sufficient where the indictment is preferred after the three months, and the warrant to apprehend or commit is not produced. *R.* v. *Phillips*, *R. & R.* 369.

And in *Willace's case*, 1 *East's P. C.* 186, it was held, that the information and proceeding before a magistrate, and not the preferring the indictment, were the commencement of the prosecution.

All other acts relating to silver coin extended to 56 Geo. 3, c. 68.

By the stat. 56 Geo. III. c. 68, s. 17, it is enacted, "that all and every act or acts in force immediately before the passing of this act, respecting the coin of this realm, or the clipping, diminishing, or counterfeiting of the same, or respecting any other matters relating thereto, and all provisions, proceedings, penalties, forfeitures, and punishments therein contained or directed, not expressly repealed by this act, and not repugnant or contradictory to the enactments and provisions of this act, shall be and continue in full force and effect; and shall be applied and put in execution with respect to the silver coin to be coined in pursuance of the directions of this act, as fully and effectually, to all intents and purposes whatsoever, as if the same were repealed and re-enacted in this act."

The above statutes relate only to the gold and silver coin of the realm, usually called the King's money. The counterfeiting of foreign coin is also provided against by various statutes.

(2.) Foreign Coin.

(2.) FOREIGN COIN]—The counterfeiting of such as is current here was not within stat. 25 Edw. III. but was made treason for the first time by the stat. 4 Hen. VII. c. 18. But that being repealed by the stat. 1 Mary, c. 1, the same provision was revived by stat. 1 Mary, st. 2, c. 6, s. 2, which enacts, "that if any person or persons hereafter falsely forge and counterfeit any such kind of coin of gold or silver, as is not the proper coin of this realm, and is or shall be current within this realm by the consent of the Queen, her heirs, or successors; or if any person or persons at any time hereafter do falsely

Forging the coin of other realms current in this realm.

forge or counterfeit the Queen's sign manual, privy signet, or privy seal; that then every such offence shall be deemed and adjudged high treason. And the offender therein, their counsellors, procurers, aiders, and abettors, being convicted according to the laws of this realm of any of the said offences, shall be likewise deemed and adjudged traitors against the Queen, her heirs and successors, and the realm, and shall suffer and have such pains of death, forfeiture of lands, goods, and chattels, and also lose the privilege of all sanctuary, as in the case of high treason is used and ordained."

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Proclamation necessary.

Proclamation by the writ of proclamation under the great seal, or a remembrance thereof, is necessary to show the consent of the crown to the currency of coin under this statute; for the coin, being foreign, will otherwise be considered as only bullion. 1 *East's P. C.* 149.

The penalty of forging coin, which is not the money of this realm, not current therein.

By the stat. 14 Eliz. c. 3, "if any person or persons hereafter falsely forge or counterfeit any such kind of coin of gold or silver as is not the proper coin of this realm, nor permitted to be current within this realm, that then every such offence shall be deemed and adjudged misprision of high treason; and the offenders therein, their procurers, aiders, and abettors, being convict according to the laws of this realm of such offences, shall be imprisoned, and forfeit such lands, goods, and chattels, as in cases of misprision of treason for concealment of high treason."

The foreign coin mentioned in these two statutes must be such as is for the most part of gold or silver. 1 *Hale's P. C.* 31.

The word aiders is intended of aiders in the fact, not aiders of the persons as receivers and comforters. *Id.* 377.

At common law this offence was only punishable as a misdemeanor.

Counterfeiting foreign gold or silver coin, felony; transportation for seven years.

But the stat. 37 Geo. III. c. 126, has now provided another punishment for the offence of counterfeiting foreign gold or silver coin *not current here*. That statute reciting, whereas the practice of counterfeiting foreign gold and silver coin, and the bringing into this realm, and uttering within the same, false and counterfeit foreign gold and silver coin, and particularly pieces of gold coin commonly called *louis d'or*, and pieces of silver coin commonly called *dollars*, hath of late greatly increased, and it is expedient that provision should be made more effectually to prevent the same, enacts, by s. 2, "that if any person or persons shall, from and after the passing of this act, make, coin, or counterfeit any kind of coin, not the proper coin of this realm, nor permitted to be current within the same, but resembling, or made with intent to resemble, or look like any gold or silver coin of any foreign prince, state, or country, or to pass such foreign coin, such person or persons offending therein shall be deemed and adjudged to be guilty of felony, and may be transported for any term of years not exceeding seven years."

By the words in this act "not permitted to be current within the realm," must be understood not permitted to be current by proclamation under the great seal. 1 *East's P. C.* 161.

Counterfeiting foreign coin not current by proclamation, but resembling copper or mixed metal coin of foreign state, a misdemeanor.

The counterfeiting of foreign coin of *copper*, or of other metal of less value than silver, *not current here*, is made a misdemeanor by stat. 43 Geo. III. c. 139, s. 3, which enacts, that "if any person shall, within any part of the United Kingdom of Great Britain and Ireland, make, coin, or counterfeit, any kind of coin not the proper coin of this realm, nor ordered by his Majesty's proclamation to be deemed current money, but resembling or made with intent to resemble any copper coin or other coin made of any metal or mixed metals of less value than the silver coin of any foreign prince, state, or country, or to pass as such foreign coin, such person shall be guilty of a misdemeanor and breach of the peace; and on conviction shall for the first offence be imprisoned not exceeding a year, and for the second offence shall be transported for seven years."

Sect. 4. No traverse to be allowed to a subsequent assizes or sessions, without cause shown to and allowed by the court.

Sect. 5 enacts, that certificates of former convictions shall be produced in cases where persons are tried for second offences.

And a penalty of not exceeding 40*s.* nor less than 10*s.* is inflicted by

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sect. 6 for every such piece of counterfeit foreign coin in possession of any person who shall have more than five pieces thereof in his custody without lawful excuse.

Sect. 7 provides that houses of suspected persons may be searched by warrant of one justice, and counterfeit coin seized, &c.

By sect. 8 proceedings not to be quashed for want of form or removed by *certiorari*.

(3.) Copper coin.

(3.) COPPER COIN]—The legislative enactments as to counterfeiting the copper coin of this realm are now to be considered.

Counterfeiting halfpence and farthings.

Lord *Hale*, speaking of copper halfpence and farthings, makes it a *quære* whether the counterfeiting of them be not treason within the statute of 25 Edw. III. but inclines to the negative. 1 *Hale*, 195, 211, 212.

Copper coin.

And with this agrees the sense of the legislature in stat. 15 Geo. II. c. 28, s. 6, which reciting, that whereas the counterfeiting of the copper coin of this kingdom is only a misdemeanor, and the punishment often very small, therefore enacteth, that if any person shall coin or counterfeit brass or copper halfpence or farthings, he, his counsellers, aiders, and abettors, shall suffer two years' imprisonment, and find sureties for their good behaviour for two years more.

And further, by stat. 11 Geo. III. c. 40, if any person shall make, coin, or counterfeit any of the copper monies of this realm, commonly called an halfpenny or a farthing; or shall buy, sell, take, receive, pay, or put off any counterfeit copper money, not melted down or cut in pieces, at or for a lower rate or value than by its denomination it doth import or was counterfeited for, he shall be guilty of felony [but within clergy]. And one justice, on complaint upon oath that there is just cause to suspect that any person hath been concerned in counterfeiting the copper monies of this realm, may by his warrant cause the dwellinghouse, room, workshop, outhouse, yard, garden, or other place belonging to such suspected person, to be searched for tools and implements for coining such copper monies; and if any such tools or implements shall at any time be found hid or concealed in any place so searched, or be found in the custody of any person whatsoever not then employed in the coining of money in his Majesty's mint, nor having the same by some lawful authority, it shall be lawful for any person whatsoever discovering the same to seize such tools or implements, and carry the same forthwith to a justice, who shall cause the same to be secured and produced in evidence against any person who shall be prosecuted for any the offences aforesaid, in some court proper for the determination thereof; and after they shall have been produced in evidence, as well the same so produced as the other so seized and not produced in evidence, shall forthwith, by order of the court, or by order of a justice, if there shall be no trial, be defaced and destroyed, or otherwise disposed of as such court or justice shall direct.

Searching suspected places for it.

It may now be a question whether, under this statute, it is not optional to prosecute either for a misdemeanor, as the offence is made by the stat. 15 Geo. II. or for a felony as it is made by that of the 11 Geo. III. since the provisions of both statutes are extended to the new copper coinage. And yet such an option, without varying circumstances, is unusual and incongruous with the general rule of law, that the misdemeanor is merged in the felony. 1 *East's P. C.* 162.

The punishment under this statute appears to be only a year's imprisonment (*a*); founded on the general stat. of the 18 Eliz. c. 7, s. 3, which provides that upon allowance of clergy, the offenders may be imprisoned for any time not exceeding a year. 1 *East's P. C.* 162; 1 *Russ.* 58.

37 Geo. 3, c. 126.

And by stat. 37 Geo. III. c. 126, s. 1, so much of the above acts of 15 Geo. II. c. 28, and 11 Geo. III. c. 40, and all other acts concerning the copper monies commonly called an *halfpenny* and a *farthing* or any other copper money of this realm, shall extend to all copper money which shall be coined and issued by order of his Majesty and shall be ordered by his procla-

(*a*) Mr. Christian, in a note on Blackstone, Vol. IV. p. 100, states that this is a "remarkable error," but does not suggest any emendation.

mation to be taken as current money; and all the provisions in such acts shall extend to all such other copper money as aforesaid.

So that, upon an indictment for counterfeiting any other piece of copper money but a halfpenny or farthing, it seems necessary that the proclamation should be produced in evidence.

WHAT IS A COUNTERFEITING WITHIN THE ABOVE PROVISIONS, &c.]—It will be necessary now to inquire into the questions which have arisen as to what is a sufficient counterfeiting within these statutes: as to the degree of guilt attached to accomplices and receivers—and as to the nature of the evidence necessary to conviction.

What is a sufficient counterfeiting.

There must be an actual counterfeiting either by the party himself or by those with whom he conspires; a mere attempt to counterfeit, such as preparing the materials or fashioning the metals, is not sufficient except in those particular instances which have been so declared by statute.

Resemblance to the true and lawful coin, a question of fact for the jury.

The monies charged to be counterfeited must *resemble the true and lawful coin*, but this resemblance is a matter of fact, of which the jury are to judge upon the evidence before them; the rule being, that the resemblance need not be perfect, but such as may in circulation ordinarily impose upon the world. Thus a counterfeiting with some little variation in the inscription, effigies or arms, done probably with intent to evade the law, is yet within it; and so is the counterfeiting in a different metal, if in appearance it be made to resemble the true coin. 1 *Hawk.* c. 17, s. 81; 1 *Russ.* 80; 1 *Hale*, 178, 184, 211, 215; 1 *East's P. C.* 163.

It is clear that there will be a sufficient counterfeiting within the statutes, when the counterfeit money is made to resemble coin, the impression on which has been *worn away by time*.

Round blanks without any impression resembling the coin in circulation worn away by time, sufficient.

In one case the shillings produced in evidence against the prisoner were quite smooth, without the smallest vestige of either head or tail, and without any resemblance of the shillings in circulation, except their colour, size, and shape; and the master of the mint proved that they were bad, but that they were very like those shillings the impression on which had been worn away by time, and might very probably be taken by persons having less skill than himself for good shillings. And the court were of opinion that a blank that is smoothed, and made like a piece of legal coin, the impression of which is worn out, and yet suffered to remain in circulation, is sufficiently counterfeited to the similitude of the current coin of this realm to bring the counterfeiters and coiners of such blanks within the statute; these blanks having some reasonable likeness to that coin which has been defaced by time, and yet passes in circulation. *Wilson's case*, *O. B.* 1783, 1 *Leach*, 285.

Not necessary that there should be an impression on the counterfeit if it resemble the common worn coin.

And in the subsequent case of *Patrick and John Welsh, Hertford Lent Assizes*, 1785, 1 *East's P. C.* 164; 1 *Leach*, 364; the point received the more solemn consideration of the twelve judges; the counsel for the prisoners having objected upon the fact of no impression of any sort or kind being discernible upon the shillings produced in evidence, that they were not counterfeited *to the likeness and similitude of the good and legal coin of this realm*. But the judges were of opinion, that it was a question of fact whether the counterfeit monies were of the likeness and similitude of the lawful current silver coin called a shilling. And the jury having so found it, the want of an impression was immaterial; because, from the impression being generally worn out or defaced, it was notorious that the currency of the genuine coin of that denomination was not thereby affected; the counterfeit, therefore, was perfect for circulation, and possibly might deceive the more readily from having no appearance of an impression; and in the deception the offence consists.

But in *Varley's case*, where the impression of money was forged on an irregular piece of metal, not rounded, without finishing it, so as not to be in a state to pass current, the offence was holden to be incomplete, although he had actually attempted to pass it in that condition. *Varley's case*, 1771, 2 *Blac. R.* 632; 1 *MS. Sum.* 46.

And where the prisoners were convicted upon a count in the indictment, framed upon stat. 25 Edw. III. c. 2, and upon the evidence it appeared, that

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no one piece of the base metal found upon the prisoners was in such a state as to make it passable, the conviction was held to be wrong. *R.* v. *Harris and Minion*, 1 *Leach*, 135. The case was referred to the judges; but the grounds of their decision are not stated in the report. And *query*, if the case was not disposed of upon a defect in the indictment. Besides the count on the 25 Edw. III. c. 2, there was another count upon the 8 & 9 Will. III. c. 26, s. 4. 1 *Russ.* 60.

What a colouring within stat. 8 & 9 Will. 3, c. 26.

As to what shall amount to a colouring within the act 8 & 9 Will. III. c. 26, s. 4, *ante*, 724, the following case has been determined by the judges.

R. v. *W. Case, Lancaster Spring Assizes*, 1795, *cor. Heath*, J. 1 *East's P. C.* 165. *William Case* was found guilty, on an indictment for traiterously colouring, with materials producing the colour of silver, a piece of base coin resembling a shilling. The prisoner was taken in the very act of making counterfeit shillings in the ordinary way, by steeping round blanks composed of brass and silver in aquafortis. The round blanks were found, some steeped in aquafortis, and some already taken out of it. They had the appearance of lead, and by rubbing they would resemble silver coin, but as they were, none would pass current. The judges, except two, thought the conviction right. They considered that the offence was complete when the piece was coloured, for it was then coloured with materials which produce the colour of silver, and that it was not necessary that the piece so coloured should be current, for the colouring of blanks was an offence within the clause.

A case under the like circumstances had been before expressly decided by the unanimous opinion of the judges to come within the statute. But there the doubt was not, as in the last instance, upon the necessity of rubbing the blank after it was taken out of the wash, in order to give it the appearance of silver, but whether the legislature did not intend such a colouring only as is altogether produced by some outward application. But they all thought that this process of extracting the latent silver, by the power of the wash, from the body to the surface of the blank, was a colouring within the words of the act. They thought, besides, that it might be charged as a colouring with silver; for the effect of the aquafortis is to corrode the base metal, and leave the silver only on the superficies, and so the copper is coloured or cased with silver. *R.* v. *Lavey and Parker, O. B. December*, 1776, 1 *East's P. C.* 166; 1 *Leach*, 153.

If there be a counterfeiting in fraud of the King, the offence within the respective statutes is complete before any uttering or attempt to utter. 3 *Inst.* 61; 1 *East's P. C.* 165.

Receivers, procurers, &c.

With respect to receivers of such as counterfeit money, considerable doubt has existed whether they are guilty of more than misprision of treason. See 1 *East's P. C.* 94.

Lord *Hale* says, that though the more probable opinion may be that such receivers are traitors, yet the more merciful opinion is against such a construction. According to the latter opinion, the case of John Conier, who was convicted upon an indictment for traitorously receiving and comforting J. F. knowing him to have traitorously counterfeited the coin, &c. was considered to be only misprision of treason, and he was at length pardoned. It is evident, however, from the statement of the reporter, that the case did not pass without doubt. And it must be admitted that the best modern authorities have adopted the stricter construction of the two; considering it as a necessary one resulting from the general rule of law, that whatever will make a man accessary before or after in felony, will make him a principal in treason; and that the stat. 25 Edw. III. having declared these offences to be high treason, the consequence follows of course.

With respect to the light in which accomplices or receivers are considered in those offences concerning the coin which amount only to felony, it is decided that they follow the general rule applicable to felony. See 1 *East's P. C.* 186.

The stat. 37 Geo. III. c. 126, does not mention procurers, who are named in the stats. 1 Mary, st. 2, c. 6, and 14 Eliz. c. 3; but the offence being

made felony, attaches to it all the incidents of felony at common law, and, consequently, may have accessaries.

But it is questioned whether they are liable to transportation, or to any other punishment than is authorised by the general act of the 18 Eliz. c. 7, s. 3, *ante*, 726.

Challenges. The prisoners are entitled to a peremptory challenge of thirty-five. *Fost.* 239.

Witnesses. It is not necessary there should be two witnesses in cases of counterfeiting the coin, as it is in other high treasons; but persons may be convicted according to the course of the common law, by one witness only. *Hale*, 318, 328.

Evidence. It is rarely the case that the counterfeiting can be proved directly by positive evidence; it is usually made out by circumstantial evidence, such as finding the necessary coining tools in the defendant's house, together with some pieces of the counterfeit money in a finished, some in an unfinished state; or such other circumstances as may fairly warrant the jury in presuming that the defendant either counterfeited, or caused to be counterfeited, or was present aiding and assisting in counterfeiting, the coin in question. Or if several conspire to counterfeit the King's coin, and one of them actually do so in pursuance of the conspiracy, it is treason in all, and they may be indicted for counterfeiting the King's coin generally. 1 *Hale*, 214.

As to counselling, aiding, and abetting. Proof that a man occasionally visited coiners; that the rattling of money was occasionally heard with them; that he was seen counting something as if it was money when he left them; that on coming to the lodgings just after the apprehension, he endeavoured to escape, and was found to have bad money about him; is not sufficient evidence to implicate him as counselling, procuring, aiding, and abetting the coining. Two women were indicted for colouring a shilling and sixpence, and a man (Isaacs) as counselling them, &c. The evidence against him was, that he visited them once or twice a week; that the rattling of copper money was heard whilst he was with them; that once he was counting something just after he came out; that on going to the room just after the apprehension, he resisted being stopped, and jumped over a wall to escape; and that there were then found upon him a bad 3*s.* piece, five bad shillings, and five bad sixpences; but upon a case reserved, the judges thought the evidence too slight to convict him. *R.* v. *Isaacs*, Hil. T. 1813; *cor. Bayley*, J.; 1 *Russ.* 62.

Securing base coin, &c. SEARCHING FOR AND SECURING BASE COIN, &c.]—Several special provisions have been made by the legislature for securing base coin and also the tools of the offenders, in order that they may be produced in evidence, and afterwards be disposed of in a proper manner.

Puncheon, dye, &c. found in the possession of any person not employed in the Mint, may be seized, and produced in evidence. By the 8 & 9 Wil. III. c. 26, s. 5, "if any puncheon, dye, stamp, edger, cutting-engine, press, flask, or other tool, instrument, or engine, used or designed for coining or counterfeiting gold or silver monies, or any part of such tool or engine, shall, at any time after the said 15th day of May, be hid or concealed in any place, or found in the house, custody, or possession of any person or persons whatsoever, not then employed in the coining of money in any of his Majesty's mints, nor having the same by any lawful authority, that then it shall and may be lawful to and for any person or persons whatsoever, discovering the same, to seize, and he and they are hereby required to seize the same, and to carry them forthwith to some justice of peace of the county, city, or place, where the same shall be so seized, and by him secured, to be produced in evidence against any person or persons who shall or may be prosecuted for any such offence, in some court of justice proper for the determination thereof, and after such time as they, or any of them, shall have been produced in evidence, as well the same so produced as the other so seized, and not made use of in evidence, and every of them, shall forthwith, by order of that court where such offender or offenders shall be tried, or by order and in the presence of such or some other justice of the peace, and in case there be no such trial, be totally defaced and destroyed; and if, after the said 15th day of May, any counterfeit or unlawfully diminished money

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shall be produced in any court of justice, either in evidence against any person or persons for any offence relating to the counterfeiting or unlawfully diminishing of money or otherwise, that then, or immediately after evidence given, the judge or judges of such court shall cause such monies to be cut in pieces in open court, or in the presence of some justice of the peace, and then to be delivered to or for such person or persons to whom the same of right shall appertain."

Justices, on complaint of persons concerned in counterfeiting coin, to cause their houses to be searched.

Persons discovering tools or instruments, may seize the same,

which shall be defaced and destroyed as justice shall direct.

And the 11 Geo. II. c. 4, s. 3, provides "that it shall and may be lawful to and for any one justice of the peace, on complaint made before him upon the oath of one credible person, that there is just cause to suspect that any one or more person or persons is or hath been concerned in counterfeiting the copper monies of this realm, by warrant under his hand, to cause the dwellinghouse, room, workshop, outhouse, yard, garden, or other place belonging to such suspected person or persons, to be searched for tools and implements for coining such copper monies; and if any such tools or implements shall at any time be found hid or concealed in any place so searched, or be found in the custody or possession of any person or persons whatsoever, not then employed in the coining of money in some of his Majesty's mints, nor having the same by some lawful authority, that then it shall and may be lawful to and for any person or persons whatsoever discovering the same, to seize, and he and they are hereby authorised and required to seize the same, and carry them forthwith to some justice of the peace of the county, city, or place where the same shall be seized, who shall cause the same to be secured and produced in evidence against any person or persons who shall or may be prosecuted for any of the offences aforesaid, in some court of justice proper for the determination thereof; and after such time as they, or any of them, shall have been produced in evidence, as well the same so produced as the other so seized and not made use of in evidence, and every of them, shall forthwith, by order of that court where such offender or offenders shall be tried, or by order of such or some other justice of the peace, in case there be no such trial, be defaced and destroyed, or otherwise disposed of, as such court, or such justice, shall direct."

Searching for counterfeit foreign coin of copper or metal of less value than silver, and the tools or implements for coining the same, is authorised by the 43 Geo. III. c. 139, s. 7.

The stats. 9 & 10 Will. III. c. 21, s. 1; 13 Geo. III. c. 71, s. 1; and 56 Geo. III. c. 68, s. 7, have been passed for the suppression of base coin, or coin inferior in value, where there is no criminal charge imputed to the persons who may happen to tender it. See 1 *Russ.* 63.

II. Impairing Coin.

Impairing coin.

The offence of impairing the coin rests on the following statutes.

Melting down.

Impairing by means of *melting down* is provided against by stat. 17 Edw. IV. c. 1, which enacts that "no person shall melt down any money of gold or silver sufficient to run in payment, upon pain of forfeiture of the value:" and again, by stat. 13 & 14 Car. II. c. 31, melting down any current silver money of the realm shall be punished with forfeiture of the same, and double the value; and if done by a freeman of a town, with disfranchisement; if by any other person, with six months' imprisonment.

Clipping, washing, or filing of *current* money, whether money of this or any other realm.

And impairing by means of *clipping*, *washing*, *rounding* or *filing*, is provided against by stat. 5 Eliz. c. 11, s. 2, which enacts, "that from and after the first day of May next coming, clipping, washing, rounding, or filing, for wicked lucre or gain sake, of any the proper monies or coins of this realm or the dominions thereof, or of the monies or coins of any other realm, allowed and suffered to be current within this realm or the dominions thereof, at this present, or that hereafter at any time shall be the lawful monies or coins of this realm, or of the dominions thereof, or of any other realm, and by proclamation allowed

IMPAIRING COIN, &c.

and suffered to be current here by the Queen's Majesty, her heirs and successors, shall be taken, deemed, and adjudged, by virtue of this act, to be treason; and the offenders therein, their counsellors, consentors, and aiders, shall be, from and after the same first day of May, taken, deemed, and adjudged as offenders in treason, and being thereof lawfully convicted or attainted, according to the order and course of the laws of this realm, shall suffer pains of death, and lose and forfeit all his and their goods and chattels; and also shall lose and forfeit all his and their lands and tenements, during his and their natural life or lives only."

There were, however, methods of falsifying, impairing, diminishing, and lightening, not comprehended within the above statute. An auxiliary statute, 18 Eliz. c. 1, was therefore passed, which enacts "that if any person or persons, of what estate, degree, or condition soever he or they be, shall, from and after the first day of April next coming, for wicked lucre or gain sake, by any art, ways or means whatsoever, impair, diminish, falsify, scale, or lighten the proper monies or coins of this realm, or any the dominions thereof, or the monies or coins of any other realms, allowed and suffered to be current at the time of the offence committed within this realm of England, or any the dominions of the same, by the proclamation of the Queen's Majesty, her heirs or successors, shall be taken, adjudged, and deemed to be treason; and the offenders therein, their counsellors, consentors and aiders, shall be likewise deemed and adjudged as offenders in treason, and being thereof lawfully convicted or attainted, according to the due order of the laws of this realm, shall suffer pains of death, and lose and forfeit all their goods and chattels to the Queen's Majesty, her heirs and successors, and shall also lose and forfeit to the Queen's Highness, her heirs and successors, all their lands, tenements and hereditaments, during his or their natural life or lives only."

Diminishing and lightening, &c. the coin of the realm and coin current.

It is clear that the impairing of Irish coin, though not current in England, is within the express words of this statute. 1 *East's P. C.* 174.

The silver coinage act, 56 Geo. III. c. 68, (s. 17,) provides, that all other acts relating to silver coin shall be extended to that act. See the provision, *ante*, 724.

"And for the better preventing the clipping, diminishing, or impairing the current coin of this kingdom," it is enacted, by the 6 & 7 Will. III. c. 17, s. 4, "that if any person whatsoever shall buy or sell, and knowingly have in his custody or possession, any clippings or filings of the current coin of this kingdom, he shall for every such offence forfeit the said clippings or filings, and also the sum of five hundred pounds, one moiety to his Majesty, and the other to the informer, to be recovered as aforesaid, and shall be also branded in the right cheek with a hot iron with the letter R, and until payment of the said five hundred pounds shall suffer imprisonment."

Punishment for buying or selling clippings, &c.

By sect. 8 of the same act, the very possession of bullion, under certain circumstances of suspicion, throws the *onus* upon the party indicted, of proving that it was neither coin nor clippings melted, under pain of imprisonment for six months.

By the stat. De Monetâ, &c. if money false or clipped be found in the hands of any that is suspicious, he may be imprisoned until he have found his warrant. 1 *East's P. C.* 174; 3 *Inst.* 18.

One witness is sufficient in clipping as well as counterfeiting the coin. This was agreed by all the judges, though it appears that the opinion and practice had once been otherwise in the case of clipping. 1 *East's P. C.* 129; 1 *Russ.* 65.

Evidence.

III. Importing Counterfeit Money.

By 25 Edw. III. s. 5, c. 2, it is treason if a man counterfeit the King's 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 merchandize and make payment in deceit of our said Lord the King and of his people.

Importing counterfeit money, treason.

IMPORTING COUNTERFEIT MONEY.

The King may by his proclamation legitimate foreign coin, and make it current money of this kingdom, according to the value imposed by such proclamation. 1 *Hale*, 192.

Legitimating foreign coin.

Therefore both *English* money coined by the King's authority, and foreign coin made current by proclamation, are within the denomination of lawful money of *England*. 1 *Inst*. 207.

Importing counterfeit foreign coin current in the realm.

And by the stat. 1 & 2 P. & M. c. 11, s. 2, it is enacted and established, "that if any person or persons shall bring from the parts of beyond the sea into this realm, or into any of the dominions of the same, any such false and counterfeit coin or money, being current within this realm as is aforesaid, knowing the same coin or money to be false or counterfeit, to the intent to utter or make payment with the same within this realm, or any the dominions of the same, by merchandizing or otherwise; that all and every such person or persons so offending as aforesaid, their counsellors, procurers, aiders, and abettors in that behalf, shall be deemed and adjudged to be offenders in high treason, and shall suffer, after lawful conviction or attainder thereof, such pains of death, loss and forfeiture of lands, goods and chattels, as other offenders shall do in cases of high treason."

This must be brought from a foreign nation, and not from *Ireland*, or other place subject to the crown of *England*; because the counterfeiting there is punishable by the laws of our King as much as in *England*. 1 *Hawk*. c. 17, s. 67.

Must be brought from some foreign place.

The money, the bringing in of which is prohibited by this statute, and by 25 Edw. III. s. 5, c. 2, must be brought from some foreign place, out of the King's dominions, into some place within the same. It may be observed also, that these acts are confined to the *importer*, and do not extend to a *receiver* at second hand; and such importer must also be averred and proved to have known that the money was counterfeit. 1 *Russ*. 66.

Need not be actually paid away.

The better opinion seems to be, that it is not necessary that such false money be actually paid away, or merchandized with, for the words of the stat. 25 Edw. III. are to "merchandize or make payment, &c." which only import an *intention* to do so, and are fully satisfied whether the act intended be performed or not. 1 *Hawk*. c. 17, s. 89. But see 3 *Inst*. 18; 1 *Hale*, 229; 1 *East's P. C*. 175, 176; and 1 *Russ*. 66.

It is clear that bringing over money counterfeited according to the similitude of foreign coin, is treason within 1 & 2 P. & M. c. 11. 1 *Hawk*. c. 17, s. 89.

Importing foreign counterfeit coin not current, with intent to utter, felony.

Foreign Coin not Current]—By the 37 Geo. III. c. 126, after reciting, (*ante*, p. 725,) it is enacted, by sect. 3, "that if any person or persons shall bring into this realm any such false or counterfeit coin as aforesaid, resembling or made with intent to resemble or look like any gold or silver coin of any foreign prince, state or country, or to pass as such foreign coin, knowing the same to be false or counterfeit, to the intent to utter the same within this realm, or within any dominions of the same, all and every such person or persons shall be deemed and adjudged to be guilty of felony, and may be transported for any term of years not exceeding seven years."

Accessaries before are not mentioned in this statute; but these are incident to every felony. Yet *quære*, if they are liable to the punishment of transportation.

An importation *with intent to utter* is sufficient, without any actual uttering; which intent must be collected from circumstances. But though an actual uttering may be the best evidence of such intent, yet it seems safest that the indictment should follow the words of the statute. 1 *East's P. C*. 176.

14 Geo. 3, c. 42.

Considerable quantities of old silver coin of the realm, or coin purporting to be such, below the standard of the mint in weight, were formerly imported to the public detriment at that time; in consequence of which, stat. 14 Geo. III. c. 42, prohibited the bringing into the kingdom any such coin, and provided that if any silver coin, being or purporting to be the coin of this realm, exceeding in amount the sum of 5*l*., should be found by any officer of his Majesty's customs on board any ship, &c. or in the custody of any person

coming directly from the water-side, or upon the information of one or more persons, in any house or other place, on search there made in the manner directed by stat. 14 Car. II. c. 11, s. 5, the officer might seize the same; and if upon examination it should appear to be of the standard weight, it should be restored: but if it should be less in weight than the standard of the mint, that is to say, at and after the rate of 62*s.* to every pound troy, it shall be forfeited. This act was revived and made perpetual by stat. 39 Geo. III. c. 75; but by stat. 56 Geo. III. c. 68, s. 2, so much of stat. 14 Geo. III. as enacts that any silver coin of the realm less in weight than after the rate of 62*s.* for every pound troy, shall be forfeited, and of any act or acts for reviving or continuing or making perpetual the provisions of the said last recited act in this respect, is repealed. See 1 *Russ.* 67.

39 Geo. 3, c. 75. 56 Geo. 3, c. 68.

IV. Exporting Counterfeit Money.

By stat. 38 Geo. III. c. 67, s. 1, it is enacted, "that all copper coin whatsoever, not being the legal copper coin of this kingdom, and all counterfeit gold or silver coin made to the similitude or resemblance, or intended to resemble any gold or silver coin, either of this kingdom or of any other country, which shall under any pretence, name, or description whatsoever, be exported or shipped, or laden or put on board any ship, vessel or boat, for the purpose of being exported from this kingdom to the said island of Martinique, or any of his Majesty's islands or colonies in the West Indies or America, shall be forfeited, and the same shall and may be seized, sued for, prosecuted, and recovered in such courts, and by such and the like ways, means and methods, and the produce thereof disposed of and applied in such and the like manner, and to such and the like uses and purposes, as any forfeiture by any law respecting the revenue of the customs, may now be seized, sued for, prosecuted or recovered, disposed of and applied, either in this kingdom or in any of his Majesty's islands in the West Indies respectively, as the case may happen to be."

Illegal coin exported to West Indies or America, forfeited.

And the second section enacts, "that every person who shall so export, or so ship, lay, or put on board any ship, vessel or boat, in order to be so exported, or shall cause or procure to be so exported, shipped, or put on board any ship, vessel or boat, or shall have in his or her custody, in order to be so exported, any such coin as aforesaid, shall for every such offence forfeit the sum of two hundred pounds, and double the value of such coin, to be recovered by bill, suit, action, or information, in any of his Majesty's courts of record at Westminster."

Penalty 200*l.* and double value of coin.

The judgment in all cases of treason, relating to the coin, is to be drawn on a hurdle to the place of execution, and there hanged by the neck till he be dead. 2 *Hawk.* c. 48, s. 5.

Judgment.

But it is generally provided by the several statutes, that this shall work no corruption of blood nor loss of dower. And see 54 Geo. III. c. 145, *ante*, p. 291.

V. Frauds relating to Bullion, and of Counterfeiting Bullion.

Bullion signifies properly either gold or silver in the mass; but is here intended to denote those metals in any state other than that of authenticated coin; comprising in this latter sense gold and silver wares and manufactures. Many statutes have been passed for the prevention of frauds with respect to such bullion, by creating offences, in making, working, putting to sale, exchanging, selling, or exporting any gold or silver manufactures of less fineness than the standards respectively fixed at the time by the several acts. See these statutes collected in 1 *East's P. C.* p. 188 to 194; and see 1 *Russ.* p. 69.

Bullion.

By stat. 6 & 7 Will. III. c. 17, s. 3, if any shall cast ingots or bars of silver,

FRAUDS RELATING TO BULLION.

in imitation of *Spanish* bars or ingots, or stamp them in likeness of the *Spanish* stamp, he shall forfeit the same, and also 500*l*., half to the King and half to the informer.

The statute of 6 & 7 Will. III. c. 17, enacts also, that "if any broker, not being a trading goldsmith or refiner of silver, shall buy or sell any bullion or molten silver, he shall suffer imprisonment for six months without bail," a regulation probably intended to prevent gambling and speculations, which might enhance the price of the precious metals. 1 *East's P. C.* 196.

Exporting bullion.

Various statutes have been made, at different times, to prevent the melting down of gold and silver coin, and the exportation of it when melted; but these statutes are no longer in operation: for the 59 Geo. III. c. 49, reciting that the laws then in force against melting and exporting the gold and silver coin of the realm, had been found ineffectual, and that it was expedient that the traffic in gold and silver bullion should be unrestrained, enacts, "that it shall be lawful for any person or persons to export the gold or silver coin of the realm to parts beyond the seas, and to manufacture or export, or otherwise dispose of the gold or silver bullion produced thereby; and that no person who shall export or melt, &c. &c. shall be subject to any restriction, forfeiture, pain, penalty, incapacity, or disability whatever, for or in respect of such melting, &c. any thing in any act, &c. notwithstanding." The act then expressly repeals various ancient enactments on the subject, but provides, that certain oaths shall be taken on the exportation of molten silver or bullion; which provision, however, being repealed by stat. 1 & 2 Geo. IV. c. 26, s. 4, there are now no restrictions whatever on melting and exporting the coin of the realm. The 14 Geo. II. c. 42, relating to the importation of light silver coin, is repealed by 6 Geo. IV. c. 105.

Blanched copper and other base metal.

Counterfeiting Bullion]—By stat. 8 & 9 Will. III. c. 26, s. 6, after reciting, that "whereas several mixtures of metals have been invented in imitation of gold and silver, and blanched copper is principally made use of in imitation of silver," it is enacted, "that if any person shall blanch copper for sale, or mix blanched copper with silver, or knowingly buy or sell or offer to sale blanched copper alone, or mixed with silver, or shall knowingly and fraudulently buy or sell or offer to sale any malleable composition or mixture of metal or minerals, which shall be heavier than silver, and look and touch and wear like standard gold, but be manifestly worse than standard, he shall be adjudged guilty of felony, and being thereof convicted or attainted shall suffer death." Sect. 9. Prosecution to be in three months.

This statute is made perpetual by 7 Ann. c. 25, s. 3.

VI. Making, Mending, or having in Possession any Instruments for Coining.

8 & 9 Will. 3, c. 26.

Stat. 8 & 9 Will. III. c. 26, s. 1, (made perpetual by stat. 7 Ann. c. 25,) enacts, that no smith, &c. or other person whatsoever (other than the persons employed in his Majesty's mints in the Tower of London or elsewhere, and for the use and service of the said mints only, or persons lawfully authorised by the lords commissioners of the treasury, or lord high treasurer of England for the time being,) shall knowingly *make* or *mend*, or begin or proceed to make or mend, or assist in the making or mending of any *puncheon, counter-puncheon, matrix, stamp, die, pattern*, or *mould*, of steel, iron, silver, or other metal or metals, or of spaud, or fine founder's earth or sand, or of any other materials whatsoever, in or upon which there shall be or be made or impressed, or which will make or impress the figure, stamp, resemblance or similitude of both or either of the sides or flats of any gold or silver coin, current within this kingdom; *nor* shall knowingly *make* or *mend*, or begin or proceed to make or mend, or assist in the making or mending of *any edger*, or *edging tool, instrument*, or *engine*, not of common use in any trade, but

Making or mending instruments for coining.

POSSESSING COINING INSTRUMENTS.

contrived for MAKING (a) of money round the edges with letters, grainings, or other marks or figures resembling those on the edges of money coined in his Majesty's mint; nor *any press for coinage, nor any cutting-engine*, for cutting round blanks, by force of a screw, out of flatted bars of gold, silver, or other metal; nor shall knowingly *buy* or *sell*, *hide* or *conceal*, or without lawful authority or sufficient excuse for that purpose, knowingly *have in his or their houses, custody, or possession, any such puncheon, counter-puncheon, matrix, stamp, die, edger, cutting-engine*, or *other tool or instrument before mentioned*. And every such offender and offenders, their counsellors, procurers, aiders, and abettors, shall be guilty of high treason, and being thereof convicted or attainted, shall suffer death, &c.

1 Ann. st. 1, c. 9. 7 Ann. c. 25.

Sect. 9. Prosecution to be in three months. But by stats. 1 Ann. st. 1, c. 9, s. 2, and 7 Ann. c. 25, s. 2, the prosecution for offences by making or mending, or beginning or proceeding to make or mend any coining tool or instrument in the above said act prohibited, or by marking of money round the edges with letters or grainings, may be commenced at any time within six months.

Conveying out of the mint, or concealing such instruments.

Another offence is created by the second section of the same statute, which enacts, that "if any person shall, without lawful authority for that purpose, wittingly or knowingly convey or assist in conveying *out of any of his Majesty's mints any puncheon, counter-puncheon, matrix, die, stamp, edger, cutting-engine, press, or other tool, engine, or instrument used for or about the coining of monies* there, or any useful part of such tools or instruments; such offenders, their counsellors, procurers, aiders, or abettors, as also all and every person and persons knowingly receiving, hiding, or concealing the same, shall be adjudged guilty of high treason, and being convicted or attainted thereof shall suffer death."

This act of Will. III. provides that no prosecution shall be made for any offence against that act, unless such prosecution be commenced within three months after such offence committed. See *Willace's case, ante*, 724.

In cases still within this provision it is incumbent on the prosecutor to show that the prosecution was commenced within three months. And see *Phillips's case, ante*, 724.

8 & 9 Will. 3, c. 26, s. 1.

The statute 8 & 9 Will. III. c. 26, s. 1, describes many instruments of coinage; and the instrument which is the subject of the indictment, must be therein set out in such a manner as to bring it within some of the descriptions in the statute. See *R.* v. *Leonard*, 2 *W. Bla.* 807, 822; *R.* v. *Bell*, *Fost.* 430.

Construction of 8 & 9 Will. 3, c. 26.

As to the tools or instruments which are to be considered within the statute, several points have arisen.

In Bell's case, (*Fost.* 430,) the prisoner was indicted for having *in his custody a press for coinage* without any lawful authority, &c. One of the questions raised was, whether a press for coinage was one of the tools or instruments within that clause of the act on which the indictment was founded, and a majority of the judges held that it was. See 1 *Russ.* 74, (note *d.*)

A mould for coining is a tool or instrument within the stat. 8 & 9 Will. III. c. 26, s. 1, the unlawful custody of which is treason.

A mould for coining, an instrument within statute.

Thus in Lennard's case, the prisoner was indicted for high treason on 8 & 9 Will. III. for having in his custody and possession, without any lawful excuse, one mould made of lead, on which was made and impressed the figure, stamp, resemblance, and similitude of one of the sides or flats of a shilling, *viz.* the head side, &c. The prisoner being convicted, it was submitted to the judges, 1st. Whether the mould found in the prisoner's custody be comprised under the general words, "*other tool or instrument before mentioned*," so as to make the unlawful custody of it high treason? 2dly; If it be so comprised, whether it should not have been laid in the indictment to be *a tool or instrument*, in the words of the act? The judges were unanimously of opinion that the mould was a tool or instrument, mentioned in the former

(a) *Quære*, a misprint in the printed statute for *marking*. 1 *East's P. C.* 167. In the 8vo. ed. of the statutes, by Pickering, the word is *marking*.

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part of the statute, and therefore included under the general words in the latter part; and that having been before expressly mentioned by name, it need not be averred in the indictment to be such tool or instrument. *Taunton Lent Assizes*, 1772, 1 *East's P. C.* 170.

Another point was afterwards raised in this case upon the form of the indictment. It appeared that the mould had only the resemblance of a shilling *inverted;* viz. the convex parts of the shilling being concave in the mould; and the head and letters reversed. And the court held this to be well enough laid in the indictment, as an instrument on which were "*made and impressed* the figure, stamp," &c.; but that it would have been better described as "a mould that *would make and impress* the similitude," &c. See 1 *Russ.* 74, and 1 *East's P. C.* 170.

Resemblance need not be exact.

The resemblance of the counterfeit to the genuine coin need not be exact. If the instrument impress a resemblance such as will impose on the world, that is sufficient. 1 *East's P. C.* 172.

The statute in that part which relates to instruments to mark the edges, is not confined to such instruments as were in use when that act was passed, it extends to newly invented instruments which will produce the same effect. Nor is it confined to such instruments as used by the hand unconnected with any other power will produce the effect.

A collar of iron for graining the edges of money (although not properly an edger, nor such an instrument as was used when the act was passed,) has also been holden to be within the statute; the several counts of the indictment charging the instrument to be an "edging-tool," "an instrument," and an "engine." *R. v. Moore*, 2 *C. & P.* 235; *R. & M. C. C.* 122.

Ridgley's case.

In *Ridgley's case* the prisoner was indicted for feloniously and traitorously having in his possession one puncheon of iron and steel, upon which was impressed and made the figure, resemblance, and similitude of the head side of a shilling, without lawful authority, &c. He was charged in another count with having such a puncheon, which would make and impress the figure, &c. The puncheon was found in the prisoner's lodging, with a quantity of bad money. This was fully proved; but the opinion of the judges was taken as to the point, whether the puncheon in question was or was not a puncheon within the meaning of the legislature. Upon the following evidence of the engraver of the mint, it appeared that the puncheon was complete and ready for use, and that the manner of making it is this: a shilling is cut away to the outline of the head; that outline is fixed upon a piece of steel, which is filed or cut close to the outline, which makes the puncheon. The puncheon makes the die, which is the counter-puncheon. That a puncheon is complete without letters, but it may be made with letters upon it, though from the difficulty and inconvenience it is never so made at the mint; but after the die is struck the letters are engraved upon it. That a puncheon alone without the counter-puncheon will not make the figure. That to make an old shilling current, nothing else was necessary but such a puncheon. That the puncheon was hardened and ready for use; but it was impossible to say that the shillings found on the prisoner were made with it, the impression was so faint, though they had all the appearance of it. The judges (absent *De Grey*, C. J.) were all of opinion that the prisoner's case came within the words of the stat. 8 & 9 Will. III. *Serjeants' Inn*, 23*d Jan.* 1779. 1 *East's P. C.* 171.

Bell's case.

In John Bell's case, (*Fost.* 430, *ante*, 735,) it was decided, that a press for coinage, proper to be used for the coining of guineas, shillings, and *louis d'ors*, is within stat. 8 & 9 Will. III. c. 26. But that if it be in the person's possession for the purpose of coining foreign coin only, that circumstance alone takes it out of the act. However, Lord C. J. *Ryder*, and Lord *Hardwicke*, and *Foster*, J. doubted of this. See *Dodson's Life of Sir M. Foster*, p. 44.

Evidence.

It should be proved that the defendant had in his possession the die in question; and the die, when produced in evidence, must appear to be such as is capable of making an impression, so nearly resembling the current shillings,

as would be likely to impose upon persons using the ordinary caution in taking money. A puncheon, making an impression resembling the head side of the shillings coined in King William's reign, but without the letters round it, was nevertheless holden to be within the statute; for the shillings of that coinage were then in such a state, that the letters round the head were not discernible, and the puncheon was capable of making an impression resembling them in that state. *R.* v. *Ridgeley*, 1 *Leach*, 189, *ante*, 736.

An instrument making only part of the impression not within the act.

But an instrument which can make part of the impression only, and which cannot possibly of itself make either side of the counterfeit coin resemble the lawful current coin of the country, as, for instance, an instrument making an impression resembling the sceptre upon the half-guinea, is not within the act. *R.* v. *Sutton*, 2 *Stra.* 1073; *Hardw.* 354.

Upon an indictment on this statute for having in the party's possession a die made of iron and steel, proof of a die made of either material will be sufficient. *R.* v. *Phillips*, *R.* & *R.* 369; *R.* v. *Oxford*, *R.* & *R.* 382. In the latter case it was agreed by all the judges, that in proceedings upon this stat. 8 & 9 Will. III. c. 20, it is not necessary to prove that money was actually made with the instrument in question.

A collar of iron for grinding the edges of counterfeit money, is an instrument within this statute, although it is to be used in a coining press. *R.* v. *Moore*, 2 *C.* & *P.* 235. And evidence that the prisoner used this collar for graining the edges of counterfeit half-crowns is admissible, although it proves the prisoner guilty of an act of coining, which is a higher species of treason. *Id.*

8 & 9 Will. 3, c. 16, s. 5. Seizing tools, &c. to produce in evidence.

It is enacted by stat. 8 & 9 Will. III. c. 16, s. 5, that if any puncheon, die, stamp, edger, cutting-engine, press, flask, or other tool, instrument, or engine, used or designed for coining or counterfeiting gold or silver monies, or any part of such tool or engine, shall be hid or concealed in any place, or found in the house, custody, or possession of any person not employed in the coining of money in the mint, nor having the same by some lawful authority: any person whatsoever discovering the same shall seize the same, and carry them forthwith to some justice of the peace to be by him secured to be produced in evidence against any person who shall be prosecuted for any such offence. And after they have been produced in evidence, as well the same so produced as the other so seized and not produced, shall forthwith, by order of the court, (or by order and in the presence of a justice, if there be no such trial,) be totally defaced and destroyed.

The having tools for coining in possession, with intent to use them, has been held to be a misdemeanor *at common law*. *R.* v. *Sutton*, *Cas. temp. Hardw.* 370; 1 *East's P. C.* 172.

This is, however, a very questionable doctrine; and in evidence to support an indictment for the offence it will be necessary to prove that the defendant had in his possession the pieces of coin mentioned in the indictment, and that he knew them to be false and counterfeit, which can of course be only implied from circumstances or from the defendant's admission. Merely having counterfeit silver in the party's possession with intent to utter it as good, is no offence, for there is no criminal act done; *R.* v. *Stewart*, *R.* & *R.* 288; *R.* v. *Heath*, *R.* & *R.* 184; but procuring it with intent to utter it as good, is a misdemeanor; and having a large quantity of such coin is evidence that it was procured with such intent, unless there be circumstances to show that the defendant was the maker of it. *R.* v. *Fuller*, *R.* & *R.* 308.

Intent to utter, &c. a question for the jury.

The intent to utter, tender, pay, or put off the coin in question also can only be presumed from circumstances; it is a question entirely for the jury to determine, upon a consideration of all the facts and circumstances of the case. *Arch. Crim. Pl. and Ev.* 329.

UTTERING COUNTERFEIT COIN.

VII. Receiving, uttering, or tendering Counterfeit Coin. (a)

Different degrees of offence.

These may amount to different degrees of offence according to the circumstances. If A. counterfeit the gold or silver coin current, and by agreement before such counterfeiting B. is to receive and vend the money, he is an aider and abettor to the act itself of counterfeiting, and consequently a principal traitor within the law. In the case of the copper coin, he would be an accessary before the fact to the felony within the stat. 11 Geo. III. c. 40. And if B. had done this afterwards for A.'s benefit, without any such agreement precedent to the counterfeiting, but yet knowing the fact; this seems to be the same as a receiving of the principal, because he maintains him. But if he had merely vended the money for his own benefit, knowing it to be false, in fraud of any person, he was only liable to be punished as for a cheat and misdemeanor before stat. 15 Geo. II. c. 28, hereafter mentioned. Yet if he then knew by whom it was counterfeited, it might be evidence of his concealment of the treason, and therefore a misprision of the same. 1 *East's P. C.* 179.

Having counterfeit coin in possession.

If false or clipt money be found in a man's hands, if he be suspicious, he may be arrested till he have found his warrant. 3 *Inst.* 18; 1 *Hawk.* c. 17, s. 68; *Hale's Sum.* 21. The unlawful procuring of counterfeit coin with intent to circulate it, though no act of uttering be proved, is a *misdemeanor* at common law, and the possession of a large quantity of counterfeit coin, all newly finished, never having been in circulation, and of the same denomination, unaccounted for, is evidence of an unlawful procurement, with intent to circulate. *R.* v. *Robinson and Fuller*, 1 *Russ.* 47, 78.

Uttering counterfeit copper money not indictable.

The uttering and tendering in payment counterfeit *copper* money has been held not to be an indictable offence. This was laid down in Cirwan's case, where the prisoner was indicted (*Oxford Sum. Ass.* 1794, 1 *East's P. C.* 182) for "unlawfully uttering and tendering in payment to J. H. ten counterfeit halfpence, knowing them to be counterfeit;" and this was laid in the one count against the form of the statute, and in another generally. The defendant was convicted on the general count, it being admitted at the trial that there was no statute applicable to the fact. But upon reference to all the judges, (*Hil. T.* 1795,) they held the conviction wrong, it not being an indictable offence.

The legislature has provided against the receiving, uttering, or tendering in payment counterfeit money, by several statutes. Those which relate to the *coin of the realm* are the 8 & 9 Will. III. c. 26; 11 Geo. III. c. 40; and 15 Geo. II. c. 28. The stat. 37 Geo. III. c. 126, relates to *foreign coin*.

8 & 9 Will. 3, c. 26. Receiving, paying, or putting off, &c. felony.

By stat. 8 & 9 Will. III. c. 26, s. 6, (made perpetual by 7 Ann. c. 25, s. 3,) "whoever shall take, receive, pay, or put off any counterfeit milled money, or any milled money whatsoever unlawfully diminished and not cut in pieces, at or for a lower rate or value than the same by its denomination doth or shall import or was coined or counterfeited for, shall be guilty of felony." By

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Churchwardens, overseers, or others, paying the poor in base coin.

(a) The stat. 9 Geo. III. c. 37, s. 7, contains a provision, for the purpose of preventing the parish poor being paid in base or counterfeit coin, which enacts, that if any churchwarden or overseer of any parish, township, or place, or other person authorised by them to make payments to or for the use of the poor within such parish, township, or place respectively, shall wilfully and knowingly make any such payments in any base or counterfeit money, or in any other than lawful money of Great Britain, one justice may, and he is hereby required, on complaint, to summon the churchwarden, overseer, or other person charged, and in a summary way, upon his or their non-appearance or confession, or proof upon oath of one witness, adjudge the party so offending to forfeit for each offence a sum not less than 10*s.* nor more than 20*s.*; and to levy the same by distress and sale of the goods and chattels of such offender, and to be applied to the use of any poor person or persons of the parish or place respectively as the justice shall appoint.

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sect. 7 the corruption of blood is saved; and by sect. 9 the prosecution must be commenced within three months after the offence committed.

The putting off under these statutes means an actual passing or getting rid of the money, and not merely an attempt to do so; as by tendering it to another who returns it again, refusing to accept it; which is a distinct offence provided for by stat. 15 Geo. II. c. 28, after mentioned. See 1 *East's P. C.* 179. In the case of Wooldridge, who was indicted on stat. 8 & 9 Will. III. c. 26, s. 6, for putting off counterfeit money to a Mrs. Levy, it appeared that he had carried a large quantity of such money to her house, which he had agreed to put off to her, and she to receive from him, at the rate of 29*s.* for every guinea; and having laid the shillings down on a table, she was proceeding to count them out at that rate, and had counted out part of the heap, when the officers entered the room and apprehended them before she could pay the prisoner for those she had selected. This was ruled not to be a completion of the offence charged and the prisoner was acquitted. 1 *Leach*, 251, *O. B. Feb.* 1784; 1 *East's P. C.* 179.

What a putting off.

The meaning of "milled money" in this statute, was considered in the case of Bunning (1 *East's P. C.* 180.) Milled money is so called to distinguish it from hammered money, and all the money now current is milled, *i. e.* passed through a mill or press to make the plate, out of which it is cut, of a proper thickness, though by a vulgar error it is frequently supposed to mean the marking on the edges, which is properly termed *graining*.

What the meaning of milled-money within this stat.

In an indictment therefore for putting off *milled money*, it is unnecessary that the counterfeit money should appear to have been *milled*: for considering *milled-money* one word, (as if written with a hyphen,) and descriptive of the money now current, if the counterfeit resemble the money which, if genuine, would have been milled, it is enough. *Bunning's case*, 1 *East's P. C.* 180.

Mr. *East* says, he has been informed that there has been no *hammered* money since the time of Car. II. 1 *East's P. C.* 180, *(notis.)*

It is necessary, in order to bring a case within this statute, that the money be vended at a *lower value* than the coin imports, and that it should be so stated in the indictment. And if the names of the persons to whom the money was put off can be ascertained, they ought to be mentioned, and laid severally in the indictment: but if they cannot be ascertained, the same rule will apply which prevails in the case of stealing the property of persons unknown. If the indictment be for putting off diminished money at a lower rate, it must be averred that it was *unlawfully* diminished. And it has been held, that an indictment upon this statute was bad, for omitting to state that the counterfeit money was "*not cut in pieces*," as those words are a material part of the description of the offence. 1 *Russ.* 81.

The money must be vended at a lower rate, and so stated in the indictment.

By stat. 9 & 10 Will. III. c. 21, s. 1, any person to whom any silver money shall be tendered, any piece whereof shall be diminished otherwise than by reasonable wearing, or that by the stamp, impression, colour, or weight thereof, he shall suspect to be counterfeit, may cut, break, or deface such piece; and if any piece so cut, &c. shall appear to be a counterfeit, the person tendering the same shall bear the loss thereof; but if the same shall be of due weight and appear to be lawful money, the person that cut, &c. the same, shall receive the same at the rate it was coined for. And if any question arise whether the piece so cut be counterfeit, it shall be determined by the next justice of the peace, or chief magistrate in a corporation.

9 & 10 Will. 3, c. 21. False silver money what to be done with.

And by stat. 13 Geo. III. c. 71, s. 1, the same is enacted in the case of gold money so tendered.

13 Geo. 3, c 71, s. 1.

And by stat. 8 & 9 Will. III. c. 26, s. 5, if any counterfeit or unlawfully diminished money shall be produced in any court of justice either in evidence or otherwise, the judge shall cause it to be cut in pieces in open court, or in the presence of a justice of the peace, and then to be delivered to or for the person to whom it belongs.

8 & 9 Will. 3, c. 26, s. 5.

This statute mentioning "counterfeit money" generally, must, it seems, be confined to gold or silver coin, in the manner before described: but by stat. 11 Geo. III. c. 40, s. 2, "if any person shall buy, sell, take, receive,

11 Geo. 3, c. 40, s. 2.

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pay, or put off any counterfeit copper coin not melted down or cut in pieces, at or for a lower rate or value than the same by its denomination imports or was counterfeited for, he shall be adjudged guilty of felony." 1 *East's P. C.* 179.

Punishment.

The punishment under the above-mentioned statutes of Will. III. and Geo. III. was burning in the hand, and imprisonment not exceeding a year, and also under stat. 18 Eliz. c. 7, s. 3; but the punishment of burning in the hand is abolished by stat. 19 Geo. III. c. 74, s. 3, and in lieu thereof the offender is subjected to a moderate fine or whipping at the discretion of the court. *R.* v. *West and others*, O. B. Sept. 1780; 1 *East's P. C.* 181.

The 8 & 9 Will. III. as we have seen, relating only to the putting off counterfeit money at a lower rate or value than that imported by its denomination, did not provide against the uttering such money in the course of traffic: that offence was punishable only as a misdemeanor, until the frequency of its occurrence attracted the attention of the legislature, who thought it expedient to subject it to more severe punishment.

15 Geo. 2, c. 28.

For this purpose the stat. 15 Geo. II. c. 28, was passed: by sect. 2 of which, after reciting, "whereas the uttering of false money, knowing it to be false, is a crime frequently committed all over the kingdom, and the offenders therein are not deterred by reason that it is only a misdemeanor, and the punishment very often but small, though there be great reason to believe that the common utterers of such false money are either themselves the coiners or in confederacy with the coiners thereof," it is enacted, "that if any person whatsoever shall after the said 29th day of September utter or tender in payment any false or counterfeit money, knowing the same to be false or counterfeit, to any person or persons, and shall be thereof convicted, such person so offending shall suffer six months' imprisonment, and find sureties for his or her good behaviour for six months more, to be computed from the end of the said first six months; and if the same person shall afterwards be convicted a second time of the like offence of uttering or tendering in payment any false or counterfeit money, knowing the same to be so, such person shall for such second offence suffer two years' imprisonment, and find sureties for his or her good behaviour for two years more, to be computed from the end of the said first two years; and if the same person shall afterwards offend a third time in uttering or tendering in payment any false or counterfeit money, knowing the same to be so, and shall be convicted of such third offence, he or she shall and is hereby adjudged to be guilty of felony without benefit of clergy."

Uttering false money knowingly, six months' imprisonment, and security for two years more.

For the second offence, two years' imprisonment, and security for two years more.

For the third offence, felony.

Sect. 3 enacts, "that if any person whatsoever shall after the said 29th day of September utter or tender in payment any false or counterfeit money, knowing the same to be false or counterfeit, to any person or persons, and shall either the same day or within the space of ten days then next utter or tender in payment any more or other false or counterfeit money, knowing the same to be false or counterfeit, to the same person or persons, or to any other person or persons, or shall at the time of such uttering or tendering have about him or her, in his or her custody, one or more piece or pieces of counterfeit money, besides what was so uttered or tendered, then such person so uttering or tendering the same shall be deemed and taken to be a common utterer of false money, and being thereof convicted shall suffer a year's imprisonment, and shall find sureties for his or her good behaviour for two years more, to be computed from the end of the said year; and if any person having been once so convicted as a common utterer of false money, shall afterwards again utter or tender in payment any false or counterfeit money to any person or persons, knowing the same to be false or counterfeit, then such person being thereof convicted shall for such second offence be and is hereby adjudged to be guilty of felony without benefit of clergy."

Uttering false money twice within ten days, or having other false money in custody, to suffer a gaol imprisonment, &c.

Subsequent offence felony.

Sect. 4 provides against corruption of blood and loss of dower.

Trial and evidence.

By sect. 5, offenders shall be indicted, arraigned, tried, and convicted by such like evidence and in such manner as counterfeiters of the coin; with a proviso that the prosecution be commenced within six months next after the offence committed.

Limitation of time.

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By sect. 8, any offender out of prison discovering two or more persons guilty of any of the said offences, so as they be thereof convicted, shall be pardoned.

This statute also mentioning counterfeit money generally, must be confined to the gold and silver coin of the realm. 1 *Hale*, 211; see *Cirwan's case, ante*, 738.

Stat. 15 Geo. 2, applies to counterfeit money passed by the trick of ringing the changes.

The words of the statute "utter or tender in payment" are in the disjunctive, and will therefore apply to an uttering of counterfeit money, though it be not tendered in payment, but passed by the common trick called *ringing the changes*, as in the following case:—The prosecutor having bargained with the prisoner, a Jew, who was selling fruit about the streets, to have five apricots for sixpence, gave him a good shilling to change. The prisoner put the shilling into his mouth as if to bite it in order to try its goodness; and returning a shilling to the prosecutor, told him it was a bad one. The prosecutor gave him another good shilling, which he also affected to bite, and then returned another shilling saying it was not a good one. The prosecutor gave him another good shilling, with which he practised this trick a third time, the shillings returned by him being in every instance bad. The court held that the words of the statute were sufficient to include this case; and that uttering and tendering in payment were two distinct and independent acts. *Frank's case*, 2 *Leach*, 64; 1 *Russ.* 82.

Charging two utterings on the same day, each in a different count, will not warrant a judgment on stat. 15 Geo. 2, c. 28, s. 2.

Some disputed points have arisen as to the form of the indictment on this statute. In *Tundy's case* the indictment charged the prisoner in the first count with having on the 15th of December, 39 Geo. III. uttered to one G. S. a counterfeit half-crown, knowing it to be so; and in the second count with having on the said 15th of December, &c. uttered another counterfeit half-crown to the same person. The prisoner having been convicted on both counts, it was referred by Mr. Justice *Heath* to the judges to consider what judgment was proper to be passed on this record; in Hilary Term, 1799, the judges held, that this indictment was not sufficient to subject the prisoner to the larger penalty, as for uttering two pieces of counterfeit coin on the same day, there being no distinct averment of that fact: and it was thought advisable only to give judgment of imprisonment for six months singly, and not on each of the counts. 1 *East's P. C.* 182; 2 *Leach*, 833.

But where two utterings are charged in one count of the indictment on a certain day therein named, the day will be held to be material, and the fact of an uttering twice on the same day to be sufficiently averred: as where the indictment charged that the prisoner on the 14th of February, &c. uttered base coin to W. C.; and that on the said 14th of February, &c. he uttered to J. L. other base coin, it was held sufficient to warrant the higher punishment of the third section of the statute, the utterings on the face of the indictment appearing to be on the same day. And the judges held at a conference upon this case, that though when the day is not material, the fact may be proved on a day different from the day laid, yet where the day is not indifferent, the precise time laid must be proved; and that in this case it must be taken that it was proved that the defendant uttered counterfeit coin at two different times of the same day. *Martin's case*, Derby Lent Assizes, 1801, 2 *Leach*, 923; 1 *East's P. C.* Addend. xviii; *Bayley*, J. 1 *Russ.* 82.

The defendant may be adjudged to suffer the punishment imposed by 15 Geo. II. c. 28, s. 3, although there be no averment in the indictment that the defendant was a common utterer of false money.

Tandy's case.

When *Tundy's case* was considered by the judges, it appears that some doubt was entertained whether a count charging two such utterings on the same day, should not, to bring an offender within the third clause, conclude with an averment that the offender was a common utterer of false money, as that clause declares him to be. But this doubt was shortly after solved in the case of James Smith, who was indicted for uttering false money knowingly, and having about him at the time of such uttering other false money. Upon conviction, judgment was respited to take the opinion of the judges, whether to bring the case within the third section the indictment should not have concluded with a distinct averment that the defendant was a common utterer

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of false money; or whether there was not the necessary conclusion of law from the facts stated: and the judges, upon search of precedents for many years back, finding that judgment had been given for the greater punishment upon indictments drawn in this form, although some were to be found containing the averment in question, held such averment, though it would not hurt, was not necessary in order to warrant the greater punishment. Maidstone Summer Assizes, 1799, *cor. Buller*, J. 1 *East's P. C.* 183; 2 *Leach*, 858; *R. & R.* 5. The same judgment was given in the case of Benjamin Levi reserved at the time.

Indictment for a second offence against stat. 15, Geo. 2, c. 28, s. 3.

And similarly it was held not to be necessary in an indictment for a second offence against the statute, to state that the court before which the former trial was had, did adjudge the defendant to be a common utterer. The indictment charged that the defendant was before that time *in due form of law tried and convicted* at the Guildford quarter sessions, on a certain indictment against him for uttering false and counterfeit coin, knowing it to be such, having about him at the time in his custody and possession other false and counterfeit money; and that it was thereupon adjudged by the court that he should be imprisoned for a year, and until he found sureties for his good behaviour for two years more: and then averred, that *having been so convicted as a common utterer of false money*, he afterwards uttered other false and counterfeit money. The objection taken in arrest of judgment, and which was reserved for the opinion of the judges, was this, that in stating the original record and judgment of the court of quarter sessions, (where the defendant had been previously convicted,) it is not stated that the court did adjudge the defendant to be a common utterer, but only that they considered and adjudged the prisoner to be imprisoned twelve months, and to find surety for his good behaviour two years more. But the judges held, that it was not necessary that the court should adjudge the defendant to be a common utterer, though the statute says he shall be *deemed and taken to be a common utterer*, that being a conclusion of law; and it being sufficient for the court before which a defendant is convicted of an offence within the statute, to adjudge him to suffer the punishment inflicted by law for the offence. *Michael's case*, O. B. Feb. 1802, 1 *East's P. C.* Addend. xix.; 2 *Leach*, 938; *R.* v. *Booth*, *R. & R.* 7.

An indictment upon the second section of this act, 15 Geo. II. for the felony, and judgments for misdemeanors on the same statute, must set out the former convictions and judgments with a *prout patet per recordum*: and judgment for a misdemeanor cannot be given upon an indictment for felony bad for want of form of such an averment. *R.* v. *Turner*, *R. & M. C. C.* 47; see *R. & R. C. C.* 5, 7; and 1 *Russ.* 85.

Trial and evidence.

By section 5 of the foregoing stat. it is ordered that offenders shall be indicted, arraigned, tried, and convicted by such like evidence and in such manner as counterfeiters of the coin.

Evidence of guilty knowledge.

Proof that the defendant knew it to be counterfeit money at the time he uttered it, must of course rest on circumstantial evidence. If, for instance, it be proved that he uttered either on the same day or other times base money of the same description to the same or to a different person, or had other pieces of base money about him when he uttered the counterfeit money in question, this will be evidence from which the jury may presume a guilty knowledge. Per *Thompson*, B. *in R.* v. *Whiley et al.* 2 *Leach*, 983.

If a man utter a bad shilling and fifty other bad shillings are found upon him, this would bring him within the description of a common utterer; but if the indictment do not contain that charge, yet these circumstances may be given in evidence among other charges of uttering, to show that he uttered the money with a knowledge of its being bad. *Per cund.* 2 *Leach*, 983; see also *Ball's case*, 1 *Campb.* 325; and *Phil. on Ev.* 137.

Associates.

An associate not present, nor co-operating at an uttering of bad money, is not liable to be convicted with the actual utterer, merely on the ground that he is an utterer also, and has other bad money about him for the purpose of uttering.

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A man and woman were indicted for uttering a bad shilling to M. B., they having another bad shilling in their possession at the time. The uttering was by the woman alone, in the absence of the man. It was held by the twelve judges, that the man was not liable to be convicted with the actual utterer, although proved to be the associate of the woman on the day of the uttering, and to have had other bad money for the purpose of uttering. And it was also held, that the woman could not be convicted of the second offence of having other bad money in her possession at the time, on the evidence of her associating with a man not present at the uttering, but having large quantities of bad money about him for the purpose of uttering. *R.* v. *Else and another*, *R.* & *R.* 142.

Associates.

If two prisoners are indicted for uttering a counterfeit shilling, and having another counterfeit shilling in their possession, it is not necessary to prove with certainty which of the pieces was the one uttered, and which found on them not uttered, if both the pieces of money are proved to be counterfeit. *R.* v. *Skerritt*, 2 *C.* & *P.* 427.

Where it appeared that two prisoners went to a shop, and that one of them went in and uttered the bad piece of money, having no more in her possession, and the other staid outside the shop having other bad money, it was held that both might be convicted, the uttering and the possession being joint. *Id.*

In prosecutions for second offence transcript of former conviction evidence.

The 9th section of 15 Geo. II. c. 28, enacts, that if any person shall be convicted of uttering or tendering any false or counterfeit money as aforesaid, and shall afterwards be guilty of the like offence in any other county or city, the clerk of the assize or the clerk of the peace for the county or city where such conviction was so had, shall, at the request of the prosecutor or any other on his Majesty's behalf, certify the same by a transcript in a few words, containing the effect and tenor of such conviction; for which certificate two shillings and sixpence, and no more, shall be paid; and such certificate being produced in court shall be sufficient proof of such former conviction.

Justices' power to try such offenders.

By this it seems that justices of the peace in sessions have power to try such offenders; otherwise this direction to the clerk of the peace to certify the conviction is incongruous; for he is not the proper person to certify what is done in another court, where he is not necessarily supposed to be present; but no power is given to the sessions by any express words in this statute to hear and determine such offences. 1 *Russ.* 86.

VIII. Uttering, Tendering, &c. Foreign Counterfeit Coin.

Tendering in payment such counterfeit coin, first offence six months imprisonment; second offence, two years; third offence, felony.

The stat. 37 Geo. III. c. 126, after reciting, *ante*, 725, enacts by sect. 4, that if any person or persons shall from and after the passing of this act utter or tender in payment, or give in exchange, or pay or put off to any person or persons any such false or counterfeit coin as aforesaid, resembling or made with intent to resemble or look like any gold or silver coin of any foreign prince, state, or country, or to pass as such foreign coin, knowing the same to be false or counterfeit, and shall be thereof convicted, every person so offending shall suffer six months' imprisonment, and find sureties for his or her good behaviour for six months more, to be computed from the end of the said first six months; and if the same person shall afterwards be convicted a second time for the like offence of uttering or tendering in payment, or giving in exchange, or paying or putting off any such false or counterfeit coin as aforesaid, knowing the same to be false or counterfeit, such person shall for such second offence suffer two years' imprisonment, and find sureties for his or her good behaviour for two years' more, to be computed from the end of the said first two years; and if the same person shall afterwards offend a third time in uttering or tendering in payment, or giving in exchange, or

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paying or putting off any such false or counterfeit coin as aforesaid, knowing the same to be false or counterfeit, and shall be convicted of such third offence, he or she shall be adjudged to be guilty of felony without benefit of clergy. See **Clergy, Benefit of**, Vol. I.

37 Geo. 3, c. 126. Clerk of the assize or of the peace to certify the conviction of any person for uttering counterfeit coin.

Sect. 5. That if any person shall be convicted of uttering or tendering any such false or counterfeit coin as aforesaid, and shall afterwards be guilty of the like offence in any other county, city, or place, the clerk of the assize or clerk of the peace for the county, city, or place where such former conviction shall have been had, shall, at the request of the prosecutor or any other on his Majesty's behalf, certify the same by a transcript in few words, containing the effect and tenor of such conviction; for which certificate two shillings and sixpence, and no more, shall be paid, and such certificate being produced in court shall be sufficient proof of such former conviction.

Justices may grant warrants for searching suspected places for counterfeit foreign coin.

Sect. 7. That it shall and may be lawful to and for any one justice of the peace on complaint made before him upon the oath of one credible person, that there is just cause to suspect that any one or more person or persons is or are or hath or have been concerned in making or counterfeiting any such false or counterfeit coin as aforesaid, resembling or made with an intent to resemble or look like any gold or silver coin of any foreign prince, state, or country, or to pass as such foreign coin, by warrant under the hand of such justice to cause the dwellinghouse, room, workshop, outhouse, or other building, yard, garden, or other place belonging to such suspected person or persons, or where any such person or persons shall be suspected to carry on any such making or counterfeiting, to be searched for any such false or counterfeit coin, or for tools or implements for coining such false or counterfeit coin, or for materials for making or coining the same; and if any such false or counterfeit coin or any such tools or instruments, or any such materials for making any such false or counterfeit coin shall be found in any place so searched, or if any such tools, implements, or materials shall be found in the custody or possession of any such person or persons whomsoever, not having the same by some lawful authority, it shall and may be lawful to and for any person or persons whatsoever discovering the same to seize, and he and they are hereby authorised and required to seize such false or counterfeit coin, tools, implements, and materials, and to carry the same forthwith to a justice of the peace of the county, city, or place where the same shall be seized, who shall cause the same to be secured and produced in evidence against any person or persons who shall or may be prosecuted for any of the offences aforesaid, in some court of justice proper for the determination thereof; and after such time as any such false or counterfeit coin, or any such tools, implements, or materials, shall have been produced in evidence as aforesaid, as well so much and such parts thereof as shall have been so produced as every other part thereof so seized and not made use of in evidence, shall forthwith, by order of the court where such offender or offenders shall be tried, or by order of some justice or justices of the peace in case there shall be no such trial, be defaced or destroyed or otherwise disposed of as such justice or justices shall direct.

Such counterfeit coin and tools and materials may be seized and carried before a justice, who shall secure the same as evidence, and to be afterwards destroyed.

Sect. 9 limits actions for acts, &c. to three months, and gives the general issue treble costs.

Having in custody a greater number than five pieces of counterfeit foreign coin, whether current here or not, makes the party liable to punishment by proceedings before a justice of the peace.

Having more than five pieces of false foreign coin in possession.

This is provided by the 6th section, which enacts, that if any person shall have in his custody, without lawful excuse, more than five pieces of any false or counterfeit coin of any kind resembling or made with intent to resemble any gold or silver coin of any foreign country, or to pass as such foreign coin, he shall on conviction upon the oath of one witness before one justice forfeit the same, which shall be cut in pieces and destroyed by order of such justice; and shall also forfeit not exceeding 5*l.* nor less than 40*s.* for every piece found in his custody, half to the informer and half to the poor; and if not forthwith paid, such offender may be committed to the gaol or house

of correction to hard labour for three calendar months, or until such penalty shall be paid.

IX. Receiving or Paying for the Current Coin any more or less than its Lawful Value.

Legitimation and current value of coin.

The coining and legitimation of money, and the giving it its current value, are the unquestionable prerogatives of the crown; though great doubt has been entertained whether by force of the stats. 25 Edw. III. c. 13, 9 Hen. V. st. 2, c. 6, and other acts settling the standard of sterling, the King is not now restrained from altering it by increasing the alloy. But at this day it is the less necessary to consider the point, because the impolicy of the act is alone sufficient to prevent the attempt from being made, unless the marketable and relative value of gold and silver should sensibly alter. 1 *East's P. C.* 148; 1 *Hale*, 188; 4 *Bla. Com.* 88.

Silver and gold the only legal tender.

No person can be enforced to take in payment any money but of lawful metal, that is, of silver or gold, except for sums under sixpence. 2 *Inst.* 5, 7; 1 *Hale*, 195.

Weights for coin.

By stat. 14 Geo. III. c. 92, s. 4, 5, no other weight than such as shall be stamped or marked by the officer appointed by his Majesty for that purpose, shall be sufficient in law for determining the weight of the gold and silver coin of this realm. And if any person shall counterfeit such stamp or mark, or knowingly sell any weight with the impression of such counterfeit stamp thereon; or shall wilfully increase and diminish any such weight after it has been so stamped or marked; or use any such weight in weighing the gold and silver coin of this realm, knowing the same to be so increased or diminished, he shall on conviction before two justices forfeit any sum not exceeding 50*l.*, half to the King and half to him that shall inform or sue; and in default of payment he shall be committed to the common gaol or house of correction for any time not exceeding three months.

The penalty for giving or receiving for money more than it is current for.

The stat. 5 and 6 Edw. VI. c. 19, after reciting that "divers covetous persons of their own authorities have of late taken upon them to make exchanges, as well of coined gold as of coined silver, receiving and paying therefore more in value than hath been declared by the King's proclamation to be current for within this his realm and other his dominions, to the great hindrance of the commonwealth of this realm," enacts, "that if any person or persons, after the 1st day of April next coming, exchange any coined gold, coined silver, or money, giving, receiving or paying any more in value, benefit, profit or advantage for it, than the same is or shall be declared by the King's Majesty's proclamation to be current for within this his Highness's realm and other his dominions, that then all the said coined gold, silver and money so exchanged, and every part and parcel thereof, shall be forfeit, and the parties so offending shall suffer imprisonment by the space of one whole year, and make fine at the King's pleasure: the one moiety of the said gold, silver or coin so forfeited to be to the King our sovereign Lord, and the other moiety to be to the party that seizeth the same, or will sue for it by bill, plaint, original action of debt, information or otherwise, in any of the King's courts of record; in which suit no essoin, protection, or wager of law shall lie, be allowed, or admitted."

In the cases of *R.* v. *Yonge* and *R.* v. *Wright*, it was urged that the exchanging guineas for bank notes, at a higher value than they were current for by the King's proclamation, was not an offence within this statute; and, after solemn arguments before the judges, the objection was held good. 14 *East*, 402, 404.

In consequence of this decision, the 51 Geo. III. c. 127, and the 52 Geo. III. c. 50, (continued by the 53 Geo. III. c. 5, to the 25th March, 1814, and further continued by 54 Geo. III. c. 52, during the continuance of any act imposing any restriction on the Bank of England with respect to payments in cash) made several provisions upon this subject, which have

PASSING FOR OTHER THAN LEGAL VALUE.

now ceased by the operation of the 59 Geo. III. c. 49, s. 1, which removed the restrictions on payments in cash, under the several Bank acts, on the 1st of May, 1823. 1 *Russ.* 89.

The stat. 56 Geo. III. c. 68, has made several provisions as to receiving the current gold coin for *more* or *less* than its value, according to its denomination. They are as follows:—

Current gold coin shall not be received or paid for more or less than its value, according to its denomination.

By 56 Geo. III. c. 68, s. 13, it is enacted, "that no person shall by any means, device, shift, or contrivance whatsoever, receive or pay for any gold coin lawfully current within the United Kingdom of Great Britain and Ireland any more or less in value, benefit, profit or advantage, than the true lawful value which such gold coin doth or shall by its denomination import; nor shall utter or receive any piece or pieces of gold coin of this realm at any greater or higher rate or value, nor at any less or lower rate or value, than the same shall be current for in payment, according to the rates and values declared and set upon them pursuant to law; and that every person who shall offend herein shall be deemed and adjudged guilty of a misdemeanor, and being thereof convicted by due course of law, shall suffer imprisonment for the term of six calendar months, and shall find sureties for his or her good behaviour for one year more, to be computed from the end of the said six months; and if the same person shall afterwards be convicted of the like offence, such person shall, for such second offence, suffer one year's imprisonment, and find sureties for his or her good behaviour for one year more, to be computed from the end of the said last mentioned year; and if the same person shall afterwards offend against this act, and shall by due course of law be convicted of any subsequent offence, he or she shall be imprisoned for the term of two years for every such subsequent offence."

Where persons who have been convicted shall be again guilty, the clerk of the peace shall certify former conviction.

By s. 14, "if any person, who shall be convicted of receiving or paying any such gold coin contrary to this act, shall afterwards be guilty of the like offence, the clerk of the assize, or clerk of the peace for the county, city or place where such conviction was so had, shall, at the request of the prosecutor, or any other person, on his Majesty's behalf, certify such conviction, for which certificate 2*s.* 6*d.*, and no more, shall be paid; and such certificate, being produced in court shall be sufficient proof of such former conviction."

Indictments not to be traversed.

By s. 15, "no person against whom any bill of indictment shall be found at any assizes or sessions of the peace, for any offence against this act, shall be entitled to traverse to any subsequent assizes or sessions; but the court at which such bill of indictment shall be found, shall forthwith proceed to try the person or persons against whom the same shall be found, unless he, she, or they, shall show good cause, to be allowed by the court, why his, her, or their trial should be postponed."

On prosecution, it shall not be necessary to prove the money lawful.

By s. 16, "that on any prosecution or trial of any offender or offenders, hereafter to be prosecuted or tried for any offence against this act, it shall not be necessary to prove that the gold coin received, or paid, or uttered contrary to this act, is the current gold coin of this realm; but the same shall be deemed and taken so to be, if received, or paid or uttered as such, until the contrary thereof shall be proved to the satisfaction of the judge, justice or court before whom any such offender or offenders shall be prosecuted or tried."

X. Tokens.

BANK TOKENS]—The governor and company of the Bank of England, for the convenience of the public, were, by stat. 44 Geo. III. c. 71, empowered to issue certain silver dollars, and provision was therein made against the counterfeiting and uttering counterfeits; and the governor and company, for the further convenience of the public, were, by stat. 51 Geo. III. c. 110, authorised to issue certain silver pieces called tokens, for 3*s.* and 1*s.* 6*d.* each; and persons uttering or vending counterfeits were, by 52 Geo. III. c. 138, subject to certain punishments imposed by the said acts.

44 Geo. 3, c. 71.

51 Geo. 3, c. 110.

52 Geo. 3, c. 138.

BANK TOKENS.

But upon the issuing of the new current silver coin, the further circulation of these tokens was prohibited, after the 25th of March, 1818, by 57 Geo. III. c. 113; extended (by stat. 58 Geo. III. c. 14,) to the 5th of July, 1818, and further to the 5th of April, 1819, &c.

57 Geo. 3, c. 113.
58 Geo. 3, c. 14.

By 57 Geo. III. c. 113, s. 1, if "any person or persons shall from and after the said 25th day of March, 1818, utter, offer or tender in payment, or give in exchange, or pass, circulate or put off, any such dollar or tokens, whether the value thereof shall be paid or given in money or goods, or in any other manner whatsoever, every person so offending, and being thereof convicted upon the oath of one or more credible witness or witnesses, before one or more of his Majesty's justices of the peace acting for the county, riding, city or place within which such offence shall be committed, shall for every such dollar or token so uttered, offered, tendered in payment, given in exchange, or passed, circulated or put off, contrary to the prohibition hereinbefore contained, forfeit and pay any sum not exceeding *5l.* nor less than 40*s.*, at the discretion of the justice or justices of the peace who shall hear and determine such offence: provided that nothing in this act contained shall extend or be construed to extend to prevent any person or persons from presenting any such dollars or tokens for payment to the governor and company of the Bank of England, or at any time before the 25th day of March, 1820, or to any of their officers or servants, or to discharge or excuse the said governor and company from their liability to pay the same before the said 25th day of March, 1820: provided also, that nothing herein contained shall restrain or prevent any person or persons, after the 25th day of March next, from selling or disposing of any such dollars or tokens as aforesaid as old silver, according to the weight thereof, at the current price of silver, and without regard to the nominal or current value at which the same shall have been circulated."

57 Geo. 3, c. 113.
Penalty for afterwards circulating them.
But they may be presented at the Bank till 25th March, 1820.
May be sold as old silver.

Sect. 2. "That it shall be lawful for any justice or justices of the peace acting for the county, riding, city or place within which any offence against this act shall be committed, to hear and determine the same in a summary way; and such justice or justices, upon any information exhibited, or complaint made upon oath in that behalf, shall summon the person or persons accused, and also the witnesses on either side, and shall examine into the matter of fact, and upon due proof made thereof, either by the voluntary confession of the person or persons accused, or by the oath of one or more credible witness or witnesses, which oath such justice or justices is or are hereby authorised to administer, shall convict the offender or offenders, and adjudge the penalty for such offence."

Justices of peace empowered to hear and determine offences.

Sect. 3. "That if any person shall be summoned as a witness to give evidence before such justice or justices, either on the part of the informer or prosecutor, or of the person or persons accused, and shall neglect or refuse to appear at the time or place to be for that purpose appointed, without a reasonable excuse for such his neglect or refusal, to be allowed by such justice or justices, then such person shall forfeit for every such offence the sum of 20*l.*, to be levied and paid in such manner and by such means as are directed for recovery of other penalties under this act."

Witnesses not attending.
Penalty 20*l.*

Sect. 6. "That the pecuniary penalties and forfeitures hereby incurred and made payable upon any conviction against this act, shall be forthwith paid by the person or persons convicted as follows; one moiety of the forfeiture to the informer, and the other moiety to the poor of the parish or place where the offence shall be committed; and in case the person or persons so convicted shall refuse or neglect to pay the same, or to give sufficient security, to the satisfaction of such justice or justices, to prosecute any appeal against such conviction, such justice or justices shall, by warrant under his or their hand and seal or hands and seals, cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such distress and sale, returning the overplus (if any) to the owner or owners."

Penalties how levied and applied.
Appeal.

Sect. 8. "That if no sufficient distress can be had, then and in such case the said justice or justices shall and may commit such offender or offenders

Offenders committed for want of distress.

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57 Geo. 3, c. 113.

to the common gaol or house of correction of the county, riding, division, city or place where the offence shall be committed, for the space of three calendar months, unless the money forfeited shall be sooner paid, or unless or until such offender or offenders, thinking him, her or themselves aggrieved by such conviction, shall give notice to the informer that he, she or they intend to appeal to the justices of the peace at the next general quarter sessions of the peace to be holden for the county, riding, division, city or place wherein the offence shall be committed, and shall enter into recognizance before some justice or justices, with two sufficient sureties, conditioned to try such appeal, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions; which notice of appeal being given not less than eight days before the trial thereof, the person or persons so aggrieved is or are hereby empowered to give; and the said justices at such sessions, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they the said justices shall think proper; and the determination of such quarter sessions shall be final, binding and conclusive to all intents and purposes."

Appeal on notice.

Recognizance.

Notice not less than eight days before trial.

Costs.

Final.

52 Geo. 3, c. 157.

LOCAL TOKENS]—The 52 Geo. III. c. 157, prohibited the circulation of local tokens of gold, silver or mixed metal after the 25th of March, 1813, but that period was extended, by 53 Geo. III. c. 19, to the 5th of July, 1813. By stat. 53 Geo. III. c. 114, after reciting that "whereas an act passed in this session of parliament, intituled 'An Act to amend an act of the last session of parliament, to prevent the issuing and circulating of pieces of gold and silver, or other metal, usually called tokens, except such as are issued by the Banks of England and Ireland respectively;' and whereas it is expedient that the period limited in the said act for the circulation of pieces of gold or silver and mixed metals, in the said act specified and denominated tokens, should be further extended, and that the said act should be amended," it is enacted, "that so much of the said recited act as prohibits the circulation of any such tokens as are in the said recited act described, after the 5th day of July, 1813, shall be and the same is hereby repealed."

Tokens not to be circulated after a certain time.

Sect. 2. "That from and after six weeks from the commencement of the next session of parliament, no piece of gold or silver, or of any mixed metal composed partly of gold or silver, of whatever name the same may be, shall pass or circulate as a token for money, or as purporting that the bearer or holder thereof is entitled to demand any value denoted thereon, either by letters, words, figures, mark or otherwise, whether such value is to be paid or given in money or goods, or other value, or in any manner whatsoever; and every person who shall, after six weeks from the commencement of the next session of parliament circulate or pass as for any nominal value in money or goods any such token, shall for every such token so circulated or passed, whether such person shall be or have been concerned in the original issuing or circulation of any such token, or only the bearer or holder thereof for the time being, forfeit any sum not less than 5*l.* nor more than 10*l.*, at the discretion of such justice or justices of the peace who shall hear and determine such offence: provided that nothing in this act contained shall extend or be construed to extend to prevent any person from presenting any such token for payment to the original issuer thereof, or to discharge or excuse any such original issuer from his liability to pay the same."

Penalty.

Original issuer.

Act not to authorise issue of promissory notes under 20*s.*

Sect. 4. "That nothing in this act contained shall extend or be construed to extend to authorise or make legal the issuing of any promissory note, not being a token composed of gold or silver, or of mixed metal composed partly of gold or silver, which cannot now be issued by law."

Act not to extend to tokens of Bank of England or Ireland.

Sect. 5. "That nothing in this act contained shall extend, or be construed to extend, to any tokens issued or circulated by or under the authority of the governor and company of the Bank of England, or by or under the authority of the governor and company of the Bank of Ireland respectively; or in any

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manner to affect any such tokens or the circulation thereof; or to subject any company or companies, or person or persons, to any penalty for issuing or circulating any such tokens."

Sect. 4. Justices of the peace are empowered to hear and determine offences in a summary way. 52 Geo. 3, c. 157.

Sect. 5. Witnesses not attending on summons to forfeit 20*l.*, to be levied (as other penalties under these acts) by distress. 53 Geo. 3, c. 114.

Sect. 9. Justices are empowered to detain offenders in custody until return can be had of any warrant of distress.

Sect. 10. In default of distress offenders may be committed to the common gaol or house of correction for three calendar months, unless the penalty be sooner paid, or the offender give notice of appeal to the next general quarter sessions, and enter into recognizance to try such appeal. Determination of sessions to be final.

By stat. 57 Geo. III. c. 46, s. 1, after reciting that "whereas various pieces of copper, and mixed metals composed in part of copper, usually denominated tokens, have lately been, and are issued and circulated, by persons residing in various parts of the United Kingdom, in great quantities, as money, and for a nominal value of the metals of which they are composed; and whereas it is expedient that the further making and issuing of such tokens should be prohibited, and that the circulation of those already made or issued should also be prohibited after a limited period." it is enacted, "that from and after the passing of this act, no piece of copper, or mixed metal composed in part of copper, of whatever value the same may be, shall be made or manufactured or originally issued as a token for money, or as purporting that the bearer or holder thereof is entitled to demand any value denoted thereon, either by letters, words, figures, marks or otherwise, whether such value is to be paid or given in money or goods, or in any manner whatsoever; and every person who shall, after the passing of this act, make or manufacture or originally issue, or cause or procure to be made, manufactured or originally issued, or permit or suffer to be so issued, on his or her behalf, as for nominal value in money or goods, any such token, shall for every token so made, manufactured or issued, or procured or permitted to be so made, manufactured or issued as aforesaid, forfeit any sum not less than 1*l.* nor more than 5*l.*, at the discretion of the justice or justices of the peace who shall hear and determine such offence." 57 Geo. 3, c. 46. Copper tokens. No copper or mixed metal tokens to be made or issued. Penalty.

Sect. 2. "That from and after the 1st day of January, 1818, no piece of copper, or of any mixed metal composed partly of copper, of whatever value the same may be, shall pass or circulate as a token for money, or as purporting that the bearer or holder thereof is entitled to demand any value denoted thereon, either by letters, words, figures, marks, or otherwise, whether such value is to be paid or given in money or goods or other value, or in any manner whatsoever; and every person who shall, after the said 1st of January, 1818, circulate or pass, as for any nominal value in money or goods, any such token, shall, for every such token so circulated or passed, whether such person shall be or have been concerned in the original issuing or circulation of any such token, or only the bearer or holder thereof for the time being, forfeit any sum not less than 2*s.* nor more than 10*s.*, at the discretion of the justice or justices of the peace who shall hear and determine such offence; provided that nothing in this act contained shall extend or be construed to extend to prevent any person from presenting any such token for payment to the original issuer thereof, or to discharge or excuse any such original issuer from his liability to pay the same: provided always, that nothing in this act contained shall be construed as affecting any tokens which have been or may be issued by the Bank of England." Circulating such tokens. Penalty. Issuer to be liable for payment. Proviso for Bank of England tokens.

Sect. 3. "And whereas certain tokens made of copper or of a mixed metal composed partly of copper, and bearing the superscription 'Sheffield Penny Token,' were issued from time to time during the years 1812, 1813, 1814, and 1815, by the overseers of the poor of the township of Sheffield, in the county of York; and whereas the immediate suppression of the circulation of

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57 Geo. 3, c. 46.

Sheffield penny tokens issued for the relief of the poor may circulate until 25th March, 1823.

the aforesaid tokens would be attended with great loss to the said township of Sheffield and to the holders thereof, who are for the most part labourers and mechanics, as well as with great inconvenience to the inhabitants of the town of Sheffield and the neighbourhood thereof; be it further enacted, that nothing in this act contained shall be construed to prevent such tokens as aforesaid from being passed and circulated at any time previous to the 25th day of March which will be in the year of our Lord 1823; provided always, that from and after the said 25th day of March, 1823, all and every the provisions of this act shall be construed to prevent such tokens as aforesaid from being passed and circulated."

Overseers of the poor of Sheffield to pay 1d. for their tokens.

Sect. 4. "That in case any token or tokens made of copper, or of a mixed metal composed partly of copper, with the superscription "*Sheffield Penny Token*," and which has or have been issued by the overseers of the poor of the township of Sheffield, at any time previous to the passing of this act, shall, after the 25th day of March, 1823, and previous to the 25th day of September, 1823, be presented to the overseers of the poor of the township of Sheffield for the time being, or their agent, at the workhouse of the said township, the said overseers shall receive and take such token or tokens as aforesaid, paying to the holder or holders thereof one penny of the current coin of the realm for each and every token so presented as aforesaid; and in case such overseers or their agent shall neglect or refuse to receive and take such token as aforesaid, and to pay one penny for the same as aforesaid, it shall and may be lawful for one justice of the peace, upon complaint upon oath in that behalf made, to summon such overseers or their agent, and after hearing the parties upon both sides, to direct and order (if he shall see just cause) the said overseers of the poor or their agent to take and receive such token as aforesaid, and to pay one penny for the same as aforesaid, together with all costs and charges whatever attending such complaint so made before such justice: provided always, that it shall and may be lawful for the overseers of the poor of the said township of Sheffield to pay such penny as aforesaid out of any money received by them for the relief and maintenance of the poor of the said township; but that it shall not be lawful for the said overseers of the poor to pay the costs and charges attending any such complaint as aforesaid out of any money received by them as aforesaid."

Justice upon complaint may summon overseers.

Overseers may pay such penny out of poor's rates.

Overseers of the poor of Sheffield may call in tokens before 25th March, 1823.

Sect. 5. "That in case the overseers of the poor for the township of Sheffield for the time being shall at any time previous to the said 25th of March, 1823, deem it advisable to call in such tokens as aforesaid, or any amount of them, it shall and may be lawful for them to take such measures as may to them seem necessary for that purpose; paying, however, for each and every token so called in, one penny of the current coin of the realm, out of any money received by them for the relief and maintenance of the poor of the said township of Sheffield."

Sect. 6. "And whereas certain other tokens made of copper, or of a mixed metal composed partly of copper, and bearing the superscription "*Birmingham, One Penny*," were issued from time to time during the years 1811, 1812, 1813, 1814, and 1815, by the overseers of the poor of the parish of Birmingham, in the county of Warwick: and whereas the immediate suppression of the circulation of the aforesaid tokens would be attended with great loss to the said parish of Birmingham, and to the holders thereof, as well as with great inconvenience to the inhabitants of the town of Birmingham and the neighbourhood thereof; be it further enacted, that nothing in this act contained shall be construed to prevent such tokens as aforesaid from being passed and circulated at any time previous to the 25th day of March, 1820: provided always, that from and after the said 25th of March, 1820, all and every the provisions of this act shall be construed to prevent such tokens as aforesaid from being passed and circulated."

Birmingham penny tokens issued for the relief of the poor may circulate until 25th March, 1820.

Overseers of the poor of Birmingham to pay 1d. for their tokens.

Sect. 7. "That in case any token or tokens made of copper, or of a mixed metal composed partly of copper, with the superscription "*Birmingham, One Penny*," and which have been issued by the overseers of the poor of Birming-

ham at any time previous to the passing of this act, shall, after the 25th day of March, 1820, and previous to the 25th day of September, 1820, be presented to the overseers of the poor of Birmingham, or their agent, at the workhouse of the said parish, the said overseers shall receive and take such token or tokens as aforesaid, paying to the holder or holders thereof one penny of the current coin of the realm for each and every token so presented as aforesaid; and in case such overseers or their agent shall neglect or refuse to receive and take such token as aforesaid, and to pay one penny as aforesaid for the same, it shall and may be lawful for one justice of the peace, upon complaint upon oath in such behalf made, to summon such overseers or their agent, and after hearing the parties upon either side to direct and order (if he shall see just cause) the said overseers of the poor or their agent to take and receive such token as aforesaid, and to pay one penny for the same as aforesaid, together with all costs and charges whatever attending such complaint so made before such justice: provided always, that it shall and may be lawful for the overseers of the poor of the parish of Birmingham to pay such penny as aforesaid out of any money received by them for the relief and maintenance of the poor of the said parish; but that it shall not be lawful for them to pay the costs and charges attending any complaint out of such money."

Justice upon complaint may summon overseers.

Overseers may pay such penny out of poor's rates.

Sect. 8. "That in case the overseers of the poor of Birmingham shall, at any time previous to the said 25th day of March, 1820, deem it advisable to call in such tokens as aforesaid, or any amount of them, it shall and may be lawful for them to take such measures as may to them seem necessary for that purpose; paying however, for each and every such token so called in, one penny of the current coin of the realm, from and out of any money received by them for the relief and maintenance of the poor of the said township of Birmingham."

Overseers of the poor of Birmingham may call in tokens before 25th March, 1820.

Sect. 9. "That it shall be lawful for any justice or justices of the peace acting for the county, riding, city, or place within which any offence against this act shall be committed, to hear and determine the same in a summary way; and such justice or justices, upon any information exhibited, or complaint made upon oath in that behalf, shall summon the party accused, and also the witnesses on either side, and shall examine into the matter of fact; and upon due proof made thereof, either by the voluntary confession of the party, or by the oath of one or more credible witness or witnesses or otherwise, (which oath such justice or justices is or are hereby authorised to administer,) shall convict the offender, and adjudge the penalty for such offence."

Justices to determine offences.

Sect. 10. "That if any person shall be summoned as a witness to give evidence before such justice or justices, either on the part of the prosecutor or the person accused, and shall neglect or refuse to appear at the time or place to be for that purpose appointed, without a reasonable excuse for such his neglect or refusal, to be allowed by such justice or justices, then such person shall forfeit for every such offence the sum of 50*l.* to be levied and paid in such manner and by such means as are directed for recovery of other penalties under this act."

Witnesses not attending to forfeit 50*l.*

Sect. 11. "That the justice or justices before whom any offender shall be convicted as aforesaid, shall cause the said conviction to be made out in the manner and form following; (that is to say,)

Conviction.

"*BE it remembered, that on the day of in the year of our Lord A. B. having appeared before me* [or *us*] *one* [or more] *of his Majesty's justices of the peace* [as the case may be,] *for the county, riding, city, or place,* [as the case may be,] *and due proof having been made upon oath by one or more credible witness or witnesses, or by confession of the party,* [as the case may be,] *is convicted of* [specifying the offence,] *in the sum of . Given under my hand and seal* [or *our hands and seals*] *the day and year aforesaid.*"

"which conviction the said justice or justices shall cause to be returned to the then next general quarter sessions of the peace of the county, city, riding, or place where such conviction was made, to be filed by the clerk of the

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peace, to remain and be kept among the records of such county, riding, city, or place."

57 Geo. 3, c. 46.

Clerk of the peace to deliver a copy thereof on payment of 1s.

Sect. 12. "That it shall be lawful for any clerk of the peace for any county, riding, city, or place, and he is hereby required, upon application made to him by any person or persons for that purpose, to cause a copy or copies of any conviction or convictions filed by him under the directions of this act, to be forthwith delivered to such person or persons, upon payment of 1s. for every such copy."

Recovery and distribution of penalties.

Sect. 13. "That the pecuniary penalties and forfeitures hereby incurred and made payable upon any conviction against this act, shall be forthwith paid by the person convicted, as follows; one moiety of the forfeiture to the informer, and the other moiety to the poor of the parish or place where the offence shall be committed; and in case such person shall refuse or neglect to pay the same, or to give sufficient security to the satisfaction of such justice or justices to prosecute any appeal against such conviction, such justice or justices shall by warrant under his or their hand and seal, or hands and seals, cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such distress and sale, returning the overplus (if any) to the owner; and which said warrant of distress the said justice or justices shall cause to be made out in the manner and form following; (that is to say,)

Warrant.

"*To the Constable, Headborough, or Tithingman of* .

"*WHEREAS A. B. of in the county of is this day convicted before me* [or *us*] *one* [or more] *of his Majesty's justices of the peace* [as the case may be,] *for the county of* [or *for the riding of the county of York, or for the town, liberty, or district of*] [as the case may be,] *upon the oath of* [or *a credible witness or witnesses,*] [or *by confession of the party,*] [as the case may be,] *for that the said A. B. hath* [here set forth the offence,] *contrary to the statute in that case made and provided, by reason whereof the said A. B. hath forfeited the sum of to be distributed as herein is mentioned, which he hath refused to pay: these are therefore in his Majesty's name to command you to levy the said sum of by distress of the goods and chattels of him the said A. B.; and if within the space of days next after such distress by you taken, the said sum, together with reasonable charges of taking the same, shall not be paid, then that you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay one half of the said sum of to of who informed me* [or *us*, as the case shall be,] *of the said offence, and the other half of the said sum of to the overseer of the poor of the parish* [*township* or *place*] *where the offence was committed, to be employed for the benefit of such poor, returning the overplus (if any) upon demand to the said A. B. the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if sufficient distress cannot be found of the goods and chattels of the said A. B. whereon to levy the said sum of that then you certify the same to me* [or *us*, as the case shall be,] *together with this warrant. Given under my hand and seal* [or *our hands and seals*] *the day of in the year of our Lord* ."

For detaining offenders till return of warrant.

Sect. 14. "That it shall be lawful for such justice or justices to order such offender to be detained in safe custody until return may conveniently be had and made to such warrant of distress, unless the party so convicted shall give sufficient security to the satisfaction of such justice or justices for his appearance before the said justice or justices, on such day as shall be appointed by the said justice or justices for the day of the return of the said warrant of distress, (such day not exceeding five days from the taking of such security,) which security the said justice or justices is and are hereby empowered to take, by way of recognizance or otherwise."

Committal of defaulters.

Sect. 15. "That if upon such return no sufficient distress can be had, then and in such case the said justice or justices shall and may commit such offender to the common gaol or house of correction of the county, riding, division, or place, where the offence shall be committed, for the space of one calendar month, unless the money forfeited shall be sooner paid, or unless or until such offender, thinking him or herself aggrieved by such conviction,

shall give notice to the informer that he or she intends to appeal to the justices of the peace at the next general quarter sessions of the peace to be holden for the county, riding, or place wherein the offence shall be committed, and shall enter into recognizance before some justice or justices, with two sufficient sureties, conditioned to try such appeal, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions; which notice of appeal, being not less than eight days before such quarter sessions, such person so aggrieved is hereby empowered to give; and the said justices at such sessions, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against, as they the said justices shall think proper; and the determination of such quarter sessions shall be final, binding, and conclusive to all intents and purposes."

Competency of witnesses.

Sect. 16. "That no person shall be disabled from being a witness in any prosecution for any offence against this act, by reason of his being an inhabitant of the parish wherein such offence was committed: provided always, that no proceeding to be had touching the conviction or convictions of any offender or offenders against this act shall be quashed or vacated for want of form, or be removed by writ of *certiorari*, or any other writ or process whatsoever, into any of his Majesty's courts of record at Westminster, or elsewhere."

Proceedings not to be removed by *certiorari*.

Limitation of actions.

Sect. 17. "That if any action or suit shall be commenced against any person or persons for any thing done or acted in pursuance of this act, then and in every such case such action or suit shall be commenced or prosecuted within three calendar months after the fact was committed, and not afterwards; and the same and every such action or suit shall be brought within the county where the fact was committed, and not elsewhere; and the defendant or defendants in every such action or suit shall and may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if the same shall appear to have been so done, or if any such action or suit shall be brought after the time limited for bringing the same, or be brought or laid in any other place than as aforementioned, then the jury shall find for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his, her, or their action after the defendant or defendants shall have appeared, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall and may recover treble costs, and have the like remedy for the recovery thereof as any defendant or defendants hath or have in any other cases by law."

Not to extend to copper monies of the realm.

Sect. 18. "That nothing in this act contained shall extend or be construed to extend to any copper monies of the realm now current or to be current, by virtue of any proclamation or proclamations that shall have been or may be issued by his Majesty."

XI. Forms.(a)

(No. 1.)

Commitment for coining silver money.(b)

[Commencement as usual, as *ante*, p. 8, (No. 1.)] *on, &c. at, &c. in the said county, twenty pieces of false, feigned, and counterfeit money, to the likeness and similitude of the good, legal, and current money and* [*silver*] *coin of our Lord the King, called* [*shillings*], *falsely, deceitfully, feloniously, and traitorously did forge, counterfeit, and coin: against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(a) The framing of indictments for coining being confined to a few members only of the profession, it is deemed inexpedient to insert forms of indictments here.

(b) See the 25 Edw. III. st. 5, c. 2, *ante*, 722.

FORMS.

(No. 2.)

Commitment for counterfeiting copper money.(a)

[Commencement as usual, as *ante*, p. 8, (No. 1.)] *on, &c. at, &c. in the said county, [fifty] pieces of false, feigned, and counterfeit copper money, to the likeness and similitude of the good, legal, and current copper money of this realm, called [pennies], feloniously did make, coin, and counterfeit: against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 3.)

Commitment for clipping, &c. the current coin.(b)

[Commencement as usual, as *ante*, p. 8, (No. 1.)] *on, &c. at, &c. twenty pieces of the proper monies and coins of this realm called [half-crowns], then and there falsely, deceitfully, and traitorously, and for wicked lucre and gain's sake, did clip, round, and file: against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 4.)

Commitment for uttering counterfeit money.(c)

[Commencement as usual, as *ante*, p. 8, (No. 1.)] *on, &c. at, &c. one piece of false and counterfeit money, made and counterfeited to the likeness and similitude of the good, legal, and current money and silver coin of our Lord the King of this realm, called a [half-crown], as and for a piece of such good, legal, and current money and silver coin called a [half-crown], then and there falsely and deceitfully did utter and tender to one E. F. he the said C. D. at the time he so uttered and tendered the said piece of false and counterfeit money as aforesaid well knowing the same to be false and counterfeit:* against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 5.)

Commitment for uttering counterfeit money, having other counterfeit money in his possession.(d)

[Proceed as in the form (No. 4,) to the *, and then thus:] *and that the said C. D. at the time he so offered and tendered the said piece of false and counterfeit money as aforesaid, had about him, in his custody and possession, a certain other piece of false and counterfeited money, made and counterfeited to the likeness and similitude of the good, legal, and current money and silver coin of our said Lord the King of this realm, called a [half-crown] he the said C. D. then and there well knowing the said last-mentioned piece of false and counterfeit money to be false and counterfeit: against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 6.)

Commitment for putting off counterfeit money at a lower rate than by its denomination it imports.(e)

[Commencement as usual, as *ante*, p. 8, (No. 1.)] *on, &c. at, &c. [twenty] pieces of false and counterfeit milled money, made and counterfeited to the likeness and similitude of the good, legal, and current milled money and silver coin of our said Lord the King of this realm, called a [half-crown,] (the said several pieces of counterfeit money not being then cut in pieces,) feloniously and unlawfully did pay and put off to one E. F. at and for a lower rate and value than the said pieces of counterfeit money by their denominations did then and there import, and were respectively coined and counterfeited for: against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

(No. 7.)

Commitment for procuring counterfeit coin, with intent to utter it.(f)

[Commencement as usual, as *ante*, p. 8, (No. 1.)] *on, &c. at, &c. unlawfully did procure and obtain certain pieces of false and counterfeit money, made and*

(a) See stat. 11 Geo. III. c. 40, s. 1, *ante*, 726.

(b) See 5 Eliz. c. 11, s. 2, *ante*, 730.

(c) See stat. 15 Geo. II. c. 28, s. 2, *ante*, 740. See a form of commitment for a subsequent offence, Arch. Forms, 72. See also a form of commitment for uttering twice within two days. *Id.* 72.

(d) See stat. 15 Geo. II. c. 28, s. 3, *ante*, 740.

(e) See *ante*, 745.

(f) *Ante*, 738.

counterfeited to the likeness and similitude of the good, legal, and current money and [silver] coin of our said Lord the King, called [half-crowns], (he the said C. D. then and there well knowing the said pieces of false and counterfeit money to be false and counterfeit,) with intent the same as and for pieces of good, legal, and current money and [silver] coin, called [half-crowns], falsely and deceitfully to utter, tender, pay, and put off. And you the said keeper, &c. [as usual, as *ante*, p. 8, to the end.]

(No. 8.)

Commitment for having coining tools in his possession.(a)

[Commencement as usual, as *ante*, p. 8, (No. 1.)] *on, &c. at &c. knowingly, feloniously, and traitorously had in the custody and possession of the said C. D. (without lawful or sufficient excuse for that purpose,) two dies, made, to wit, of iron and steel, in and upon which respectively were made and impressed the figure, stamp, resemblance, and similitude of one of the sides or flats of the lawful [silver] coin current within this kingdom, called a [shilling], and which said dies would then and there make and impress the figure, stamp, resemblance, and similitude of one of the sides and flats of the said lawful silver coin current within this kingdom, called a [shilling]: against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual, as *ante*, p. 8, to the end.]

Colliery. *See ante,* **Coals,** p. 720; *post,* **Malicious Injuries to Property,** Vol. III. p. 730.

Combination. *See post,* **Conspiracy,** Vol. I.

Combination of Workmen. *See post,* **Servants,** Vol. V. p. 418 to 426.

Commission of Judges. *See ante,* **Assizes,** p. 286.

Commission of the Peace. *See* **Justices,** Vol. III. p. 449.

Commitment. (b)

What.

COMMITMENT signifies the committing or sending of a person to prison, by a warrant or order, on account of some offence committed, or suspected to have been committed, by him.

There are two species of commitments which will be here noticed: 1st, Commitments for *Safe Custody*—and, 2d, Commitments *in Execution*.

As to commitments for re-examination, see **Examination,** Vol. II. p. 99.

COMMITMENTS FOR SAFE CUSTODY.

I. *For what and who may be committed,* 756.

(a) See stat. 8 & 9 Will. III. c. 26, s. 1, *ante*, 729.

(b) As to commitments in general, see 1 Chit. C. L. 106 to 117; 2 Hawk. c. 16; 1 Hale, 583; Bac. Ab. *Commitment.*

COMMITMENT.

II. *Who may commit*, 757.

III. *To what Prison, and Time, &c. of Imprisonment*, 758.

[6 Geo. I. c. 19; 15 Geo. II. c. 24; 24 Geo. II. c. 55; 1 & 2 Geo. IV. c. 14; 4 Geo. IV. c. 64.]

IV. *How Commitment to be framed*, 760 to 763.

V. *Informations and Examinations to be put in writing*, 763. See Bail, *ante*, 307.

[7 Geo. IV. c. 64, s. 2.]

VI. *Charges of Commitment*, 763.

[3 Jac. I. c. 10; 31 Car. II. c. 21; 27 Geo. II. c. 3.]

VII. *Duty of Gaoler as to receiving, &c. Defendant*, 764.

[4 Edw. III. c. 10; 55 Geo. III. c. 50.]

VIII. *Certifying Commitment*, 765.

[3 Hen. VII. c. 3.]

IX. *Copy of*, 765.

[31 Car. II. c. 21.]

X. *Discharge of Defendant*, 765.

XI. *Forms as to*, 766.

COMMITMENTS IN EXECUTION.

I. *For What and who may be committed*, 768.

II. *Who may commit, and to what Prison*. 768.

III. *How Commitment to be framed*, 769 to 772.

IV. *Execution, Expenses, Copy, and Certificate of*, 772.

V. *Discharge of Defendant*, 772.

VI. *Forms as to*, 773.

COMMITMENTS FOR SAFE CUSTODY.

And herein—1st. For what and who may be committed.—2dly. Who may commit.—3dly. To what Prison, and Time, &c. of Imprisonment.—4thly. How the Commitment is to be framed.—5thly. The Information and Examination to be put into Writing.—6thly. The Charges of Commitment.—7thly. The Duty of the Gaoler as to receiving the Defendant, &c.—8thly. Certifying the Commitment.—9thly. The Copy of it, &c.—And, 10thly. The Discharge of Defendant.

I. For what and who may be committed.

For what and who may be committed.

All persons apprehended for offences which are not bailable, and also all persons who neglect to offer or complete bail for offences which are bailable, must be committed. 2 *Hawk.* c. 16, s. 1.

It is necessary, however, that in all cases before committing a party for safe custody that some *primâ facie* case be made out against him; *Cox* v. *Coleridge*, 1 *B. & C.* 43, 50; 2 *D. & R.* 86, S.C.; otherwise the magistrate would be subject to an action. See Justices, Vol. III. p. 486, 487.

We have already seen for what offence a party may be apprehended, and how he may be apprehended, *ante*, 257 to 259, 265; also as to what offences

are bailable and what not, *ante*, 303; and how a party should bail himself, *ante*, 306. FOR WHAT.

In Felonies]—We have seen that, in *felonies, one* justice cannot now take bail on a charge of felony or suspicion of felony. He must either dismiss the charge, *or* commit the accused if there be *positive credible* proof, or a *strong presumption* of guilt. And if he be of opinion there is not a strong presumption of guilt, but at the same time that he ought not to dismiss the charge, then he must order the party to be detained until he is taken before two justices, *ante*, 303. In felonies.

We have also seen that, in felonies, if the prisoner be brought before *two or more* justices, either in the first instance, or on being ordered to be detained by a single magistrate, they may, if they are of opinion that there is not a strong presumption of guilt, but that still sufficient appears against him to make a judicial inquiry proper, admit him to bail; and they may admit him to bail, not only if no strong presumption of guilt be raised by the evidence adduced on the part of the accuser, but also when it has been raised, but is at the same time weakened by the evidence of the accused, *ante*, 303.

If the prisoner be charged with suspicion only of felony, yet if there be no felony at all proved to be committed, or if the fact charged as a felony be in truth no felony in point of law, the justice should discharge him as to the felony; as if a man be charged with felony for stealing a parcel of the freehold, or for carrying away what was delivered to him, and such like, for which, though there may be cause to bind him over as for a trespass, the justice should discharge him as to felony, because it is not felony. 2 *Hale*, 121.

Misdemeanors]—We have seen as to when a justice should bail or commit a party in case of misdemeanors, *ante*, 304. Misdemeanors.

Contempts]—It seems doubtful whether a justice can commit for a contempt. See *R.* v. *James*, 5 *B.* & *A.* 894; 2 *Barnard.* 155; *post*, **Sessions**, Vol. V. p. 477; and **Examination**, Vol. II. p. 99. Persons guilty of contempt.

It is said, however, that wheresoever a justice is empowered by any statute to bind a person over, or to cause him to do a certain thing, and such person being in his presence shall refuse to be bound, or to do such thing, the justice may commit him to the gaol, to remain there till he shall comply. 2 *Hawk.* c. 16. s. 2.

A justice of the peace may commit a *feme covert* who is a material witness upon a charge of felony brought before him, and who refuses to appear at the sessions to give evidence, or to find sureties for her appearance. *Bennett and Wife* v. *Watson and another*, 3 *M.* & *S.* 1. And *vide post*, **Examination**, Vol. II. p. 99.

For Re-examination]—As to commitments for further examination, see *post*, **Examination**, Vol. II. p. 99. Re-examination.

Liability of Magistrate]—If the magistrate, acting within the scope of his jurisdiction, but taking an erroneous view of the effect of the evidence, should come to a wrong conclusion and commit the defendant, and the defendant should be afterwards discharged by the superior court on an *habeas corpus*, yet he cannot on that account sue the magistrate. 14 *East*, 82; and see further, *post*, **Justices**, Vol. III. p. 486, 487. Liability of magistrate.

II. Who may commit.

A justice of the peace or other officer who has power to examine and bail the prisoner, has also in general, as incident to his office, power to commit him. 1 *Ld. Raym.* 66; 2 *Hawk.* c. 16, s. 3; *Bane* v. *Methuen*, 2 *Bingh.* 62; 9 *Moore*, 161, S. C. The 7 Geo. IV. c. 64, s. 1, expressly recognises this power in justices of the peace. See *ante*, 303. Who may commit.

WHO MAY COMMIT.

The privy council and secretaries of state have the power of committing for treason and other offences affecting the public. 7 *T. R.* 736, 742; 2 *Hawk.* c. 16.

We have already seen who may bail a prisoner, *ante*, 304, 305; and from this may be collected who may commit him.

III. To what Prison, and Time, &c. of Imprisonment.

To what prison.

If the party accused of a felony be not bailed, or discharged without bail, he must be committed to the common gaol of the county, &c. 5 Hen. IV. c. 10; 23 Hen. VIII. c. 2.

Or, when charged merely with small offences, either to the common gaol or house of correction, at the option of the committing magistrate. 6 Geo. I. c. 19.

The Court of King's Bench may commit defendants to any prison in England they think fit. *Moore*, 666.

In England.

The prison must be within the realm of England. 2 *Hawk.* c. 16, s. 5; and see the *habeas corpus* act, *post*, **Habeas Corpus**, Vol. II. giving a remedy by action for acting to the contrary.

Stocks.

Justices may commit certain offenders to the stocks, or other custody, by particular statutes.

Different county.

Generally, if a man commit felony in one county, and be arrested for the same in another county, he shall be committed to gaol in that county where he is taken. *Dalt.* c. 170.

Yet if he escape, and be taken on fresh suit in another county, he may be carried back to the county where he was first taken. *Id.*

21 Geo. 2, c. 55.

Also by statute 24 Geo. II. c. 55, s. 1, if a person be apprehended upon a warrant indorsed in another county, for an offence not bailable, or if he shall not there find bail, he shall be carried back into the first county, and there be dealt with according to law. See this act at length, *post*, **Warrant**, Vol. V.

Justices of liberty, &c. may commit offenders to house of correction, &c. of the county, &c. in which such liberty, &c. situate.

Stat. 15 Geo. II. c. 24, recites that "whereas doubts and questions have arisen, touching the commitment of offenders, by justices of the peace of liberties and corporations, to the houses of correction of counties, ridings, or divisions, in which such liberties or corporations are situate, though the inhabitants of such liberties and corporations contribute to the maintenance and support of such houses of correction;" and enacts, "that in all cases where any person liable by law to be committed to the house of correction, shall be apprehended within any liberty, city or town corporate, whose inhabitants are contributory to the support and maintenance of the house or houses of correction of the county, riding, or division, in which such liberty, city or town corporate is situate; it shall and may be lawful for the justices of the peace of such liberty, city, or town corporate, to commit such person to the house of correction of the county, riding or division, in which such liberty, city, or town corporate is situate; which person so committed shall and may be received, detained, dealt with and ordered, and be set and kept to hard labour, or conveyed and sent away, or discharged, and be subject and liable to the same correction and punishment, to all intents and purposes, as if committed by any justice or justices of the peace of the same county, riding, or division."

This act to be construed liberally.

This act is a declaratory one, and should have a liberal construction; and therefore where justices of a borough, contributing to the county rate, have committed persons to the county house of correction for offences cognizable within the county, the justices at their borough sessions have a right to order such prisoners to be brought before them for trial there. *R. v. Amos*, 2 *B. & A.* 533. It is questionable also where a county magistrate, having concurrent jurisdiction, has committed a prisoner for an offence within the

borough, whether the borough sessions have not the same power of ordering such prisoner to be brought before them for trial.

Where the justices of a borough had exclusive jurisdiction within the borough itself, but jurisdiction concurrent with that of the county justices over certain places called the liberties of the borough, it was held that for an offence committed within the liberties they might commit to the county gaol, and cause the prisoner to be brought before them for trial at the borough sessions. *R.* v. *Musson*, 6 *B. & C.* 74; 9 *D. & R.* 172, S. C.

Power to Justices, acting in any place not being a county to commit offenders to the gaol of the county.

Stat. 60 Geo. III. & 1 Geo. IV. c. 14, after reciting that "whereas the trial of capital offences before justices of peace, within local and exclusive jurisdictions not being counties, may be attended with inconvenience, and it is desirable that some remedy should be provided for the same;" enacts, "that the justices of the peace acting within and for any town, liberty, soke, or place, not being a county, but having an exclusive jurisdiction for the trial of felonies and misdemeanors committed within the same, shall, from and after the passing of this act, have full power within their respective limits, at their discretion, to commit any person duly charged before them or any of them with any capital offence committed within such limits, to the gaol of the county within which such town, liberty, soke or place shall be situated, there to be tried at the next session of oyer and terminer or general gaol delivery, to be held in and for such county, in the same manner as if such offence had been committed within any other part of the said county, and as if such person had been committed by any justice of the same county, not being within such limits."

Sect. 2 of the same act empowers local justices to bind over the parties and witnesses to prosecute and give evidence, and return the recognisances and depositions to the clerk of assize or other proper officer; and by sect. 3 the expenses allowed by the judge are to be paid by the local jurisdiction as the judge shall order; but as to this see *post*, **Costs**, Vol. I.

As to the commitment of vagrants, see the 4 Geo. IV. c. 64, *post*, **Gaols**, Vol. II.; **Vagrants**, Vol. V.

Time of imprisonment.

Time of Imprisonment]—The time during which the defendant may be imprisoned will be treated of while considering the mode of framing the commitment, *post*, 761. As to the time for which a party may be committed for re-examination, see *Davis* v. *Capper*, 10 *B. & Cres.* 24; 4 *C. & P.* 134, S. C.; *post*, **Examination**, Vol. II. p. 99, 100.

Mode of imprisonment, and right to have advisers, &c. in prison.

Mode of Imprisonment and Right to have Attorney, &c. in Prison]—The 4 Geo. IV. c. 64, provides for the mode and places of imprisonment of persons committed for trial for various offences, and the admissions at proper times and under certain restrictions of persons with whom such prisoners may desire to communicate. See *post*, **Gaol**, Vol. II.

The observance of this act may be enforced by *mandamus* from the Court of King's Bench, ordering the sheriff and gaolor to admit an attorney into the prison to consult with the prisoners. *R.* v. *Thurtell*, *M. T.* 1823.

It has been held on this act, that prisoners committed to gaol for trial who are able but refuse to work are not entitled by law to have any food provided for them by the public, and therefore where a magistrate reported as an abuse to the justices at the quarter sessions, that untried prisoners had been compelled to work at the treadmill, and the justices at the sessions ordered that the treadmill should be applied to the employment of other prisoners as well as those sentenced to hard labour, and that those committed for trial who were able to work and had the means of employment offered them by which they might earn their support, but who refused to work, should be allowed bread and water only, the Court of K. B. refused to grant a *mandamus* to compel the justices to order such prisoners any other food. *R.* v. *Justices of Yorkshire, N. R.*, 2 *B. & Cres.* 286; 3 *D. & R.* 510, S. C.

FORM OF.

IV. How Commitment to be framed.

Must be in writing under seal, &c.

Commitments to the custody of gaolers, &c., must be in writing under the hand and seal of the magistrate making the commitment, directed to the gaoler or keeper of the prison, mentioning the time and place of making it.

The magistrate may, by parol, order a party to be detained for a reasonable time, until the magistrate can make out the commitment; (*Still* v. *Walls*, 7 *East*, 533;) or in cases of felony, until the prisoner (in case of doubt as to bailing) shall be taken before two justices, in pursuance of the 7 Geo. IV. c. 64, s. 1, *ante*, 303.

Authority of magistrate.

It is said that the authority of the magistrate ought to be shown, but this in strictness is not absolutely necessary, for his authority may be supplied by parol evidence. See 2 *Hawk.* c. 16, s. 13; 2 *Hale*, 122; *Ken. R.* 122; 2 *Marsh. Rep.* 377. It is however usual and best to state such authority. *Id. Toone*, 63.

The commitment may be in the King's name, but it is most usually in the magistrate's awarding it. See *Dalt. J.* 125; 2 *Hawk.* c. 16, s. 14.

Direction.

Direction]—The commitment should be directed to the gaoler or keeper of the prison, and not generally to carry the party to prison. 2 *Hawk.* c. 16, s. 13; *R.* v. *Smith*, 2 *Stra.* 934; 1 *Ld. Raym.* 424. The magistrate's warrant and commitment is usually directed to a constable and to the keeper of gaol, directing the former to convey the prisoner into the custody of the gaoler, and the latter to receive and keep him. In London and the metropolis, the commitment is usually directed to the gaoler only.

Name of defendant.

Name of Party]—It should contain the name and surname of the party committed, if known; if not known, then it may be sufficient to describe the person by his age, stature, complexion, colour of his hair, and the like, and to add that he refuseth to tell his name. 1 *Hale*, 577.

Oath.

Oath]—It is safe, but not absolutely necessary, to set forth that the party is charged upon oath. 2 *Hawk.* c. 17, s. 117; 2 *Wils.* 158; 1 *Leach*, 167.

Cause.

Cause]—It ought to contain concisely the cause, as for treason, or felony, or suspicion thereof; otherwise if it contain no cause at all, if the prisoner escape it is no offence at all; whereas if the *mittimus* contained the cause, the escape were treason or felony, though he were not guilty of the offence; and therefore for the King's benefit, and that the prisoner may be the more safely kept, the *mittimus* ought to contain the cause. 2 *Inst.* 52.

And hereupon it appeareth, that a warrant or *mittimus* "to answer to such things as shall be objected against him," is utterly against law. 2 *Inst.* 591.

Also it ought to contain the *certainty* of the cause; and therefore if it be for felony, it ought not to be generally for felony, but it must contain the special nature of the felony, briefly, as for felony, "for the death of J. S.;" or for burglary, "in breaking the house of J. S.;" and the reason is, because it may appear to the judges of the King's Bench, upon an *habeas corpus*, whether it be felony or not. 2 *Hale*, 122.

And although it is not necessary to state in a warrant of commitment on a charge of felony, that the act was done "feloniously," yet unless it sufficiently appears on the facts stated in the commitment to be in law a felony, the judges of the Court of King's Bench are bound to bail the defendant. *R.* v. *Judd*, 2 *T. R.* 255; 2 *Chit. Rep.* 138.

In *Dr. Groenvelt's case* it was resolved, "that the cause of commitment ought to be certain, to the end that the party may know for what he suffers, and how he may regain his liberty." 1 *Ld. Raym.* 213.

The commitment ought not to be in the disjunctive. *R.* v. *Evered*, *Cald.* 26. Two justices committed Robert Collehole, an apprentice, for running away from his master. An objection was taken to the *form* of the commit-

ment, for the uncertainty thereof, which ran thus: as an apprentice *or* servant, for disobeying his indentures *or* articles." *Lord Mansfield* said, that the objection to the warrant of commitment as running in the disjunctive must undoubtedly prevail. The counsel for the prosecution consented to the prisoner's discharge. Statement of offence.

Where an offence is created by statute, it should be described accordingly in the commitment. 5 *T. R.* 169; 2 *Leach*, 583.

But a commitment for safe custody before conviction need not be so peculiarly certain, and is not construed so strictly as commitment in execution after conviction, and at all events need not be framed with the same precision as an indictment. 7 *B. & Cres.* 669; *sed vide Fortes.* 272, *post*, 769.

A commitment stating that A. B. had been discovered and apprehended under circumstances that denoted a derangement of mind and a purpose of committing some crime for which, if committed, he would be liable to be indicted, to wit, an assault; and that the said A. B. being brought before the justice, he committed him as a dangerous person, suspected to be insane, under the 39 & 40 Geo. III. c. 94, s. 3, was held to be sufficient, although it did not state the name of the person whom the prisoner intended to assault, and it did not appear that the committing magistrate had received any evidence. *R.* v. *Gourlay*, 7 *B. & Cres.* 669; 1 *M. & R.* 619, S. C.

A commitment for treasonable practices is legal. *R.* v. *Despard*, 7 T. R. 736.

And commitments for high treason in general are good. 2 *Hawk.* c. 16, s. 16. And see as to a libel, 2 *Wils.* 153, 159.

Even in cases of felony, the want of the certainty of the cause seems not to make the commitment absolutely void, so as to subject the gaoler to a false imprisonment; but it lies in averment to excuse the gaoler or officer, that the matter was for felony. 1 *Hale*, 584.

And although the commitment itself be informal, yet if the *corpus delicti* appear on the deposition returned to the court, the defendant will not be bailed but remanded. *R.* v. *Marks*, 3 *East's Rep.* 157; *Cald.* 295; 1 *Chit. C. L.* 113.

Conclusion]—It must have an apt conclusion; as if it be for felony, or a crime either at common law or created by statute, for which he is punishable by indictment, to detain him "till he be thence delivered by law," or "by order of law," or "by due course of law," or words to that effect. 2 *Hale*, 123; 2 *Hawk.* c. 16, s. 18; *R.* v. *Nash*, 2 *Bla. Rep.* 806. Conclusion.

But if the commitment be not for an offence so indictable, or being an offence rather of a civil than criminal nature, as for contumacy in refusing to do something which he ought to do, the conclusion ought to be "until he comply, and perform the thing required," for he is entitled to be discharged immediately upon the performance of his duty. If, therefore, an overseer of the poor be committed for refusing to account, the warrant of commitment must conclude, "there to remain until he shall account." *Carth.* 152.

And when the commitment is in pursuance of a special authority, the terms of the commitment must be special, and exactly pursue that authority. *Nash's case*, 2 *Bla. Rep.* 806.

In a case, however, where a collector of the parish rates was committed to the county gaol by warrant of two justices, upon complaint made against him for that he having been duly appointed collector of the rates for the parish of Richmond, pursuant to stat. 25 Geo. III. c. 41, refused to account, and pay over the monies collected by him by virtue of the act to W. S., the person duly authorised to receive them; and the justices adjudged that he should be committed to the gaol, there to remain without bail or mainprize, until he should have made a true and fair account, and until such money, as upon the said account should appear to be remaining in his hands, should be paid by him or his sureties to W. S., and they required the keeper of the gaol to receive and safely keep him until he should be discharged by due course of law, and because the warrant directed that he should be detained "until he was discharged by due course of law;" a *habeas corpus* was obtained on the

FORM OF.

Conclusion.

ground of the warrant being void; the cases of *Yorley*, 1 *Salk.* 351; 1 *Ld. Raym.* 100, S. C.; *Bracy*, 1 *Ld. Raym.* 99; *Hollingshead*, 2 *Ld. Raym.* 851; and *Baldwin* v. *Blackmore*, 1 *Burr.* 602, having been cited, *Lord Ellenborough*, C. J., after the argument of the case, said, "if there was any uncertainty on the face of the commitment, I should have agreed with the argument. But coupling the premises with the conclusion, is it not in effect the same as if the warrant had directed the gaoler to detain the party until he had accounted? We must read the warrant as if the magistrates had in the conclusion recited over again the adjudication." *Et per Le Blanc*, J. "Some precise authority should be shown to justify the court in adopting the objection made to this warrant. When the party has accounted and paid over the money, he will be entitled to be discharged by due course of law." The prisoner was remanded. *Exparte Goff*, 3 *M. & S.* 203.

A conviction by two justices of an overseer, under stat. 17 Geo. II. c. 38, upon complaint of the succeeding overseers, for refusing and neglecting to deliver over to them "a certain book belonging to the parish, called The Bastardy Ledger," convicting him of the said offences, and adjudging that he should be committed to the common gaol "until he shall have yielded up all and every the books concerning his said office of overseer belonging to the parish," &c.; was held void as to the adjudication in respect to the imprisonment and the commitment made in pursuance thereof, on account of a clear excess of jurisdiction, the imprisonment being for too long a time; and it was held, that the imprisonment under the commitment was a trespass in the committing magistrates, for which an action was maintainable, the commitment being void *in toto*. *Groome* v. *Forrester*, 5 *M. & S.* 314.

In the case of *R.* v. *James Gordon*, 1 *B. & A.* 572, (*a.*) the prisoner being committed to the New Prison, Clerkenwell, till the next general sessions, for assaulting a customhouse officer's assistant in execution of his duty, a motion was made for a *habeas corpus*, because the stat. 13 & 14 Car. II. c. 11, directs that such offender shall be committed, without bail, till the next quarter sessions. The writ was granted. Afterwards, the defendant being brought up, the keeper of New Prison returned the warrant of commitment, which appeared to be to the general sessions: but he also returned a warrant of detainer for the same offence, issued the day before he was brought up, by the same justice, which was till the next quarter sessions. The defendant, therefore, was remanded without opposition, the warrant of detainer being strictly regular.

See further as to the conclusion of the commitment where it is in execution, *post*, 770, 771.

Consequences of defect in conclusion.

If only part of the conclusion be irregular, it doth not seem to make the warrant void, but the law will reject that which is surplusage, and the rest shall stand; so that if the matter appear to be such, for which he is to remain in custody, or be bailed, he shall be bailed or committed as the case requires, and not discharged, but the wrong conclusion shall be rejected. 1 *Hale*, 584; and see *Davis* v. *Capper*, 10 *B. & Cres.* 37.

And we have just seen, though a warrant of commitment for felony be informal, yet if the *corpus delicti* appear in the depositions returned to the court, they will not bail, but will remand the prisoner. The practice in cases of defective commitments was in this case altered, to prevent in future prisoners thus remanded from renewing the same application to another court or judge. *R.* v. *Marks and others*, 3 *East.* 157; *R.* v. *Taylor*, 7 *D. & R.* 622; 3 *D. & M. M. C.* 491; *post*, p. 772.

Seal.

Seal]—It must be under seal; without this, the commitment is unlawful, the gaoler is liable to false imprisonment, and the wilful escape by the gaoler, or breach of prison by the felon, makes no felony. 1 *Hale*, 583.

But this must not be intended of a commitment by the sessions, or other court of record: for there the record itself, or the memorial thereof, which may at any time be entered of record, are a sufficient warrant, without any warrant under seal. 1 *Hale*, 584.

CHARGES OF COMMITMENT.

Time and Place of Making]—It should also set forth the time and place at which it is made. 2 *Hawk.* c. 16, s. 13.

Time and place.

A mistake in the date might be fatal. See *Exparte M'Gee*, 6 *Mad. Rep.* 206; *Salt's case*, 13 *Vesey*, 361.

V. Information and Examination to be taken in Writing, &c.

Examinations to be taken in writing.

We have already seen, *ante*, Vol. I. p. 307, that by 7 Geo. IV. c. 64, s. 2, justices, before they commit a person to prison for an offence, should take the examination of such person, and the information on oath of the witnesses, so far as is material, in writing, under a penalty for omission.

VI. Charges of the Commitment.

Charges to be paid by the offender if able.

By stat. 3 Jac. c. 10, s. 1, "all and every person and persons whatsoever, that from and after the end of this present session of parliament, shall be committed to the common or usual gaol within any county or liberty within this realm, by any justice or justices of the peace, for any offence or misdemeanor, to any such gaol, that the said person or persons so to be committed as aforesaid, having means or ability thereunto, shall bear their own reasonable charges for so conveying or sending them to the said gaol, and the charges also of such as shall be appointed to guard them to such gaol, and shall so guard them thither: and if any such person or persons so to be committed as aforesaid shall refuse, at the time of their commitment and sending to the said gaol, to defray the said charges, or shall not then pay or bear the same, that then such justice or justices of the peace shall and may by writing under his or their hand and seal, or hands and seals, give warrant to the constable or constables of the hundred, or constable or tithing-man of the tithing or township where such person or persons shall be dwelling and inhabit, or from whence he or they shall be committed as aforesaid, or where he or they shall have any goods within the county or liberty, to sell such and so much of the goods and chattels of the said persons so to be committed, as by the discretion of the said justice or justices of the peace shall satisfy and pay the charges of such his or their conveying and sending to the said gaol, the appraisement to be made by four of the honest inhabitants of the parish or tithing where such goods or chattels shall remain and be, and the overplus of the money which shall be made thereof to be delivered to the party to whom the said goods shall belong."

If not able, to be paid out of the county rates.

And by stat. 27 Geo. II. c. 3, st. 1, reciting that "whereas by an act passed in the third year of the reign of King James the First, intituled, 'An Act for the rating and levying of the charges for conveying malefactors and offenders to the gaol,' every offender so to be conveyed shall bear the charges of himself and of those who convey him; and if he refuse so to do, his goods within the same county may be distrained and sold to satisfy the same: and if he hath no goods, the constable, churchwardens, and other inhabitants of the parish where he was taken, shall make a tax on every inhabitant thereof to pay the said charges: and whereas the taxing the parish where such offender was taken to pay such charges is a great discouragement to parishes to take offenders, and it is also found by experience to be very difficult to make a rate on the inhabitants to raise such tax, whereby constables and others are often kept out of their money by them advanced for the service of the public, and sometimes lose the same, to their very great injury and vexation;" enacts, "that from and after the 24th day of June, 1754, when any person, not having goods or money within the county where he is taken, sufficient to bear the charges of himself and of those who convey him, is committed to gaol or the house of correction, by warrant from any justice or justices of the peace, then, on application by any constable or other officer

CHARGES OF COMMITMENT.

who conveyed him, to any justice of the peace for the same county or place, he shall upon oath examine into and ascertain the reasonable expenses to be allowed such constable or other officer, and shall forthwith, without fee or reward, by warrant under his hand and seal, order the treasurer of the county or place to pay the same, which the said treasurer is hereby required to do, as soon as he receives such warrant; and any sum so paid shall be allowed in his accounts."

27 Geo. 2, c. 3.

Except in Middlesex.

Sect. 4. "That nothing in this act contained shall extend to empower such court, or any justice or justices of the peace, to make warrants or orders on the treasurer of the county of Middlesex for the payment of the expenses of the constable or other officer in conveying any person to gaol, or for the payment of any person for his time, trouble, and expense, who shall appear on his recognizance to give evidence as aforesaid; but that within the said county of Middlesex the expenses of the constable or other officer, occasioned by his conveying of any person to gaol by virtue of a warrant from any justice or justices of the peace, shall (after such expenses have been examined into upon oath, and allowed by such justice or justices, and for which no fee or reward shall be taken) be paid by the overseer or overseers of the poor of the parish or place where the said person was apprehended, who is and are hereby authorised and required to pay the same; and the sum or sums so paid shall be allowed in his or their accounts."

Rate of charge per mile.

By the *Habeas Corpus* Act, 31 Car. II. c. 2, s. 2, the charge of conveying an offender is limited not to exceed 12*d.* a mile; which may be an argument for allowing as much in this case, especially as security is to be given before a man is removed on that act by *habeas corpus* that he shall not escape by the way, which renders guards in that case not so necessary.

The provisions of the 55 Geo. III. c. 50, do not seem to affect these regulations.

As to the expenses of carrying vagrants to gaol, where they have no effects, see 4 Geo. IV. c. 64, s. 39; 5 Geo. IV. c. 83, s. 22, *post*, Vagrant, Vol. V.

Deserter.

A justice before whom a deserter is brought and committed to the county gaol, may, under the authority of these statutes, if the deserter be unable to bear the charges himself, direct the expenses of conveying him thither to be paid by the treasurer of the county to the constable of the parish who found and apprehended him in the parish, and conveyed him to the gaol. *R.* v. *Pierce*, 3 *M. & S.* 62.

VII. Duty of Gaoler as to Receiving, &c. the Prisoner.

Gaoler to receive a prisoner.

If the gaoler shall refuse to receive a felon, or shall take any thing for receiving him, he shall be punished for the same by the justices of gaol delivery. *Dalt.* c. 170, p. 410. Stat. 4 Edw. III. c. 10. See also stat. 55 Geo. III. c. 50.

But if a man be committed for felony, and the gaoler will not receive him, the constable must bring him back to the town where he was taken; and that town shall be charged with the keeping of him until the next gaol delivery; or the person that arrested him may in such case keep the prisoner in his own house, as it seemeth. *Dalt.* c. 170, p. 410.

But in other cases it seems that regularly no one can justify detaining a prisoner in custody out of the common gaol, unless there be some particular reason for so doing; as if the party be so dangerously sick that it would apparently hazard his life to send him to the gaol, or there be evident danger of a *rescous* from rebels, or the like, 2 *Hawk.* c. 16, s. 9; see *ante*, 206.

A gaoler is protected from liability though he should receive by mistake of the constable a person whom it was intended not to confine. *Sir T. Jones*, 214; *Cowp.* 479; *sed vide* 3 *Campb.* 35.

COPY OF COMMITMENT, &c.

VIII. Certifying the Commitment.

3 H. 7, c. 3.

By stat. 3 Hen. VII. c. 3, the sheriff or gaoler shall certify the commitment to the next gaol delivery.

As to the defendants being compellable to work, &c. see *post*, **Gaol**, Vol. II.

IX. Copy of Commitment.

Copy of commitment. 31 Car. 2, c. 2, s. 5.

The Habeas Corpus Act, 31 Car. II. c. 2, s. 5, enacts, that if any officer or gaoler shall, upon demand made by the prisoner or other person on his behalf, refuse to deliver, or within the space of six hours after demand shall not deliver, to the person so demanding, a true copy of the warrant of commitment or detainer of such prisoner, he shall forfeit to the prisoner or party aggrieved, for the first offence 100*l.* and for the second offence, 200*l.*; and shall also be deprived of his office: and the prisoner suing as the party grieved is entitled to the costs of action. See 1 *H. Bla.* 10.

And where a person is sent over from Ireland under a warrant from a secretary of state for that country, charged with any offence, and is committed to prison until he can be brought before a judge, and the warrant is left with the gaoler, this is such a commitment as entitles the prisoner to a copy under the Habeas Corpus Act, after it has been demanded. 3 *Esp. Rep.* 174.

But where a person after appearing before a magistrate, and being unable to find bail, at his own request is permitted to continue in the custody of the officer for a short time, he is not entitled to a copy of the commitment. 1 *Stra.* 167.

And service of a demand of a copy of the commitment on the turnkey of a prison, is not sufficient to support an action against the gaolor for the penalty incurred by him under the Habeas Corpus Act, if the gaoler himself were in the prison; but if he be not there, then the deputy may be served; and if the deputy have no deputy, then in the absence of the deputy, service may be made on the turnkey, or it may be left at the gaol; for it is the duty of the governor to leave some person in his place. 2 *Bos. & P.* 530.

As to the right to a copy of conviction, see *post*, **Conviction**, Vol. I. As to the right to a copy of indictment, see *post*, Vol. III. p. 356, 357.

X. Discharge of Defendant.

It seems that a person legally committed for a crime certainly appearing to have been done by some one or other cannot be lawfully discharged by any one but the King, till he be acquitted on his trial, or have an *ignoramus* found by the grand jury, or none to prosecute him on a proclamation for that purpose by the justices of gaol delivery. But if a person be committed on a bare suspicion, without an indictment, for a supposed crime, where afterwards it appears that there was none, as for the murder of a person thought to be dead, who afterwards is found to be alive, it hath been holden, that he may be safely dismissed without any further proceeding, so that he who suffers him to escape is properly punishable only as an accessary to his supposed offence; and it is impossible that there should be an accessary where there can be no principal, and it would be hard to punish one for a contempt in disregarding a commitment founded on a suspicion, appearing in so uncontested a manner to be groundless. 2 *Hawk.* c. 16, s. 22.

When a defendant is advised that his commitment is illegal, or that he is entitled to be discharged or bailed by a superior jurisdiction, he may obtain relief by writ of habeas corpus. See *post*, **Habeas Corpus**, Vol. II.

XI. Forms.

(No. 1.)

General form of warrant of commitment for safe custody.

KENT [the county where the commitment is made]: *J. P. Esquire, one of his Majesty's justices of the peace for the said county, to the constable of* in the *said county, and to the keeper of the common gaol,* [or if an offence of small degree, say, *house of correction,*] *at* in the said county.

These are to command you the said constable, in his Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol [or *house of correction,*] *the body of C. D. charged this day before me, the said justice, on the oath of of A. B.* [*labourer,*] *and others, for that he the said A. B. on the day of in the year of our Lord one thousand eight hundred and at in the said county, did, &c.* [stating the offence concisely as advised, *ante,* 560; see various forms under the particular titles of offences.] *And you the said keeper are hereby required to receive the said A. B. into your custody in the same* [*common gaol,*] *and him there safely to keep, until he shall be thence delivered by due course of law,* [ante, 761.] *Herein fail you not. Given under my hand and seal the day of in the year of our Lord* J. P. (L. S.)

(No. 2.)

The like in the King's name.

County of } *WILLIAM the Fourth, by the grace of God of the United Kingdom* } *of Great Britain and Ireland King, Defender of the Faith. To the keeper of our* [*gaol*] *at in our said county of or to his deputy, greeting.*

Whereas A. O. late of in our said county, [*yeoman,*] *is arrested for suspicion of* [*felony,*] *by him, as it is said, committed, in feloniously* [*taking and carrying away of the value of the property of .*] *We therefore command you, and each of you, that you receive him the said A. O. into your custody in our said* [*gaol,*] *or that one of you do receive him, there to remain till he be delivered from your custody according to the law of our kingdom of England. Witness J. P. Esquire, one of the justices assigned to keep the peace in our said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in our said county committed, at in the said county, the day of in the year of our reign.* J. P. (L. S.)

(No. 3.)

Commitment of a person for further examination. (a)

County of } *J. P. Esquire, one of the justices of our lord the King, assigned to keep* } *the peace in and for the said county, to the constable of in the said county, and to the keeper of the common gaol* [or *house of correction,*] *at in the said county.*

These are to command you the said constable, in his said Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, [or *house of correction,*] *the body of A. O. charged this day before me, the said justice, on the oath of A. I. on suspicion of having,* [here set forth the substance of the offence as in a commitment in general, as the case may be, see *ante,* 560,] *but inasmuch as E. F. a material and necessary witness against the said A. O. for the offence and crime aforesaid, resides at* [*Leeds,* as the case may be,] *and he the said A. I. hath not been able to procure the attendance of the said E. F. but will use his best endeavour so to do on the day of instant.*

You the said keeper are hereby required to receive the said A. O. into your custody in the said [*common gaol*] *until next, the day of instant, when you are hereby required to bring the said A. O. at in the said county, before me, or before such others of his Majesty's justices of the peace for the said county, as shall be then and there present, to be re-examined and further dealt with according to law. Hereof fail you not. Given under my hand and seal the day of in the year of our Lord one thousand eight hundred and* J. P. (L. S.)

(a) As to this, see post, Examination, Vol. II.

FORMS.

(No. 4.)

Order on overseers (if in Middlesex,) or treasurer of the county (if in any other county,) to reimburse expenses of conveying a prisoner to gaol by stat. 27 Geo. 2, c. 3, s. 1. (a)

To the treasurer of the county of [or to the *overseers of the poor of the parish or place of* *in the county of*]

County of } *WHEREAS application hath been this day made to me, one of his Majesty's justices of the peace in and for the said county, by A. B. one of the constables of the parish of in the said county, to allow the reasonable expenses of his conveying C. D. to the common gaol at in the county aforesaid, who was by me committed to the said gaol, for* [here state the substance of the offence as in a commitment.]

It having been duly made appear to me, the said justice, that the said C. D. hath not money nor goods within the said county sufficient to bear the charges of himself and those who conveyed him to the said gaol, and I having upon oath examined into the expenses thereof, and made due enquiry into the premises, do hereby ascertain and allow the reasonable expenses thereof, at the sum of which I hereby order and require you the treasurer of the said county [or *overseers*] *forthwith to pay the said A. B. Given under my hand and seal this day of in the year of our Lord one thousand eight hundred and* J. P. (L. S.)

(No. 5.)

Warrant of distress for expenses when a person is committed to gaol. (b)

County of } *To the constable of in the said county.*

WHEREAS by warrant under the hand and seal of me J. P. Esquire, one of his Majesty's justices of the peace in and for the said county of bearing date the day of in the year of our Lord one thousand eight hundred and A. O. late of in the said county, [*labourer,*] *was committed to the common gaol* [or *house of correction,*] *of the said county of for* [here state the substance of the offence, see *ante*, 560,] *he the said A. O. having means or ability to bear his own reasonable charges for so conveying or sending him to the said gaol,* [as the case may be,] *and the charges of those appointed to guard him thither; and whereas A. C. constable of the parish of in the said county, who in obedience to such warrant conveyed the said A. O. to the said common gaol,* [or *house of correction,*] *of the said county of hath made oath before me the said justice, that the said A. O. refused at the time of his commitment and sending to the said common gaol,* [or *house of correction,*] *to defray the said charges of conveying him as aforesaid, and did not then pay nor hath since paid the same, which said charges amount to the sum of . These are, therefore, to command you to sell such and so much of the goods and chattels of the said A. O. as shall satisfy and pay the sum of being the charges of such his conveying to the said gaol,* [or *house of correction,*] *the appraisement to be made by four of the honest inhabitants of the parish where such goods and chattels shall be; and I do hereby order and direct the goods and chattels so to be distrained, to be sold and disposed of, at the expiration of four days from the time of taking such distress, unless the said sum of for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid, returning the overplus upon demand to him the said A. O. the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if sufficient distress cannot be found of the goods and chattels of the said A. O. whereon to levy the said sum of that then you certify the same to me, together with this warrant. Given under my hand and seal at in the said county of the day of in the year of our Lord one thousand eight hundred and*

J. P. (L. S.)

COMMITMENTS IN EXECUTION.

And herein—1st. For what and who may be committed in Execution.—2dly. Who may Commit, and to what Prison.—3dly. How Commitment to be framed.—4thly. The Execution, Expenses, Copy and Certificate of Commitment, &c.—5thly. The Discharge of the Defendant.

(a) See the act, *ante*, 763. (b) See 3 Jac. 1. c. 10, s. 1, *ante*, 763.

I. For What, and Who may be Committed in Execution.

For what, and who may be committed.

A commitment in execution is used either as an original punishment, or as the means of enforcing payment of a pecuniary fine, or in any other manner enforcing obedience to the sentence of a magistrate or sessions.

The power of making commitments of this nature is derived for the most part from statutory provisions, in many cases, however, it exists at common law as an incidental means of enforcing the law.

A commitment for a contempt is a commitment for punishment. *R.* v. *James*, 5 *B.* & *A.* 894. A question was there raised, but not decided, as to whether a magistrate could commit for a contempt. See 2 *Burn.* 155; *post*, **Examination**, Vol. II. p. 99; **Justices**, Vol. III. p. 469; **Sessions**, Vol. V.

A commitment of an insane person under the 39 & 40 Geo. III. c. 94, s. 3, is not a commitment in execution. *Exparte Gourlay*, 7 *B.* & *Cres.* 669; 1 *M.* & *R. Mag. Ca.* 282; *post*, **Lunatics**, Vol. III. p. 664.

If a statute assigns a commitment as a mode of punishment in the first instance, the commitment follows upon and is the legal consequence of the judgment. But where it is assigned merely as a substitute to enforce a punishment or penalty, the magistrate cannot adopt it till he has ascertained the punishment, or penalty cannot be enforced. As if a statute imposes a penalty for an offence to be levied by distress, or a commitment in default of payment, before making the commitment, the want of sufficient goods to answer the penalty should be ascertained, and this is generally done by means of the officer's return to a warrant of distress, though other means would, it seems, be now sufficient. See now 5 Geo. IV. c. 18, *post*, **Distress**, Vol. I.; and the case of *R.* v. *Hawkins*, *Fort.* 272; *Hill* v. *Bateman*, 1 *Stra.* 710.

Where an offender is convicted in *one* penalty, under a statute providing a corporal punishment, on failure of sufficient distress, and has effects sufficient only to satisfy *part*, it has been held that the goods ought not to be taken, but the corporal punishment should be resorted to. If, however, the same person be separately convicted in *two* penalties, and his goods are sufficient to satisfy *one* only, they ought to be levied under *one* conviction, and the corporal punishment should be inflicted for the other. (See *R.* v. *Wyatt*, 2 *Ld. Raym.* 1195; *Fort.* 132; 11 *Mod.* 54.) But the law never intended that a man should suffer both punishments for *one* conviction. 2 *Ld. Raym.* 1196.

5 Geo. 4, c. 18.

By the 5 Geo. IV. c. 18, (which we shall hereafter, *post*, **Distress**, Vol. I. more fully notice,) it is enacted, that where a penalty is directed to be recovered before a magistrate, on default of payment thereof, a magistrate may order a distress on the offender's goods, and in default of a sufficient distress, no sale of goods shall take place, but the offender may be committed unless he give security, &c.; and by sect. 2, in cases where penalties are directed to be recovered by distress, but no remedy provided where sufficient distress cannot be found, justices may commit the offender, &c.; and by sect. 3, if the offender after committal to prison shall pay the amount of the penalty, &c. to the keeper, he shall be forthwith discharged; and the 4th section empowers justices to commit to prison without issuing a warrant of distress in certain cases having the offender's consent.

II. Who may Commit, and to what Prison.

Who may commit, and to what prison.

The observations already made, *ante*, 757, 758, will for the most part here apply.

In the case of a conviction the commitment is in general made by the justice who convicted the offender. By 3 Geo. IV. c. 23, s. 2, however, a commitment may in all cases be made by one justice, even in cases where the conviction must be by two, and it is immaterial whether the justice who

makes the commitment be one of the justices before whom the conviction was made. See *post*, **Distress**, Vol. I.

III. How Commitment to be framed.

How commitment to be framed.

The observations already made as to the form of the commitment for safe custody will be applicable here, *ante*, 760 to 763.

It seems, however, that commitments in execution must be more peculiarly certain and construed more strictly than commitments for safe custody, See *Exparte Gourlay*, 7 *B. & Cres.* 669; 1 *M. & R.* 619, S. C.; *sed vide per Parker*, C. J. *R.* v. *Hawkins*, *Fost.* 272.

Several cases have been pointed out as to the requisite certainty in commitments for safe custody, *ante*, 760 to 763.

Statement of conviction and offence.

In the case of a conviction, it is necessary to state in the commitment in execution on the same, that the offender was *convicted* of the offence. Therefore where one was brought up by *habeas corpus*, and the warrant was returned in the following form, viz. "receive into your custody the body of F. R. herewith, &c. brought before me J. S. one of his Majesty's justices, &c. by J. A. constable, and *charged* before me, on the oath of M. S. for being a rogue and vagabond within the meaning and intent of an act (17 Geo. II.) &c. for that the said F. R. on, &c. at, &c. did unlawfully use a certain craft to deceive, &c. (setting out the offence of acting as a fortune teller) contrary to the statute; him the said F. R. therefore safely keep in your custody, &c." The court, considering this as a commitment by way of punishment and not for safe custody only, were unanimously of opinion that the commitment was bad, because it only stated that the party had been charged with, not that he had been *convicted* of, the offence imputed to him. *R.* v. *Rhodes*, 4 *T. R.* 220; 12 *East*, 78, n.; 2 *Inst.* 52; *R.* v. *Cooper*, 6 *T. R.* 509.

Also a warrant of commitment in execution after a conviction must show before whom the conviction was, as likewise the authority of the person committing. *R.* v. *York*, 5 *Burr.* 2684.

A commitment in the alternative is bad, as a commitment of one as an apprentice *or* servant for disobeying his indentures *or* articles. *R.* v. *Everett*, *Cald.* 26; and see *R.* v. *North*, 6 *D. & R.* 143; 3 *D. & R. M. C.* 119, S. C.; *R.* v. *Sadler*, 2 *Chit. Rep.* 519; *R.* v. *Pain*, 7 *D. & R.* 678; 3 *D. & R. M. C.* 517, S. C.; and *post*, **Conviction**, p. 822.

The commitment should correspond in every material particular with the conviction. In a late case it was decided, that though the conviction may be correct, yet if the commitment be for a different offence, or do not disclose any offence at all, the magistrate is liable to an action for the imprisonment, &c. under it. *Rogers* v. *Jones*, 3 *B. & Cres.* 409; 1 *R. & M.* 129, S. C.; and see *Wickes* v. *Clutterbuck*, 2 *Bing.* 483; *post*, **Justices**, Vol. III. p. 487.

Where a defendant was committed under the Malicious Trespass Act, (then the 1 Geo. IV. c. 56, now the 7 & 8 Geo. IV. c. 30, s. 24, *post*, **Malicious Injuries to Property**, Vol. III. p. 741,) and the commitment recited, "that one M. P. had made complaint to the justice that he had lost a post or pale out of his fence, and that he had cause to suspect and did suspect that G. H. on whose premises the same was found, *did cut*, *spoil*, and take and carry away the same, and that the said G. H. did not appear before the justice, and not giving the justice any satisfactory account how she came by the post, nor producing the party of whom she bought it, nor any credible witness to testify the sale, she was therefore by him committed, '*for wilfully and maliciously carrying away the same.*'" *Per Bailey*, J. "This commitment is clearly bad; the charge recited is, that the defendant had *cut*, *spoiled and taken away* the post, and the justice convicts her of *carrying it away*. It is perfectly consistent with the statement in the commitment that somebody else may have cut and spoiled the post, and that she might have carried it away, which is no offence within this act. Therefore as she is convicted of

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no offence she must be discharged. *R.* v. *Harpur*, 1 *D. & R.* 222; 1 *D. & R. M. C.* 67, S. C.

It is not, however, necessary to state the conviction in a precise or technical form, but only to show that the party has been convicted of some specific offence and by a person having competent authority for that purpose. 1 *Paley on Conv.* 253; *R.* v. *Helps*, 3 *M. & S.* 331; *R.* v. *Rogers*, 1 *D. & R.* 156; 1 *D. & R. M. C.* 59; 5 *B. & A.* 773, S. C.

It is not required, therefore, to set forth the evidence or the facts in detail; *R.* v. *Walter*, 8 *Mod.* 5; or the name of the witness; and if by mistake a wrong name is mentioned, as that of the witness upon whose oath the conviction was made, it is surplusage and may be disregarded. *Massey* v. *Johnson*, 12 *East*, 67.

In a commitment for an offence against a statute, it is sufficient to state that it was "contrary to a certain statute made and passed in the first year of the reign of Geo. I." without pointing out specifically the statute. *R.* v. *Harpur*, 1 *D. & R.* 222; 1 *D. & R. M. C.* 67, S. C.; and see further *post*, **Indictment**, Vol. III. p. 345; *post*, **Conviction**, p. 826.

Statement of want of distress.

Where a commitment is inflicted only by a statute, as an alternative punishment for want of a sufficient distress, such want should be noticed in the commitment. See *R.* v. *Chandler*, 1 *Ld. Raym.* 545; *R.* v. *Whitelock*, 1 *Stra.* 263. It is submitted it is no longer necessary to state *how* the want of a sufficient distress appears to the magistrate, see the 5 Geo. IV. c. 18, s. 1, unless the act authorising the commitment points out how it must appear, as does the second section of that act. *Post*, **Distress** Vol. I.

Statement of time and manner of imprisonment.

The *time* during which the defendant is to be imprisoned and the manner of the imprisonment must be stated accurately and according to the directions of the law or statute from which the authority to commit is derived, and in this respect more accuracy is required than in commitments for safe custody, *ante*, 761.

Where a statute appoints imprisonment, but limits no time how long, in such case the prisoner must remain imprisoned at the discretion of the court. *Dalt.* c. 170, p. 410.

Under the Vagrant Act (17 Geo. II. c. 5, s. 7, now the 5 Geo. IV. c. 83, *post*, **Vagrants**, Vol. V.) which directed the offender to be imprisoned till the next sessions or for any less time, as the justice should think proper, a commitment ordering the party to be detained, not for any limited time but until he should be discharged according to the laws and customs of this realm, was held bad. *R.* v. *Hall*, 3 *Burr.* 1636.

A commitment under the 35 Eliz. c. 2, (which empowers a justice to inquire into certain matters and commit such persons as refuse to answer,) "till discharged by due course of law," was held bad. *Yorley's case*, 1 *Salk.* 351. And so in a case where magistrates committed for a contempt. *R.* v. *James*, 1 *D. & R.* 559; 1 *D. & R. M. C.* 131; 5 *B. & A.* 894, *S. C.*; and see *Exparte Leake*, 9 *B. & Cres.* 234.

A commitment by the Vice Chancellor of Oxford stating the offence to be carrying goods without a license, and ordering the party to remain in custody until he should give security to carry no more and to observe the statutes of the University for life, was adjudged to be illegal. *R.* v. *Barnes*, 2 *Stra.* 917.

Hard labour.

If a statute order a commitment for hard labour, it must be so signified in the commitment. Where a statute, besides ordering a commitment to prison, adds also, "there to remain and be corrected and kept to hard labour," the *correction* understood is by whipping. *R.* v. *Hoseason*, 14 *East*, 607; *post*, **Servants**, Vol. V. p. 408.

Statement of and condition of discharge.

The *condition*, if any, upon which defendant may be discharged, must be distinctly stated in the commitment.

Therefore if he be authorised to be committed till the payment of a penalty or the performance of some other act, the condition must be distinctly expressed and such as is authorised. It ought to be for imprisonment until he has paid the penalty.

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A commitment reciting that the defendant had been convicted by the College of Physicians and fined 20*l.* and was thereby committed to gaol "till he should be delivered by the said college or otherwise by due course of law," was held bad, as being too general, and not sufficiently ascertaining whether the commitment was a distinct punishment or merely for enforcing the fine. *Dr. Groevelt's case*, 1 *Ld. Raym.* 213.

Where justices committed the late overseer of a parish, under 17 Geo. II. c. 38, upon a conviction (on the complaint of the succeeding overseers) for neglecting and refusing to deliver over a certain book belonging to the parish, called "the Bastardy Ledger," and committed him, in pursuance of their adjudication, "until he should have yielded up all and every the books concerning his said office of overseer belonging to the parish;" the court held the commitment void in toto, for which the magistrates might be sued in trespass for false imprisonment, although the conviction had not been quashed. *Groome* v. *Forrester*, 5 *M. & S.* 314; and see *Exparte Leake*, 9 *B. & Cres.* 234, as to a commitment by commissioners of bankrupts.

Statement of penalty and costs.

If the commitment be till payment of a penalty, the sum must be stated and fixed. Thus a conviction and commitment for a forcible entry, "there to remain till they shall have paid a fine to the King," the justices not having assessed any fine, was held to be bad. *R.* v. *Elwell*, 2 *Ld. Raym.* 1575; *Stra.* 794.

So under the 6 Geo. I. c. 16, s. 1, which empowers a justice to commit till the penalty and charges are paid, a commitment for nine months or until the sum of 15*l.* "together with the charges previous to and attending the conviction shall be paid," was held bad, for want of ascertaining the exact sum by the payment of which the defendant might be released. *R.* v. *Hall*, *Coup.* 60. And see a case on the commitment of a toll-keeper for refusing to account. *R.* v. *Catherall*, *Fitzg.* 266.

So where a conviction took place on the Stage Coach Act, 50 Geo. III. c. 48, and the commitment recited the conviction, from which it appeared the defendant had been committed by the justices for three months, "unless before that time he pays the sum of 6*l.* together with the expenses of the warrant, viz. the sum of —— shillings, without expressing the sum which he was to pay for the expenses, the court held the commitment bad on that account, for the defendant could not know on what terms he might be discharged and the gaoler was equally in the dark. The conviction and commitment should have ascertained precisely what sum for expenses the defendant was to pay. *R.* v. *Payne*, 4 *D. & R.* 72; 1 *D. & R. M. C.* 67; *R.* v. *Rogers*, 5 *B. & A.* 773; 1 *D. & R.* 156; 1 *D & R. M. C.* 59, S. C.

The form of a commitment for costs, in default of a sufficient distress, is given by the 18 Geo. III. c. 19, see *post*, Costs, Vol. I.

Where a party was committed as the reputed father of a bastard child, "until he should pay the sum due and legal accustomed fees, or until he should be otherwise delivered by due course of law," the commitment was held bad, the commitment not having been authorised by the 49 Geo. III. c. 68, s. 3. *Robson* v. *Spearman*, 3 *B. & A.* 493.

A commitment for payment of two sums of money, one of which was not due, was held bad altogether, though as to one of the sums it was correct. *Exparte Addis*, 2 *D. & R.* 167; 1 *B. & C.* 90; and see *Goff's case*, 3 *M. & S.* 203.

It is not necessary expressly to state to whom the payment of the penalty or costs should be made. See *R.* v. *Rogers*, 1 *D. & R.* 156; 1 *D. & R.* 59; 5 *B. & A.* 773, S. C.

It seems, however, that it must appear from some part of the commitment, who is the party entitled to the penalty, and at all events it is better that it should. See *R.* v. *Helps*, 3 *M. & S.* 331.

It must appear that the sum awarded to be paid was sanctioned from the nature of the offence committed. In a case under the Malicious Trespass Act, (1 Geo. IV. c. 56, now the 7 & 8 Geo. IV. c. 30, s. 24,) where it was not stated that the damage sustained by the injury amounted to 5*l.* and defendant was convicted in and committed for non-payment of that sum, the

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court held it unwarrantable. *R.* v. *Harpur*, 1 *D.* & *R.* 222; 1 *D.* & *R. M. C.* 67, S. C.

Bad in part bad in whole.

If a commitment be bad in part it is bad for the whole. *Exparte Addis*, 2 *D.* & *R.* 167; 1 *B.* & *C.* 90, *ante*, 771; *Goff's case*, 3 *M.* & *S.* 203.

Consequences of defect.

If the commitment be void, an action for false imprisonment will lie against the magistrates making the same, and this although the conviction be not quashed. See *Groome* v. *Forrester*, 5 *M.* & *S.* 514; *Rogers* v. *Jones*, 3 *B.* & *Cres.* 409; 1 *R.* & *M.* 129, *S. C.*; *Wickes* v. *Clutterbuck*, 2 *Bingh.* 483; *post*, **Justices**, Vol. III. p. 487.

Besides this, if the commitment be void, the party may obtain his discharge by *habeas corpus*. See *post*, **Habeas Corpus**, Vol. II.

Defects when cured.

It is a general rule that if a warrant of commitment in execution on a conviction manifestly defective on the face of it, shows that there has been a conviction, the court will not notice the defect until the conviction is returned into court, and if the conviction be right, the defects in the commitment will be cured, provided the latter show the like offence as is stated in the conviction. *R.* v. *Taylor*, 7 *D.* & *R.* 622; 3 *D.* & *R. M. C.* 491, S. C. *ante*, 762.

And the Court of King's Bench will not criticise the commitment with the same strictness to which a conviction is subjected, if there be reasonable ground for presuming that the conviction on which the commitment is founded is free from objection, and which in general may be presumed. *R.* v. *Rogers*, 1 *D.* & *R.* 156; 1 *D.* & *R. M. C.* 59; 5 *B.* & *A.* 773, S. C.; and see further, *post*, **Habeas Corpus**, Vol. II.

IV. Execution, Expenses, and Copy and Certificate of Commitment.

Execution of warrant

As to the mode of executing a warrant of commitment, see in general, *post*, **Warrant**, Vol. V.

Expenses, copy, and certificate of.

The observations already made, *ante*, 763, 765, as to the expenses, copy or certificate of the commitment for safe custody, will here apply.

V. Discharge of Defendant.

Discharge of party after commitment.

A commitment in execution does not, like a commitment for safe custody, in any case admit of bail. See 11 *Mod.* 45, 52.

And although a right of appeal be given by statute to the next sessions, which may not be till after the term of imprisonment has expired, (as is the case with the present Vagrant Act, 5 Geo. IV. c. 83, s. 11,) yet after a commitment by one justice, it is not competent for others to discharge the defendant upon his appealing to the next sessions and giving bail to prosecute that appeal. *R.* v. *Brooke*, 2 *T. R.* 190.

It is said in *Dalt.* c. 170, p. 410, that upon the defendant's finding sureties for payment of the fine, he ought to be discharged; but this seems very questionable.

If the commitment be until payment of a certain fine or penalty, it follows as of course that the party is to be set at liberty immediately on payment or tender thereof. 1 *Paley on Conv.* 265. A payment or tender to the gaoler or officer entrusted with the execution of the commitment would, it should seem, be sufficient.

Where an officer, after a tender of the penalty, persisted in conveying a person to gaol, insisting also upon payment of a further sum, indorsed by the justice on the warrant of commitment, under the name of costs, he was held liable to an action for false imprisonment. *Smith* v. *Sibson*, 1 *Wils.* 153.

The warrant of commitment remains in force until it be executed, so long as the magistrate who made it is living, *post*, **Warrant**, Vol. V.

Forms.

(No. 6.)

Commitment where the punishment is by imprisonment, &c.

—— } *To the Constable of , in the said county, and to the keeper of the* { *[house of correction] at , in the said county.*

WHEREAS C. D., late of , in the said county, [labourer,] was on this day duly convicted before me, J. P., one of his Majesty's justices of the peace in and for the said county, for that he the said C. D. &c. [here state the offence, as in the conviction,] *against the form of the statute in that case made and provided; and I the said J. P. thereupon adjudged the said C. D., for his said offence, to be imprisoned in the [house of correction] at , in the said county, [and there kept to hard labour,* if ordered,] *for the space of : these are therefore to command you the said constable of aforesaid, to take the said C. D., and him safely to convey to the [house of correction] at aforesaid, and there to deliver him to the said keeper thereof, together with this precept: and I do hereby command you the said keeper of the [house of correction] to receive the said C. D. into the said [house of correction,] there to imprison him [and keep him to hard labour,* if ordered,] *for the space of ; and for your so doing, this shall be your sufficient warrant. Given under my hand and seal, at , in the county aforesaid, this day of , in the year of the reign of our sovereign lord King William the Fourth.*

J. P.

(No. 7.)

Commitment in default of immediate payment of a penalty.

—— } *To the Constable of , in the said county, and to the keeper of the* { *[house of correction] at , in the said county.*

WHEREAS C. D., late of in the said county, [labourer,] was on this day duly convicted before me, J. P., one of his Majesty's justices of the peace for the said county, for that he the said C. D. &c. [here state the offence, as in the conviction,] *against the form of the statute in that case made and provided; and I the said J. P. thereupon adjudged the said C. D., for his said offence, to, &c.* [as in the conviction, to the word "*months,*"] *unless the said sums should be sooner paid: and whereas the said C. D., being so convicted as aforesaid, and being now required to pay the said sums, hath not paid the same or any part thereof, but herein hath made default: these are therefore to command you the said constable of aforesaid, to take the said C. D., and him safely to convey to the [house of correction] at aforesaid, and there to deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction,] to receive the said C. D. into the said [house of correction,] there to imprison him [and keep him to hard labour,* if ordered,] *for the space of calendar months, unless the said sums shall be sooner paid; and for your so doing, this shall be your sufficient warrant. Given under my hand and seal, at , in the county aforesaid, this day of , in the year of the reign of our sovereign lord King William the Fourth.*

J. P.

(No. 8.)

Commitment in default of payment of a penalty within a limited time.

—— } *To the Constable of , in the said county, and to the keeper of the* { *[house of correction] at , in the said county.*

WHEREAS C. D., late of , in the said county, [labourer,] was on the day of last past, duly convicted before [me] J. P., one of his Majesty's justices of the peace in and for the said county, for that he the said C. D. &c. [here state the offence, as in the conviction]; *against the form of the statute in that case made and provided; and [I] the said J. P., thereupon adjudged the said C. D., for his said offence, to &c.* [as in the conviction, to the end of the adjudication]; *and [I] the said J. P. then and there ordered that the said sums should be paid by the said C. D. on or before the day of then next; and whereas the said C. D. hath not, on or before the said day of , paid the several sums or any part thereof, nor hath he yet paid the said several sums or any part thereof, but therein hath made default: these are therefore to command you the said constable of aforesaid, to take the said C. D., and him safely to convey to the [house of correction] at aforesaid, and there to deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction,]*

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to receive the said C. D. into the said house of correction, there to imprison him [*and keep him to hard labour*, if ordered,] *for the space of calendar months, unless the said sums shall be sooner paid; and for your so doing, this shall be your sufficient warrant. Given under my hand and seal, at , in the county aforesaid, this day of , in the year of the reign of our sovereign lord king William the Fourth.* J. P.

Common.

As to when a commoner may be a witness, *post*, Evidence, Vol. II. p. 72; as to putting stoned horses on commons, *post*, Horses, Vol. III. p. 274; as to putting scabbed sheep on, see Sheep, Vol. V. p. 490.

Common Prayer.

See ante, Church, Churchwardens.

[1 Edw. VI. c. 1; 1 Mar. ses. 2, c. 3; 1 Eliz. c. 2; 13 & 14 Car. II. c. 4; 1 W. & M. ses. 1.]

Who to provide common prayer book in parish.

By the 1 Eliz. c. 2, the book of common prayer shall be provided at the charge of the parishioners of every parish, and see 13 & 14 Car. II. c. 4.

Resident incumbent to read the common prayer once a month, though he keep a curate.

By stat. 13 & 14 Car. II. c. 4, s. 7, where an incumbent resides upon his living, and keeps a curate, the incumbent himself (not having lawful impediment, to be allowed by the bishop) shall at least once a month openly and publicly read the common prayer, and (if there be occasion) administer the sacraments and other rights of the church, on pain of 5*l.* to the poor, on conviction, by confession, or oath of two witnesses, before two justices; and in default of payment in ten days, the same to be levied by the churchwardens or overseers by distress and sale, by warrant of such justice.

Public worship in the navy.

All commanders, captains, and officers at sea, shall cause the public worship of Almighty God, according to the liturgy of the church of England, to be performed in their respective ships; and prayers and preachings by the chaplains shall be performed diligently. Stat. 22 Geo. II. c. 33, art. 1.

Qualifications of lecturer.

By stat. 13 & 14 Car. II. c, 4, s. 19, 20, 21, no person shall be received as a lecturer, or allowed to preach or read any lecture or sermon, without license from the bishop, and assenting to the 39 articles, and reading the common prayer, before his first sermon, and on the first lecture day of every month; on pain of three months' imprisonment for every offence, by two justices of the peace, on certificate from the bishop of the offence committed.

Impugners of book of common prayer.

Impugners of the form of worship in the church of England, established by law, and contained in the book of common prayer; of the 39 articles; of the rites and ceremonies of the church; and the episcopal government; shall be excommunicated (*a*) *ipso facto*, and not restored but by the bishop or archbishop on their respentance. *Can.* 5, 6, 7.

Ministers derogating from the book of common prayer.

By stat. 1 Eliz. c. 2, s. 4—8, if any parson, vicar, or other minister, that ought to use the common prayer, or to administer the sacraments, shall refuse to do the same, or (wilfully standing in the same) shall use any other form, or shall speak any thing in derogation of the same book or of any thing therein contained; he shall on conviction for the first offence forfeit to the King one year's profit of all his spiritual promotions, and be imprisoned

(*a*) As to excommunication being abolished, except under circumstances, *ante*, 637.

for six months; for the second offence, shall be deprived of all his spiritual promotions, and be imprisoned for a year; and for the third offence, shall be deprived of all his spiritual promotions, and be imprisoned during life. And if he has no spiritual promotion, he shall for the first offence be imprisoned for a year, and for the second during life.

But this shall not restrain the spiritual court from proceeding against these offenders; and they may be deprived by the said court, according to the course of the spiritual law, for the first offence. 1 *Eliz.* c. 2, s. 16, 23. 1 *Hawk.* c. 7. s. 4; 1 *East's P. C.* 10.

Any person depraving the book of common prayer.

By the same statute, sect. 13 & 20, if any person whatsoever shall in plays, songs, or by other open words, speak any thing in derogation of the same book or any thing therein contained; or shall by open fact cause or procure any minister in any place to say common prayer openly, or to minister any sacrament, in other form, or shall interrupt or let any minister to say the said common prayer; he shall (being indicted for the same at the next assizes) forfeit to the King for the first offence 100 marks, and for the second 400 marks; which if not paid in six weeks after conviction, he shall suffer six months' imprisonment for the first offence, and twelve months for the second; and for the third offence, shall forfeit all his goods and chattels, and be imprisoned during life.

Speaking irreverently of the sacrament.

By stat. 1 Edw. VI. c. 1, if any person shall speak irreverently of the sacrament of the Lord's Supper, he shall suffer imprisonment, and make fine and ransom at the King's will. And three justices, one being of the quorum, may take information by the oaths of two witnesses and, afterwards, at the sessions, may inquire thereof by the oath of twelve men upon indictment. And they shall, at the sessions where the offender shall be indicted, direct a writ to the bishop to appear by himself or deputy at the trial. But no person shall be molested, but within three months after the offence committed.

Disturbers of public worship.

By stat. 1 Mar. ses. 2, c. 3, if any person shall disturb *a preacher in his sermon* by word or deed, he shall be apprehended and carried before a justice of the peace, who shall commit him to safe custody, and within six days he and another justice shall examine the fact, and if they find him guilty by two witnesses, or confession, they shall commit him to gaol for three months, and further to the next sessions; and if at the sessions he repents and is reconciled, he shall be discharged on finding sureties for his good behaviour for a year; if not, he shall be continued in gaol till he does; saving the ecclesiastical jurisdiction; and he shall not be punished both ways.

This statute, though made in queen Mary's reign, extendeth to the divine service now established. *Gibs.* 372.

Reading notices in church.

A parish clerk refused to read in church a notice which was presented to him for that purpose, and the person presenting it read it himself at a time when no part of the church service was actually going on, *viz.* whilst the minister was walking from the communion table to the vestry room. The defendant, a constable, by order of the minister, took him out of the church and detained him an hour after the service was over. He then allowed plaintiff to go, on his promise to attend a magistrate the next day, which he accordingly did, but no complaint being made against him he was discharged. For this the plaintiff brought an action of trespass for an assault and false imprisonment, and obtained a verdict. *Adolphus*, on motion for a new trial or a nonsuit, cited the stats. 1 Mar. sess. 2, c. 3, s. 3, 1 W. & M. c. 18, s. 18, in support of it. *Sed per Abbott*, C. J. "It appears to me, that the 1 Mar. sess. 2, c. 3, merely gave to the common law cognizance of an offence which was before punishable by the ecclesiastical law; in order to be within that statute, the party must maliciously, wilfully, or of purpose molest the person celebrating divine service. Had the notice been read by the plaintiff whilst any part of the service was actually going on, we might have thought that he had done it on purpose to molest the minister; but the act having been done during an interval when no part of the service was in the course of being performed, and the party apparently supposing that he had a right to give such a notice, I am not prepared to say that the 1 Mar. sess. 2, c. 3,

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warranted his detention, in order that he might be taken before a justice of the peace. Neither does the case come within the toleration act, 1 W. & M. c. 18. That only applies where the thing is done wilfully, and of purpose maliciously to disturb the congregation or misuse the preacher. The detention of the plaintiff after the time when the service ended was therefore illegal, and we ought not to disturb the verdict which has been found." Rule refused. *Williams* v. *Glennister*, 2 *B. & Cres.* 699; 4 *D. & R.* 217, S. C.

Disturbers of religious worship, how punished.

By stat. 1 W. & M. sess. 1, c. 18, s. 18, "if any person or persons, at any time or times after the 10th day of June, 1688, do and shall willingly and of purpose, maliciously or contemptuously come into any cathedral or parish church, chapel, or other congregation permitted by this act, and disquiet and disturb the same, or misuse any preacher or teacher, such person or persons, upon proof thereof before any justice of peace, by two or more sufficient witnesses, shall find two sureties to be bound by recognizance in the penal sum of 50*l.*, and in default of such sureties shall be committed to prison, there to remain till the next general or quarter sessions; and upon conviction of the said offence at the said general or quarter sessions, shall suffer the pain and penalty of 20*l.* to the use of the King's and Queen's Majesties, their heirs and successors." And see **Riot**, Vol. V.

The Court of King's Bench refused to grant a *certiorari*, to remove an indictment at the sessions for a person not behaving himself modestly and reverently at the church during divine service; which although punishable by ecclesiastical censures, yet the court conceived it a proper cause within cognizance of the justices of the peace. And this was before the above-mentioned statute of 1 W. & M. c. 18; 1 *Keb.* 491. But in *R.* v. *Hube and others*, 5 *T. R.* 542, it was held that an indictment upon stat. 1 W. & M. c. 18, at the quarter sessions may before verdict be removed by *certiorari* into the King's Bench, and upon conviction of several defendants, each is liable to the penalty of 20*l.* See 3 *Burn's Eccl. Law*, tit. *Public Worship*.

Almanac.

The almanac at the beginning of the common prayer is good evidence, *ante*, 128.

Compensation. *See* **Costs**, Vol. I.; **Rewards**, Vol. V.

Compounding. *See* **Award**, *ante*, p. 300; **Felony**, Vol. II.; **Information**, Vol. III. p. 373.

Compromise. *See* **Award**, *ante*, p. 300; **Felony**, Vol. II.; **Information**, Vol. III. p. 373.

Confederacy. *See* **Conspiracy**, *post*, 782.

Confession.(a)

CONFESSIONS made by the party accused may be considered as regards,

I. *Confessions made at the Trial of Defendant*, 777.

II. *Confessions made before Justices on Examination*, 777.

III. *Confessions made on other Occasions*, 778 to 782.

I. Confessions on the Trial of Defendant.

On trial of defendant.

Confessions made by the accused on his trial may be either *expressed* or *implied*.

Express.

An *express* confession is, where a defendant pleads guilty and thereby directly confesses the crime with which he is charged, which is the highest conviction that can be. 2 *Hawk.* c. 31, s. 1; 1 *Chit. C. L.* 428.

But it is usual for the court, especially if the punishment be capital, to advise the party to plead and put himself upon his trial, and not presently to record his confession, but to admit him to plead. 2 *Hale*, 225.

In smaller offences, as assaults, or the like, it may be advisable to confess the indictment, as the defendant may afterwards produce affidavits to show that the prosecutor made the first assault, which he cannot do after conviction. 1 *Salk.* 55.

And in trifling personal injuries, the prosecutor and defendant frequently settle the charge in private, and the latter comes into court and pleads guilty to the indictment; and upon proving a general release given by the former, submits to a small fine for the breach of the peace which his conduct has occasioned. *Dick. Sess.* 156; *Cro. C. C.* 21; and see *post*, Sessions, Vol. V. p. 467.

As to the mode in which confession is made, and the subsequent proceedings on charges of felony, see 1 *Chit. C. L.* 428, 429.

Implied.

An *implied* confession is where a defendant in a case not capital doth not directly own himself guilty, but in a manner admits it by yielding to the King's mercy, and desiring to submit to a small fine; which submission the court may accept of if they think fit, without putting him to a direct confession. 2 *Hawk.* c. 31, s. 3.

II. Confessions at Examinations before Magistrates.

Confessions at examinations before justices.

Confessions, when duly made on examinations before magistrates, in pursuance of the 7 Geo. IV. c. 64, s. 2, *ante*, 307, are of themselves evidence against the confessor.

The rules noticed *post*, 778 to 782, showing what confessions in general are admissible in evidence, will here apply.

The mode of conducting the examination will be found *post*, Examination, Vol. II.

(a) A magistrate should not only be upon his guard against extorted, but also against collusive confessions. A remarkable instance of this kind is mentioned by Mr. Dickenson, as singularly illustrative of the propriety of this caution. Two brothers committed a robbery in a dark night to a large amount, and fled. A younger brother, who was innocent, in order to favour their escape, contrived to draw suspicion on himself, and when examined, tacitly admitted his guilt. He was afterwards committed to prison, and all pursuit of his brothers was discontinued. On the trial, he proved *an alibi* on the clearest and most satisfactory evidence, and was consequently acquitted. In the mean time, the actual felons had safely arrived in America with their plunder. 1 *Dick. Just.* 460.

BEFORE MAGISTRATES.

It may be as well here to notice that the examination must not be upon oath; 1 *Hale*, 585; if it be, the court will not allow it to be given in evidence; and where it was in writing, and purported to have been taken upon oath, *Le Blanc*, J., even refused to admit parol evidence to prove that the prisoner, at the time of his examination, was not in fact sworn. *R.* v. *Smith and others*, 1 *Stark.* 242.

Where one of three prisoners stated, in the presence and hearing of the others, in his examination before the magistrate, that he and one of the others committed the felony, and this was not contradicted by the other, still *Holroyd*, J., held that this could not be given in evidence against the other, and he said it had been so ruled by several of the judges in a case tried at Chester. *R.* v. *Appleby and others*, 3 *Stark.* 33.

The confession ought to be reduced into writing, and it is advisable for precaution and facility of future proof to have it signed by the defendant. In *Lambe's case*, the question for the opinion of the judges was, whether a written examination taken by a committing magistrate, and containing a confession, which the prisoner on hearing it read over to him admitted to be true, but refused to sign, ought to have been received in evidence, as it was not signed either by the magistrate or by the prisoner; and a majority of the judges held that such a confession would have been evidence at common law, and that it is not rendered inadmissible by any provision in the statutes of *Philip* and *Mary* respecting examinations and informations before justices of the peace. In this case the examination was rendered admissible by the prisoner's acknowledging the truth of its contents; if he had not made such an admission, but had only refused to sign it after it had been read over to him, it could not have been received in evidence. 2 *Leach*, 625; 1 *Phill. Ev.* 115; 2 *Hawk.* c. 46, s. 41; 4 *Esp.* 172.

After the examination of a prisoner before a magistrate upon a charge of felony has been taken down by the magistrate's clerk, it is read over to him, and he is told that he may sign it or not as he chooses; having declined to sign it, the examination cannot be read in evidence. *R.* v. *Tolicote*, 2 *Stark. C. N. P.* 483.

The confession should be taken down in the very words uttered by the prisoner, *post*, Vol. II. p. 98.

A confession before a magistrate, if taken down in writing at the time, should be produced, and proved by the magistrate or his clerk to have been duly taken; see 1 *Hale*, 585; 2 *Hawk.* c. 46, s. 3; 1 *Leach*, 240, 348; but if it be clearly shown that the examination of the defendant was not reduced to writing, or perhaps if the writing be lost or destroyed, then parol evidence of it may be admitted. See *R.* v. *Lamb*, 2 *Leach*, 629. *R.* v. *Hollingshead*, 4 *C. & P.* 242; *Phillips* v. *Wimburn*, *id.* 273; *post*, Vol. II. p. 53.

III. Confessions on other Occasions.

On other occasions.

The confession of the defendant himself, whether taken on an examination before justices of the peace in pursuance of the statute of 7 Geo. IV. c. 64, s. 2, *ante*, 307, upon a bailment or commitment for felony or misdemeanor, or in discourse with private persons, is allowed to be given in evidence against the party confessing, but not against others. 2 *Hawk.* c. 46, s. 3.

The general rule on this subject was very fully considered in a judgment delivered by Mr. Justice *Gross*, in a case reserved for the opinion of the twelve judges, and it seems to be now clearly settled, that a free and voluntary confession, made by a prisoner accused of an offence, whether made before he is apprehended or after, whether on a judicial examination or after commitment, whether reduced into writing or not; in short, that any voluntary confession made by a prisoner to any person at any time or place, is strong evidence against him. *Lamb's case*, 2 *Leach*, 552; 2 *Hawk.* c. 46, s. 31; 1 *Phill. on Ev.* 110.

The confession of the prisoner is sufficient ground for a conviction, though there be no other proof of his having committed the offence, or of the offence

having been committed, if that confession was in consequence of a charge against him; *R.* v. *Eldridge*, *R.* & *R. C. C. R.* 440; *R.* v. *White*, *id.* 508; *R.* v. *Tippet*, *id.* 509; and especially if there is evidence that he had been desirous to keep out of the way of the person upon whom the offence is supposed to have been committed, or if any of his companions under the same charge have attempted to do so. *R.* v. *Falkner*, *id.* 481. ON OTHER OCCASIONS.

Where a witness answers questions upon examination on trial, tending to criminate himself, and to which he might have demurred, his answers may be used for all purposes. 4 *Camp.* 10; *R.* v. *Mercceron*, 2 *Stark. C. N. P.* 366. But the latter case seems incorrectly reported, see *per* Lord *Tenterden*, C. J., in *R.* v. *Gilham*, *R.* & *M. C. C.* 203, *post*, 780.

Though a statute only empowers a justice to convict upon the oath of one or more witnesses, this implies a power to convict upon the confession of the party alone. *R.* v. *Gage*, 1 *Stra.* 546; 1 *Paley*, 32; 1 *B.* & *A.* 100; 4 *B.* & *A.* 510.

It is said by Mr. J. *Blackstone*, that confessions, even in cases of felony at the common law, are the weakest and most suspicious of all testimony, ever liable to be obtained by artifice, false hopes, promises of favour, or menaces; seldom remembered accurately, or reported with due precision; and incapable in their nature of being disproved by other negative evidence. 4 *Blac. Com.* 357.

Nature of Confession]—Before any confession can be received in evidence, it must be ascertained *with certainty* that such confession was neither obtained by threats nor promises, but was *perfectly free* and *voluntary*; 2 *East's P. C.* 657; for, says Lord *Hale*, I have often known the prisoner disown his confession upon his examination, and hath sometimes been acquitted againt such his confession. 2 *Hale*, 284, 285. Nature of confession. Must be voluntary.

The confession will be presumed to be freely made until the contrary appear; and the magistrate's clerk cannot, unless the prisoner alleges that the confession was unduly obtained, be asked by the prisoner's counsel whether the confession was voluntarily made. 6 *St. Tri.* 831.

If the promise or menace, &c. take place previously to the prisoner's being brought before the magistrate, and the confession be before the magistrate, the court will in general refuse to admit the confession to be given in evidence, unless it appear that the prisoner was undeceived by the magistrate, and cautioned by him not to expect the favour, or not to regard the menaces held out to him. 2 *East's P. C.* 658; and see 1 *Phil. Ev.* 112.

But a confession made in consequence of questions put by the officer who had charge of the prisoner, a boy about fourteen years of age, on a charge of felony, and when he had no food for nearly a day, but obtained without threat or promise, was held admissible. *R.* v. *Thornton*, *R.* & *M. C. C.* 27.

A prisoner was charged with stealing a guinea and two promissory notes; the prosecutor told him that it would be better for him to confess. It was held, that after this admonition, the prosecutor might be allowed to prove that the prisoner brought him a guinea and a 5*l.* note, which he gave up to the prosecutor *as the guinea and* one of *the notes* that had been stolen from him. *R.* v. *Griffin*, *R.* & *R. C. C. R.* 151.

It is no objection that the confession was made under a mistaken supposition that some of the prisoner's accomplices were in custody; not even though some artifice had been used to draw him into that supposition. *R.* v. *Burley*, 1 *Phil. Ev.* 7th ed. 111.

If a prisoner, who is committed on a charge of felony, ask the turnkey of the gaol to put a letter into the post, addressed to the prisoner's father, and the turnkey promise to do so, and instead of that, on receiving the letter, he conveys it to the visiting magistrates of the gaol, who forward it to the prosecutor. This letter is evidence against the prisoner, notwithstanding the manner in which it was obtained. *R.* v. *Derrington*, 2 *C.* & *P.* 418.

A person charged with murder made a confession before the coroner. It appeared that before he made this confession, B., who was both a clergyman

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and a magistrate, had had an interview with him: held, that the prosecutors were not bound to call B. before they put in the confession, but that it would be fair for them to do so, and that if the prosecutors did not call B. the prisoner might call him before the confession was read, to prove that some inducement was held out. *R.* v. *Clewes*, 4 *C. & P.* 221.

What is a threat or promise.

With respect to what shall be deemed a threat or promise; a confession induced by saying, "unless you give me a more satisfactory account, I will take you before a magistrate," cannot be received in evidence. So also saying to the prisoner that it would be *worse* for him if he did not confess, or that it would be *better* for him if he did, is sufficient to exclude the confession, according to constant experience. *R.* v. *Thompson*, 1 *Leach*, 291; 2 *East's P. C.* 659.

In the case of Thomas Cass, he was indicted at the Old Bailey in Feb. Sess. 1784, for stealing, on the 4th of the same month, an iron bar, the property of Edward Meux, Esq. It was the bar of a window belonging to a public house in High Street, Bloomsbury, and the prisoner, on pretence of drinking a pint of beer, contrived to take it away. On going the ensuing evening to the same house, the publican suspecting that he was the person who had stolen the bar, sent for a constable, by whom, on the charge given, he was taken to the watch-house, where he remained all night. On the next morning, the constable, as he was taking him to the magistrates, called with him at the publican's house, and in the conversation which took place, the publican said, "I am in great distress about my irons; if you will tell me where they are, I will be favourable to you." In consequence of which the prisoner confessed that he had taken the property, and told him where it was; but there being no other evidence, *Gould*, J., told the jury they must acquit the prisoner; for that the *slightest hopes of mercy* held out to a prisoner to induce him to disclose the fact, was sufficient to invalidate a confession. 1 *Leach*, 328, *notis*.

In the case of *R.* v. *Jones*, *R. & R. C. C.* 152, the prosecutor had asked the prisoner, on finding him, for the money he (the prisoner) had taken out of the prosecutor's pocket; but before *the money was produced* said, "he only wanted his money, and if the prisoner gave him that, he might go to the devil, if he pleased;" after which, the prisoner took eleven shillings and sixpence halfpenny out of his pocket, and said it was all he had left of it; and a majority of the judges held, that the confession ought not to have been received.

A prisoner, committed on a charge of murder, sent for the chaplain of the gaol to pray with him. The chaplain told him that, as the minister of God, he ought to warn him not to add sin to sin by attempting to dissemble with God, and that it would be important for him to confess his sins before God, and to repair, as far as he could, any injury he had done. The chaplain stated that he considered he had made a great impression, and that he told the prisoner he did not wish him to confess to him. There were two interviews; and the chaplain said he was almost sure that he always used the terms confessing his sins before God, but was not quite positive that he mentioned the words "before God" every time. After this the prisoner sent for the gaoler, who warned him not to tell him any thing but what he wished to be repeated to the magistrates. The prisoner then made a confession. After this the prisoner sent for the mayor, who said, "Before you say any thing, I must apprise you, (as I have done several times,) that it will be, probably, given in evidence against you; you are therefore to exercise your own discretion, and say little or nothing, as you think best; and if you have changed your mind and don't choose to say any thing, I will retire, and shall not feel at all angry at your having brought me down." The prisoner made another confession, which was taken down, and read over, and he admitted its correctness, but he could not sign it as his hand shook so much. These confessions were objected to by the prisoner's counsel, but, after argument, the twelve judges held that they were rightly received. *R.* v. *Gilham*, *R. & M. C. C.* 186; *Car. C. L.* 61; *Talf. Dick. Sess.* 356, 357, S. C.

A., a prisoner charged with murder, was visited by B., who was both a magistrate and a clergyman; B. told him that if he was not the person who struck the fatal blow, and he would tell all that he knew, he (B.) would use his endeavours and influence to prevent any thing from happening to him, and that if he (A.) did not make a disclosure, some one else would probably do so. After this, B. wrote to the secretary of state, who returned an answer that mercy could not be extended to A., which answer was communicated by B. to A. After this, A. sent for the coroner, and wished to make a statement. The coroner told him that if he did so, it would be used as evidence against him. The prisoner made a confession: held, that this confession was admissible. *R.* v. *Clewes*, 4 *C. & P.* 221.

Where it appeared that the prisoner, on being taken into custody, had been told by a person, who came to assist the constable, that it would be better for him to confess, but that, on his being examined before the committing magistrate on the following day, he was frequently cautioned by the magistrate to say nothing against himself; a confession under these circumstances before the magistrate was held to be clearly admissible. *R.* v. *Lingate*, 1 *Phil. Ev.* 7 ed. 115; *R.* v. *Hardwick*, *id.*; *R.* v. *Rosier*, *id.*; *Stark. on Ev.* Part. IV. 2350.

Acts subsequent to an extorted confession.

If a confession be obtained by undue means, nothing the prisoner afterwards says, under the influence of having made that confession, can be received. *R.* v. *Sarah Nute*, 1 *Burn's J.* 24 ed. 688.

In *R.* v. *Jenkins*, *R. & R. C. C. R.* 492, it was held, that if a confession be improperly obtained, it is a ground for excluding evidence, not only of the confession, but of any act done by the prisoner in consequence, towards discovering the property.

But although a confession may not be receivable in evidence, yet any discovery that takes place in consequence of such confession will be admitted as a substantive fact: as if a man by promise of favour be induced to confess that he knowingly received certain stolen goods, and that they are in such a room in his house, and the goods be found there accordingly, although the confession itself cannot in that case be given in evidence, yet it may be proved that in consequence of something the witness heard from the defendant, he found the goods in question in the defendant's house. *R.* v. *Lockhart*, 2 *East's P. C.* 658; 1 *Leach*, 430; and see 1 *Leach*, 300, n. and 301, n.

If persons having nothing to do with the apprehension, prosecution, or examination of the prisoner, advise him to confess, this is no ground for excluding a subsequent confession made to another person. *R.* v. *Row*, *R. & R. C. C. R.* 153; *R.* v. *Gibbons*, 1 *Carr. & P.* 97; *R.* v. *Tyler*, 1 *Carr. & P.* 129.

Confession must be taken altogether.

It is fully settled, that whenever a person's confession is made use of against him, it must all be taken together, and not by parcels. If the confession be not in writing, the whole of what the prisoner said must be fully stated, although it may happen that some part of it concerns other prisoners who are tried on the same indictment; in such case it is not possible to make any selection, for until the evidence has been heard, it cannot be known what it is, or to whom it relates, and all that can be done is to direct the jury not to take into their consideration such parts as affect the other prisoners. But a distinction might perhaps be made in this respect, in case the confession has been reduced into writing, if that part which relates to the other prisoners is capable of being separated and detached from the rest, and can be omitted without affecting in any degree the prisoner's narrative against himself. 2 *Haw.* c. 46, s. 42, 43, 44; 4 *Taunt.* 245; and see the *Queen's case*, 2 *B. & B.* 294.

If there be proof of recent possession of stolen property, and the prosecutor give in evidence a declaration in which the prisoner asserted that he bought the goods of A. B., the prosecutor having made the prisoner's declaration evidence, it must be taken as true until it is contradicted; but if there be other evidence to falsify it, the judge will leave both the prisoner's declaration and

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the evidence contradicting it to the jury for their consideration. *R.* v. *Jones*, 2 *C. & P.* 129.

In a case in which a party's declaration had been given in evidence against him, *Abbott*, C. J. left the whole conversation to the jury, to consider whether the facts asserted by the party in his own favour were not true, as well as those against him. Cited in *R. & M. C. N. P.* 258; *Smith* v. *Blandy*, id.

If a prisoner, in a confession made before a coroner, which is taken down in writing, mention the names of two other persons who are also charged with the same offence, the confession when read in evidence must be read with these names in it, just as it is, and the officer of the court must not say "another person" and a "third person" instead of reading the names. *R.* v. *Clewes*, 4 *C. & P.* 221; *R.* v. *Jones*, id. 217.

If a prisoner charged with murder, say in his confession, which is read in evidence against him, that he was present at the murder, but took no part in the commission of it, this is evidence for him as well as against him; but the judge will not direct an acquittal, as the jury may believe one part of the confession and disbelieve another; however, if it is meant to be charged that the prisoner did more than is stated in the confession, there ought to be some evidence to show that. *R.* v. *Clewes*, 4 *C. & P.* 221.

Confession evidence only against confessor.

A party's confession is only evidence against himself, and not against his accomplices; 3 *Stark.* 33; 1 *Hale*, 585; 2 *Hawk.* c. 46. s. 3; *R.* v. *Tong*, *Kell.* 17, 18; *R.* v. *Boroski*, 3 *St. Tr.* 474; although he charges his accomplice in his hearing, and the accomplice does not deny it. *R.* v. *Appleby*, 3 *Stark.* 33; 1 *Phil. Ev.* 7th ed. 116.

In Tinkler's case, however, the dying declarations of an accomplice were holden by the judges to be good evidence against the principal; and the majority of the judges were of opinion, that this evidence would of itself be sufficient to convict, although the testimony of the accomplice, if living, would not, unless corroborated by other evidence. 1 *East's P. C.* 354.

Also, in cases of conspiracy, and of high treason in compassing the King's death, &c., any thing said or written by one of the accomplices, not as a confession simply, but for the purpose of furthering the common design, is admissible evidence against the others. *R.* v. *Watson*, 2 *Stark.* 140, 141; 5 *Esp.* 125; 6 *T. R.* 527.

Confidential *Communications, how for privileged in Evidence, post,* **Evidence**, Vol. II. p. 68.

Conies. *See* **Game**, Vol. II.

Conjuration. *See* **Witchcraft**, Vol. V.; **Sessions**, Vol. V. p. 471.

Conspiracy.

I. *What it is*, 783.
[33 Edw. I. stat. 2.]
II. *Prosecution for*, 785.

III. *Evidence of*, 787.
IV. *How punishable*, 788.
V. *Forms*, 789.

I. What it is.(a)

CONSPIRACY is when two or more combine together to execute some act for the purpose of injuring a third person or the public. What it is.

1. By the common law there can be no doubt but that all confederates whatsoever, wrongfully to prejudice a third person or the public, are highly criminal; as where divers persons confederate together by indirect means to impoverish a third person, or falsely and maliciously to charge a man with being the reputed father of a bastard child, or to maintain one another in a matter whether it be true or false. 1 *Hawk.* c. 72, s. 2. By the common law.

2. And conspiracy by statute is as follows: "Conspirators be they that do confeder or bind themselves by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely and maliciously to indict, or cause to indict, or falsely to move or maintain pleas; and such as retain men in the country with liveries or fees for to maintain their malicious enterprises; and By statute.

(a) Mr. Talfourd, in his much improved and useful edition of Dickenson's Sessions, makes the following observations as to this offence.

"The offence of conspiracy is more difficult to be ascertained precisely than any other for which indictment lies; and is indeed rather to be considered as governed by positive decisions than by any consistent and intelligible principles of law. It consists, according to all the authorities, not in the accomplishment of any unlawful or injurious purpose, nor in any one act moving towards that purpose; but in the actual concert and agreement of two or more persons to effect something, which, *being so concerted and agreed*, the law regards as the object of an indictable conspiracy. There are two classes of cases in which the criminality of such agreement is perfectly intelligible and obvious: 1. Where the object proposed would, if accomplished, be a criminal offence in all parties acting in it. 2. Where, though the ultimate object may be lawful, the means by which the parties, conspirators, propose to effect their purpose necessarily involve in them an indictable offence. Of the first kind are conspiring to commit a felony—conspiring to obtain money under false pretences—conspiring to suborn or abstract a witness—where the object, if carried into effect, would be a substantive offence, and where therefore *concert* is indictable as an *act* in itself tending to produce it. Of the second kind is a conspiracy to support a cause, in itself just, by false testimony; and the same principle would apply here; for whether the concerted offence be the end or the means it is equally an offence, which, if consummated, would subject the offenders to the visitation of criminal justice. But it is not easy to understand on what principle conspiracies have been holden indictable, where neither the end nor the means are, in themselves, regarded by the law as criminal, however reprehensible in point of morals. Mere concert is not in itself a crime; for associations to prosecute felons, and even to put laws in force against political offenders, have been holden legal. *R.* v. *Murray and others*, tried before *Abbott*, C. J. at Guildhall, 1823. If then there be no indictable offence in the object, no indictable offence in the means, and no indictable offence in the concert, in what part of the conduct of the conspirators is the offence to be found? Can several circumstances, each perfectly lawful, make up an unlawful act? And yet such is the general language held on this subject, that at one time the immorality of the object is relied on; at another the evidence of the means; while at all times the concert is stated to be the essence of the charge, and yet that concert, independent of an illegal object or illegal means, is admitted to be blameless." Mr. Talfourd then proceeds to comment on *Macklin's case*, 2 *Campb.* 369, the case of *R.* v. *Farmer*, 13 *East*, 226, and that of *R.* v. *Grey*, 3 *St. Tr.* 519; and considering it a hopeless task to lay down any fixed principles whereby this offence may be governed, he points out the several instances of cases wherein parties have been convicted of conspiracies, and which will be found collected in the above text.

WHAT IT IS.

this extendeth as well to the takers as to the givers: and stewards and bailiffs of great lords, which by their office or power undertake to bear or maintain quarrels, pleas, or debates, that concern other parties than such as touch the estate of their lords or themselves. 33 Edw. I. st. 2.

As to conspiracies among workmen, see 6 Geo. IV. c. 129, *post*, Servants, Vol. V. p. 418.

From this definition of conspirators, it seems clearly to follow, contrary to the opinion of Lord *Coke*, that not only those who actually cause an innocent man to be indicted, and also to be tried upon the indictment, whereupon he is lawfully acquitted, are properly conspirators, but that those also are guilty of this offence who barely conspire to indict a man falsely and maliciously, whether they do any act in prosecution of such conspiracy or not. 1 *Hawk.* c. 71, s. 2; 2 *Ld. Raym.* 1169.

But an *action* will not lie for the conspiracy unless it be put in execution; for in such case, the *damage* is the ground of the action. 1 *Ld. Raym.* 378.

Against individuals.

Combining together to marry a girl to get her fortune amounts to a conspiracy, and is indictable. 3 *Ves. & B.* 173.

Conspiring to seduce a girl is indictable. *R.* v. *Lord Gray and others*, 3 *St. Tr.* 519.

If a man and woman marry in the name of *another*, for the purpose of raising a specious title to the estate of the person whose name is assumed, it is a conspiracy. *R.* v. *Robinson and Taylor*, 1 *Leach*, 37.

So a conspiracy to injure the reputation of an individual by indicting or preferring a complaint before a magistrate, though no indictment or complaint be preferred, is indictable; 1 *Bla. Rep.* 392; and this though the offence intended to be charged was not cognizable in the temporal courts. 1 *Salk.* 174.

It seems an indictment lies for conspiring to cheat and defraud a man by selling him an unsound horse. 2 *B. & A.* 204; 1 *Stark. C. N. P.* 402.

But no indictment lies for conspiring to commit a civil trespass on a preserve to take game, though effected in the night and with destructive weapons. *R.* v. *Tanner*, 13 *East*, 228.

An agreement between individuals to support each other in all undertakings, lawful or unlawful, is illegal. 9 *Co.* 56.

But associations to prosecute felons, and even to put laws in force against political offenders, are lawful. *R.* v. *Murray and others, cor. Abbott*, C. J. Guildhall, 1823.

An agreement amongst several to hiss and condemn a play, &c. is indictable. 2 *Camp.* 358.

A conspiracy to deprive a man of an office under an illegal trading company, is not indictable. *R.* v. *Stratton*, 1 *Campb.* 549, n.

Against the public.

A conspiracy to injure public trade, to affect public health, to violate public police, or to insult public justice or the like, is indictable. Thus it is an indictable offence to conspire on a particular day by false rumours to raise the price of the government funds, with intent to injure the subjects who should purchase on that day; *R.* v. *De Berenger*, 3 *M. & S.* 67; for, as there observed by Lord *Ellenborough*, C. J. the purpose itself is mischievous; it strikes at the price of a vendible commodity in the market, and if it gives it a fictitious price, by means of false rumours, it is a fraud levelled against all the public, for it is against all such as may possibly have any thing to do with the funds on that day. And it was held in the same case, that an indictment for such an offence need not specify the particular persons who purchased as the persons intended to be injured, for the conspiracy is the thing which constitutes the crime; and it is sufficient if the indictment state the conspiracy as it existed at the time when the crime was complete.

A conspiracy by magistrates to present a false certificate that a road under indictment is in repair, is indictable. *R.* v. *Mawbey*, 6 *T. R.* 619, 638.

A conspiracy to prevent a prosecution for a felony, is an offence. 14 *Vin.* 65.

So is a conspiracy to commit a felony or misdemeanor. *R.* v. *Pollman*, 2 *Camp.* 229; *R.* v. *Roberts*, 1 *Camp.* 399.

WHAT IT IS.

Journeymen confederating and refusing to work for certain wages, may be indicted for a conspiracy, notwithstanding the statutes which regulate their work and wages do not direct this mode of prosecution; for the offence consists in *conspiring*, and not in the refusal, and all conspiracies are illegal, although the subject-matter of them may be lawful. *R.* v. *Journeymen Tailors of Cambridge*, 8 *Mod.* 11, 320.

A conspiring to sell unwholesome provisions is indictable. *R.* v. *Macarty*, 2 *Ld. Raym.* 1179.

No act need be done.

To complete the offence of conspiracy no act need be done in consequence thereof.

A bare conspiracy to do a lawful act to an unlawful end is a crime. Suppose there is a conspiracy to let lands of 10*l.* a-year value to a poor man, in order to get him a settlement, or to make a certificate man a parish officer, or a conspiracy to send a woman big of a bastard child into another parish to be delivered there, and so to charge that parish with the child; certainly these are crimes *indictable*.. *Per. cur.* *R.* v. *Edwards and others*, 8 *Mod.* 321; and see 1 *Bla. Rep.* 392.

How many must be concerned in.

One person alone cannot be guilty of a conspiracy; 1 *Hawk.* c. 72, s. 8; but one person may be prosecuted for having conspired with others, and may be tried and convicted alone, if the others escape or die before the time of trial, or the finding of the bill. 1 *Stra.* 193; 2 *Stra.* 1227. And if all but one be acquitted, and it is not stated as a conspiracy with certain persons unknown, the conviction of a single defendant will be invalid and no judgment can be passed on him. *Poph.* 202; *R.* v. *Scott*, 3 *Burr.* 1262; 12 *Mod.* 262; 1 *Hawk.* c. 72, s. 8. But if an action on the case in nature of a conspiracy be brought against several persons, and all but one be acquitted, yet judgment may be given against that one only. 1 *Hawk.* c. 72, s. 8.

And where two conspire and one dies, the survivor may still be indicted for the conspiracy. 2 *Stra.* 1227; *R.* v. *Nicholls*, 13 *East*, 412, n.

And even where the other defendant has pleaded and is alive, but has not been tried, a verdict of guilty of conspiring with him may be sustained, and judgment given on it, although it is possible he may be afterwards acquitted. *R.* v. *Cooke*, 5 *B. & Cres.* 538; 7 *D. & R.* 672, S. C.

A husband and wife alone cannot be indicted for a conspiracy, because they are esteemed but as one person in law. 1 *Hawk.* c. 72, s. 8.

But in the case of *R.* v. *Cope and others*, 1 *Stra.* 144, the husband and wife and servants were indicted for a conspiracy to ruin the trade of the prosecutor, who was the King's card-maker. The evidence against them was, that they had at several times given money to the prosecutor's apprentices, to put greese into the paste, which had spoiled the cards. But there was no account given that ever more than one at a time was present, though it was proved they had all given money in their turns. It was objected that this could not be a conspiracy; for several persons might do the same thing, without having any previous communication with each other. But it was ruled, that the defendants being all of a family, and concerned in making of cards, it would amount to evidence of a conspiracy. And see further, *post*, 787.

II. Prosecution for.

Modes of proceeding for.

In the case of a conspiracy to indict a person of a crime, or carry on any other malicious prosecution against him, his remedy is by action on the case, or else by indictment; (see 5 *East*, 582;) or sometimes he may move the Court of King's Bench for and obtain a criminal information against the offenders, but then he will generally be compelled to abandon any civil remedy. 2 *Burr.* 719; 2 *T. R.* 198. To sustain an action on the case some actual damage must be sustained. 1 *Ld. Raym.* 378. The most usual course, especially where pecuniary compensation is not the object, is to indict. See 5 *East*, 582.

PROSECUTION FOR.

Indictment.

Indictment]—The *venue* should be laid in the county where the conspiracy took place; 1 *Salk.* 174; it seems it may be laid in the county in which an act was done by any one of the conspirators in furtherance of their common design. 4 *East*, 164.

It is usual to set out the overt acts, that is to say, those acts which may have been done by any one or more of the conspirators, in order to effect the common purpose of the society; but this, as we shall see, is not absolutely requisite.

If the indictment lay the offence to be an *unlawful* conspiracy, this, whether it be to charge a man with *criminal* acts, or such only as may affect his *reputation*, is fully sufficient. The several charges in the indictment are not to be considered as distinct and separate counts, but as one and the same united and continued offence, pursued through its different stages. *R.* v. *Rispal*, 1 *Bla. Rep.* 368.

An indictment against several persons for conspiring together, "*by indirect means*," to prevent one H. B. from exercising the trade of a tailor, was held good, without stating the mode. The illegal combination is the gist of the offence, and it is enough to state the conspiracy and the object. *R.* v. *Eccles and others*, 1 *Leach*, 274; 13 *East*, 230, n.

In a late case, an indictment charging that the defendants conspired "by divers false pretences, and subtle means and devices, to obtain and acquire to themselves of and from P. D. and G. D. divers large sums of money of the respective monies of the said P. D. and G. D., and to cheat and defraud them respectively thereof," was held sufficient; for the gist of the offence being the conspiracy, if that fact and its object be stated, the particular means and devices need not be set out. *R.* v. *Gill and another*, 2 *B. & A.* 204.

When the object of the combination is to indict the prosecutor, it is not necessary to show with what particular offence it was intended to charge him, but it will suffice to say that they conspired to indict him of a crime punishable by the laws of this kingdom, and then it may be alleged that they, according to the conspiracy, did indict him; *R.* v. *Spragg*, 2 *Burr.* 993; in such a case, there is no occasion to aver the innocence of the party injured, if the conspiracy be laid *falsely;* for he will be presumed guiltless until the contrary appears. *R.* v. *Best*, 1 *Salk.* 174; 1 *Stra.* 193.

So, in an indictment for conspiring to pervert the course of justice, by producing a false certificate of justice of peace that a road indicted was in repair, in order to influence the judgment of the court, it is not necessary to allege that the defendants knew the certificate to be false; it is sufficient that they agreed to certify the fact as true, without knowing it to be so. *R.* v. *Mawbey*, 6 *T. R.* 619.

An indictment for a conspiracy "to defraud J. W. of divers goods, and in pursuance of the conspiracy defrauding him of divers goods, to wit, of the value of 100*l.*" is good, without specifying such goods; (1 *Chit. Rep.* 688;) and the court in such case would not, it should seem, call upon the prosecutor to deliver a particular of such goods; (*Id.*); and an indictment for conspiracy to defraud divers persons seems sufficient, without stating their names. 3 *M. & S.* 75.

Where the act only becomes illegal from the means used to effect it, so much must be stated as will show its illegality, and charge the defendant with a substantive offence. Thus, in an indictment for a combination to marry paupers, in order to throw the burthen of maintaining them on another parish, it is necessary to show that some threat, promise, bribe, or sinister means was made use of, because the act of marriage being in itself lawful, the procuring it requires this explanation in order to be charged as a crime: 1 *East's P. C.* 461, 462; it is also material in this case to show the intent of the combination, by stating that the husband was a pauper, and the wife legally settled in the parish from which she was taken. 8 *Mod.* 320; 1 *Esp. Rep.* 306, 307.

Trial of indictment.

Trial]—The trial must be in the county where the conspiracy took place. 1 *Salk.* 174. In *R.* v. *The Rev. Josh. King and others*, 2 *Chit. Rep.* 217, it was held no reason for changing the venue in an indictment for a conspiracy

to destroy foxes and other vermin, that the gentry of the county in which the indictment was found are addicted to fox-hunting. EVIDENCE OF.

A conspiracy is cognizable by the general quarter sessions, being a trespass. *R.* v. *Rispal*, 3 *Burr.* 1321; 1 *Bla. Rep.* 368.

On a motion for a new trial, or in arrest of judgment, all the defendants convicted must be present in court, and this though the motion be made on behalf of one of them only. *R.* v. *Spragg*, 2 *Burr.* 936; *R.* v. *Teal and others*, 11 *East*, 307; *R.* v. *Askew*, 3 *M. & S.* 9; *R.* v. *Lord Cochrane*, 3 *M. & S.* 10, n.; *R.* v. *Hollingberry*, 4 *B. & Cres.* 329; 6 *D. & R.* 345, S. C. New trial.

But when the indictment is removed into the King's Bench by *certiorari*, and set down for argument, it is not necessary that the defendant should appear in person, because it is in the nature of a special verdict, and his innocence may still be presumed. *R.* v. *Nicholls*, 2 *Stra.* 1227.

III. Evidence of.

The evidence must bring the case within the rules already laid down as to what is a *conspiracy*, *ante*, 783 to 785. Evidence.

The actual fact of conspiring need not be proved; but it may be inferred from circumstances and the concurring conduct of the defendants. *R.* v. *Parsons*, 1 *Bla. Rep.* 392. Conspiracy may be inferred.

In prosecutions for conspiracies it is an established rule, that where several persons are proved to have combined together for the same illegal purpose, any act done by one of the party, in pursuance of the original concerted plan, and with reference to the common object, is in the contemplation of law the act of the whole party; and therefore, the proof of such act, after proof of the combination, would be evidence against any of the others who were engaged in the same conspiracy; and any declarations also made by one of the party at the time of doing such illegal act, seem not only to be evidence against himself, as tending to determine the quality of the act, but also to be evidence against the rest of the party, who are equally responsible as if they had themselves done the act. But what one of the party may have been heard to say at some other time when no act was committed by him, as to the share which some of the others had in the execution of the common design, or as to the object of the conspiracy, cannot, it seems, be admitted as evidence against the other defendants. 1 *Phil. Evid.* 94; *R.* v. *Salter*, 5 *Esp.* 125; 2 *Stark.* 141; *R.* v. *Roberts*, 1 *Camp.* 399. And in *R.* v. *Henry Hunt and others*, for unlawfully meeting together with persons unknown, for the purpose of exciting discontent and disaffection, it was held (*H. Hunt* having presided at their meeting) that resolutions passed at a former meeting assembled a short time before, in a distant place, and at which *H. Hunt* also presided, and the avowed object of which meeting was that of the meeting mentioned in the indictment, were admissible in evidence to show the intention of *H. Hunt* in assembling and attending the meeting in question. 3 *B. & A.* 566. How far acts of one defendant evidence against the rest.

The letters of one defendant to another are, under certain circumstances, admissible in evidence to rebut the charge of conspiracy, if they show that he was the dupe of the other, and was not himself a participator in any fraud. *R.* v. *Whitehead*, 1 *Car. & P.* 67.

In the *Queen's case* it was considered, that on a prosecution for a crime to be proved by conspiracy, general evidence of an existing conspiracy may in the first instance be received, as a preliminary step to that more particular evidence, by which it is to be shown that the individual defendants were guilty participators in such conspiracy. That this is often necessary to render the particular evidence intelligible, and to show the true meaning and character of the acts of individual defendants. But in such cases, the general nature of the whole evidence intended to be adduced should be opened to the court; and if upon such opening, it should appear manifest that previously no particular proof sufficient to affect the individual defendants is intended to be adduced, it would become the duty of the judge to stop the case *in limine*, and not to allow the general evidence to be received, which, even if attended with no other bad effect, such as exciting an unreasonable prejudice, would certainly be a useless waste of time. 2 *Brod. & Bing.* 310.

EVIDENCE OF.

Upon an indictment against workmen for a conspiracy against their employers, to prevent them from taking any apprentice, it was held that evidence of their having turned out from their employment with intent to compel their masters to dismiss any one apprentice, was sufficient to support the charge. *R.* v. *Ferguson and another*, 2 *Stark. N. P. C.* 489.

Where several conspire to procure an employment under government by corrupt means, it seems that a banker, who receives the money in order to pay it over for that purpose, becomes a party to the conspiracy. *R.* v. *Pollman*, 2 *Camp.* 233.

In *Watson's case*, (2 *Stark. C. N. P.* 140, and see *Stark. on Evid.* part iv. 404,) after evidence of a treasonable conspiracy, to which the prisoner who was upon his trial was a party; it was held, that papers found in the lodgings of a conspirator, at a subsequent period to the apprehension of the prisoner, might be read in evidence, although no absolute proof had been given of their previous existence, strong presumptive evidence having been adduced, to show that the lodgings had not been entered by any one in the interval between the apprehension of the prisoner and the finding of the papers. Upon the same trial, evidence having been given that a paper containing seditious questions and answers had been found in the possession of a conspirator, but had not been published, the court doubted whether the paper was sufficiently connected by evidence with the object of the conspiracy to render it admissible, and it was not read; but they held, that if proof were to be given that the instrument was to be used for the purposes of the conspiracy, it would clearly be admissible.

It makes no difference as to the admissibility of the act or declaration of a conspirator against a defendant, whether the former be indicted or not, or tried or not, with the latter, for the making one a co-defendant does not make his acts or declarations evidence against another, any more than they were before; the principle upon which they are admissible at all is, that the act or declaration of one is the act or declaration of both, united in one common design, a principle which is wholly unaffected by the consideration of their being jointly indicted. Neither does it make it material what the nature of the indictment is, provided the offence involve a conspiracy. Thus, upon an indictment for murder, if it appeared that others, together with the prisoner, conspired to perpetrate the crime, the act of one, done in pursuance of that intention, would be evidence against the rest. 6 *T. R.* 528.

Where one of defendants acquitted.

Where one of several defendants charged with a conspiracy has been acquitted, the record of acquittal is evidence for another defendant subsequently tried. *R.* v. *Horne Tooke, Old Bailey*, 1794.

Where two defendants were indicted for a conspiracy to commit a fraud, and the defence of one was, that he himself had been deceived by the representations of his co-defendant, and part of a written correspondence having been received in evidence for the crown; it was held, that the whole of the correspondence between the defendants, up to the time of the overt act of the conspiracy, was admissible in evidence for the defence. *R.* v. *Whitehead*, *D. & R. C. N. P.* 61.

Competency of witnesses.

Where on an indictment for a conspiracy against A., B., and C., C. called a witness, and examined him as to a conversation between himself (C.) and A.; it was held, that the counsel for the prosecution were at liberty to examine as to other conversations between A. and C. although they tended chiefly to criminate A. who had called no witnesses. *R.* v. *Kroche*, 2 *Stark.* 343.

Wife of co-defendant.

The wife of one co-defendant, in a case of conspiracy, is not a competent witness for another defendant, for as a joint offence is charged against all the defendants, an acquittal of the others would be a ground for an acquittal of her husband. *R.* v. *Lockyer*, 5 *Esp. C. N. P.* 107; *R.* v. *Frederick*, 2 *Str.* 1094.

And for further information, see Starkie on Evidence, part iv. tit. *Conspiracy*.

IV. Punishment, &c.

Punishment.

It is clear that those who are convicted of conspiracy at the suit of the party shall have judgment of fine and imprisonment, and to render the plaintiff his damages. 1 *Hawk.* c. 72, s. 9.

FORMS.

Also it is certain that he who is convicted at the suit of the King of a conspiracy to accuse another of a matter which may touch his life, shall have judgment that he shall lose the freedom and franchise of the law (whereby he is disabled as a juror and discredited as a witness.) 1 *Hawk.* c. 72, s. 9. Villainous judgment.

And this is commonly called villainous judgment, which is given by the common law, and not by any statute. But it now is the better opinion, that the villainous judgment is by long disuse become obsolete, there being no instance of its having been pronounced since the reign of Edward the Third; but instead thereof the delinquents are usually sentenced to fine, imprisonment, and surety for good behaviour. 4 *Bla. Com.* 136, 137; 2 *Burr.* 996, 1027; 1 *Hawk.* c. 72, s. 9.

By the 9 Geo. IV. c. 31, s. 25, assaults committed in pursuance of a conspiracy to raise the rate of wages, are punishable with imprisonment with or without hard labour, for not exceeding two years, and the offender may be fined and required to find sureties for keeping the peace, see *ante*, 278. Assault to raise wages.

An attorney has been struck off the roll after conviction for a conspiracy. 1 *Chit. Rep.* 557. Attorney.

As to the incompetency of witnesses convicted of a conspiracy, see *post*, Evidence, Vol. II. p. 64. Incompetency of convicted person as witness.

V. Forms.

(No. 1.)

—— *THE jurors for our Lord the King upon their oath present, that C. D. late of, &c.* [here state the names and additions of all the defendants,] *being persons of evil minds and dispositions, on, &c. with force and arms at, &c.* [the venue,] *unlawfully and wickedly* [or if the conspiracy be malicious, say, *falsely and maliciously,*] *did conspire, combine, confederate, and agree together to* [here state the object of the conspiracy according to the substance of the facts.] *And the jurors aforesaid upon their oath aforesaid do further present, that the said C. D. &c. in pursuance of and according to the said conspiracy, combination, confederacy, and agreement, between them the said C. D. &c. as aforesaid had, did, on, &c. at, &c.* [the place where the overt act took place, here set out the overt acts of conspiracy according to the substance of the facts,] *to the great damage of the said A. B.* [the party immediately injured,] *to the evil example of all others, and against the peace of our said Lord the King his crown and dignity.* [Add a second count, stopping at the statement of the conspiracy, omitting the overt acts, and concluding as above. Add a third count, as general as possible, upon the principle laid down in 2 *B. & A.* 204, *ante*, 786.] General form of an indictment for conspiracy.

(No. 2.)

—— *THE jurors for our Lord the King upon their oath present, that R. B. late of, &c. P. J. late of, &c. R. G. late of, &c. and E. C. late of, &c. being persons of evil name, fame, and dishonest conversation, and not endeavouring to seek their living by honest labour, according to the laws of this kingdom of England, but compassing, devising, and conspiring amongst themselves by what unlawful means they might unlawfully and unjustly obtain and acquire into their hands and possession the goods, chattels, and money of the honest liege men and subjects of the said Lady the Queen, to maintain their dishonest and diabolical course of living, on, &c. at, &c. falsely, unlawfully, wickedly, and craftily contriving, intending, conspiring, and devising among themselve to deceive and defraud one P. P. the younger, of* [mercer,] *not only of his monies, but also to deprive him the said P. P. of his good name, fame, estate, and credit, and to bring the said P. P. into the greatest hatred, scandal, contempt, and infamy amongst all the liege men and subjects of the said Lady the Queen, on, &c. aforesaid, at, &c. aforesaid, falsely, unlawfully, deceitfully, maliciously, and for the cause of wicked gain conspired, contrived, consulted, and agreed among themselves falsely, unjustly, wickedly, and diabolically to charge and accuse the said P. P. to be the father of a child whereof* Indictment for a conspiracy to charge a person with being the father of a bastard child, in order to obtain money from him. *a)*

(*a*) This precedent is from 3 *Ld. Raym.* 37. It was the indictment against Best, and held valid, 1 *Salk.* 174. Conspiracies present themselves in such a variety of shapes, that it is thought sufficient to give only the above forms as precedents. See various forms, 3 *Chit. C. L.* 1145, *et seq.*

FORMS.

the said E. C. was then pregnant, as they then and there pretended, and by the conspiracy among them so as aforesaid before had then and there with force and arms, &c. they did falsely and maliciously affirm, and every one of them then and there did falsely and maliciously affirm, that he the said P. P. then lately before had carnal knowledge of the body of her the said E. C. and had carnally known the said E. C., and that he the said P. P. was the father of the pretended child whereof the said E. C. was then pregnant as she asserted and pretended, and that for the further execution of the premises they the said R. B., P. J., R. G., and E. C. then and there agreed and concluded among themselves that he the said R. B. should go to the said P. P. and falsely, wickedly, maliciously, and for the sake of wicked gain should charge and accuse him the said P. P. that he the said P. P. then lately before had had carnal knowledge of the body of the said E. C. and had carnally known her the said E. C., and that he the said P. P. was the father of the said pretended child whereof they pretended that she the said E. C. was pregnant. And the jurors, &c. do further say, that the said R. B. in execution of the premises, and according to the said conspiracy, consultation, and agreement among them the said R. B., P. J., R. G., and E. C. as aforesaid before had, afterwards, to wit, on the said, &c. at, &c. aforesaid, with force and arms, &c. falsely, wickedly, maliciously, diabolically, and for the sake of wicked gain, in the hearing of many faithful liege men and subjects of the said Lady the Queen, charged and accused the said P. P. that he the said P. P. then lately before had had carnal knowledge of the body of the said E. C. and had carnally known her the said E. C., and that he the said P. P. was the father of the said pretended child whereof they affirmed the said E. C. was then pregnant, to the great damage, scandal, and defamation of the said P. P. to the pernicious example of all others, and against the peace of our said Lord the King his crown and dignity. [Add other counts more general.]

Conspiracy and riot.

See the form of indictment for riot and conspiracy to annoy prosecutor in his house, Vol. V. p. 301.

Constable.

THE office of a constable in apprehending offenders and in executing warrants, is treated of under the titles **Arrest** and **Warrant**; and in like manner the other particulars of his duty may be found under the respective titles throughout the book; this title treating only of the office of a constable in general.

As to peace officers appointed under the Metropolitan Police Act, see **Police**, Vol. V.

I. *Origin of Constable, and nature of Office*, 791.
[13 Edw. I. st. 2, c. 6.]

II. *Who shall be a Constable, and of Special and Deputy Constables*, 792 to 796.
[5 Hen. VIII. c. 6; 32 Hen. VIII. c. 40; 1 Will. III. c. 18; 6 & 7 Will. III. c. 4; 10 & 11 Will. III. c. 23; 18 Geo. II. c. 15; 31 Geo. III. c. 32; 42 Geo. III. c. 90; 52 Geo. III. c. 155; 57 Geo. III. c. 44; 1 Geo. IV. c. 37.]

III. *How Elected and compellable to act*, 796 to 798.
[13 & 14 Car. II. c. 12; 1 Geo. II. st. 2, c. 13.]

IV. *His Power as Conservator of the Peace*, 799.

V. *His Duty as Officer to Justices*, 799.
[5 Geo. IV. c. 18.]

VI. *Punishment for Neglect of Duty*, 800.
[27 Geo. II. c. 20; 33 Geo. III. c. 55; 5 Geo. IV. c. 83.]

VII. *His Indemnity and Protection in his Office*, 802 to 806.
[7 Jac. I. c. 5; 21 Jac. I. c. 12; 24 Geo. II. c. 44; 1 & 2 Geo. IV. c. 83.]

VIII. *His Expenses*, 806 to 811.

[3 Jac. c. 10; 27 Geo. II. c.3; 27 Geo. II. c. 20; 18 Geo. III. c.19; 41 Geo. III. U. K. c. 78; 1 Geo. IV. c. 37.]

IX. *His Account and Removal from his Office*, 811.

X. *Forms*, 812.

I. Origin of Constables, and Nature of the Office.

Antiquity and origin of constables in general.

The sundry names of high constables, or constables of lathes, rapes, wapentakes, hundreds, and franchises, and the divers names also of petty constables, tithingman, borsholders, borowheads, headborows, chiefpledges, and such other (if there be any) that bear office in towns, parishes, hamlets, tithings, or borowes, are all in effect but two, that is to say, constables and borsholders. *Lamb. Const.* 4.

The word *constable* is evidently a compound, but it seems to be uncertain from whence it has been originally derived.

Borsholders.

Borsholders, (which is the other general name, and doth contain within it the meaning of tithingman, borowheads, headborows, thirdborows, and chiefpledges,) is a word compounded of the Saxon *borge*, *borrow*, or *borhoe*, a pledge, and *ealder*, the elder, chief, or head; and *borshealder*, in one word, doth mean the chief or head of the sureties or pledges. For the understanding whereof it is to be remembered, that by the ancient laws of this realm (before the coming of King William the Conqueror) it was ordained for the more sure keeping of the peace, and for the better repressing of thieves and robbers, that all free-born men should cast themselves into several companies, by ten in each company; and that every of those ten men of the company should be surety and pledge for the forthcoming of his fellows; so that if any harm were done by any of these ten against the peace, then the rest of the ten should be amerced, if he of their company that did the harm should fly, and were not forthcoming to answer to that wherewith he should be charged. And for this cause the companies are yet in some places of England called *boroes*, of the said word *borge*, *borrow*, or *borhoe*, signifying a pledge or surety; and in other places they are called *tithings*, because they contain (as hath been said) the number of ten men with their families.

Origin of hundreds.

And even as ten times ten do make an hundred, so because it was then also appointed that ten of these companies should at certain times meet together for their matters of greater weight, therefore that general assembly, or court, was and yet is called a *hundred*. Furthermore, it was then also ordained, that if any man were of so evil credit that he could not get himself to be received into one of these tithings or borows, then he should be shut up in prison, as a man unworthy to live at liberty amongst men abroad. Now whereas every of these tithings or borows did use to make choice of one man amongst themselves to speak and to do in the name of them all, he was, therefore, in some places called the tythingman, in other places the boroes elder, (whom we now call borsholder,) in other places the borohead or headborow, and in some other places the chiefpledge, which last name doth plainly expound the other three that are next before it; for head or elder of the boroes and chief of the pledges are all one; and in some shires, where every third borough hath a constable, there the officers of the other two are called *thirdborowes*. And in these tithings or boroes sundry good orders were observed; and amongst others, first, that every man of the age of twenty-one years should be sworn to the King. Then, that no man should be suffered to dwell in any town or places unless he were also received into some such suretyship and pledge as is aforesaid. Thirdly, that if any of these pledges were imprisoned for his offence, then he ought not to be delivered without the assent of the rest of his pledges. Again, that no man might remove out of one tything or boroe to dwell in another, without lawful warrant in that behalf. Lastly, that every of these pledges should yearly be presented and brought forth by their chiefpledge at a general assembly for that

ORIGIN AND NATURE OF OFFICE.

purpose, which we yet in remembrance thereof do call the *view of frankpledge*, or the leet court. *Lamb. Const.* 6, 7.

In some places at this day there is both a tithingman and constable, where the tithingman is as it were a deputy to execute the office in the constable's absence; but there are some things which a constable hath power to do that tithingmen cannot intermeddle with; for the constable may do whatever the tithingman may do, but not *e converso*, the tithingman not having an equal power with the constable. But in places where there is no constable, the office and authority of tithingman seems to be all one under a different name. 1 *Bla. Com.* 357.

Antiquity of high constables.

By the statute of Winchester, 13 Edw. I. st. 2, s. 6, in every hundred and franchise two constables shall be chosen to make the view of armour; and they shall present defaults of armour, and of suits of towns, and of highways, and such as lodge strangers in uplandish towns, for whom they will not answer.

From hence Lord *Coke* and others will have it, that high constables are no more ancient than this statute. But Mr. *Hawkins*, (agreeably with *Lambard*, *Dalton*, and other authorities,) says, that it seems to be the better opinion that both constables of hundreds, which are commonly called high constables, and also constables of tithings, which are at this day commonly called petty constables or tithingmen, were by the common law, and not first ordained by the said statute of Winchester; for that statute doth not say that there shall be such officers constituted, but clearly seems to suppose that there were such before the making of it. 2 *Hawk.* c. 10, s. 33.

In short, the truth of the matter seems to be this; the far greatest part of the business of high constables at this day is not at all appropriated to them as high constables, but only as officers to execute the precepts of the justices of the peace, which any other person may do as well as they. The original and proper authority of a high constable, as such, seems to be the very same and no other, within his hundred, as that of the petty constable within his vill; and therein, most probably, he is coeval with the petty constable. He has the superintendence and direction of all petty constables within his district; and he is in a manner responsible for their conduct, since he is bound to notice and to present their defaults, for his neglect of which duty he is representable himself. The other usual branches of this office, such as the surveying of bridges, the issuing of precepts concerning the appointing of overseers of the poor, surveyors of the highways, assessors, and collectors of the land-tax and window duties, and in like manner the viewing of armour by the above-mentioned statute, are in him, not of necessity, but as matter of convenience, and it is discretionary in the justices whom they will appoint to be their officers in these cases; others have been superadded to their office, for the like reason of convenience, by sundry acts of parliament, such as the issuing of precepts for the licensing of alehouses, for the levying of county rates, and for returning lists of jurors; since one person can do all much easier and cheaper than so many different persons.

Nature of office. Ministerial or judicial.

Nature of Office in general]—The office of constable is either strictly derivative or *ministerial*, as in obeying warrants and precepts of justices, coroners and sheriffs, and the charges of private individuals; or is original and *judicial*, as a conservator of the peace at common law; and in many cases it is exercised by virtue of particular acts of parliament. It has been asserted, however, that the office is wholly ministerial and no way judicial; *Bac. Abr. Const. D.* 3, *Burr.* 1263; but this seems too general a position, see *per Ashhurst, J.* 2 *T. R.* 406; *Com. Dig. Leet, M.* 5.

II. Who shall be a Constable, and herein of Special and Deputy Constables.

To be an inhabitant, &c.

No person is qualified to be a constable who is not an inhabitant of the place for which he is to serve; *Field, Pen. Stat.* 331; and actual residence

in the parish is essential. *R.* v. *Adlard*, 7 *D. & R.* 340; 4 *B. & C.* 772, S. C. And therefore a person occupying a house and paying all parish rates in respect of it, and carrying on the trade of a printer, frequenting the house daily on all working days, and sometimes remaining there during the night at work, but not sleeping in the house, is not liable to serve the office of constable in the parish where the house is situate. *Id.* But one who is resident within a private leet within the hundred is not therefore exempt from serving the office of constable of the hundred, and a custom to elect such a one is good. *R.* v. *Gener*, *Cowp.* 13. WHO SHALL BE.

Tenants in ancient demesne are liable to serve as constables. Resiants in a manor owing suit and service to a leet within the same, but not commensurate or extensive with it, the limits of the hundred reaching beyond those of the leet, are obliged to serve as constables out of the leet but within the hundred. *R.* v. *George*, *Lofft*, 365, 418.

Every inhabitant may not be a fit person to be appointed to this office, for he ought to be of the abler sort of parishioners; and if a very ignorant or poor person be chosen, he may by law be discharged, and an abler person appointed in his room. *Dalt.* c. 28. And able person.

Aged persons incapacitated by weakness, and in Westminster persons of sixty-three years old, are expressly exempted, 31 Geo. II. c. 17, s. 13. Aged persons.

In *R.* v. *Clarke*, 1 *T. R.* 682, it was holden that the King may exempt any person, or whole bodies corporate, from serving the office of constable; subject however to this restriction, that the exemption be not extended so far as to prevent the existence of the office in any particular place, and grants of this nature should be construed strictly. King may exempt.

It hath been said, that a custom in a town that the inhabitants shall serve the office of constable by turns, according to the situation of their several houses, is not good; for that by such a course it may come to a woman's turn to be a constable, as an inhabitant of one of those houses; yet we find such customs allowed to be good in later books; and it seems, that the consequence of the reasoning above mentioned may well be denied, since a woman in such case may procure another to serve for her. 2 *Hawk.* c. 10, s. 37; 1 *Bac. Abr.* 683; *vide* 2 *T. R.* 406. Women.

Also it seems that a practising physician, being chosen constable in pursuance of such custom, has no remedy for his discharge; for that there are no precedents of this kind, and his calling is private. 2 *Hawk.* c. 10, s. 41. Physicians.

By stat. 32 Hen. VIII. c. 40, the president, commons, and fellows of the faculty of physic in London shall not be chosen constables.

And by stats. 5 Hen. VIII. c. 6, and 18 Geo. II. c. 15, surgeons in London shall be freed and exempted from the office of constable. Surgeons.

In the case of *R.* v. *Pond*, on an indictment against Pond, a surgeon, for refusing to be constable, it was moved by the attorney-general that a *noli prosequi* might be granted, for that by stat. 5 Hen. VIII. c. 6, (and by stat. 32 Hen. VIII. c. 40, for the incorporating of barbers and surgeons, which incorporation was dissolved by the above stat. of 18 Geo. II.) all persons of the corporation of surgeons within London are exempt; and though it had been held that physicians are not exempt, yet by the equity of those statutes, and by the custom of the realm, *all* surgeons have been allowed the same privilege; and therefore a *noli prosequi* was allowed, unless cause shown. And no cause was shown, the reporter says, that ever he heard of. *R.* v. *Pond*, *Com.* 312.

However, in a later case it has been held, that a member of the Barbers' Company in the city of London is not exempted from serving the office of constable. *R.* v. *Chapple*, 3 *Campb.* 91.

By stat. 6 & 7 Will. III. c. 4, apothecaries in London and within seven miles thereof, being free of the company of apothecaries, and also those in the country who have served seven years' apprenticeship, shall be exempted from the office of constable. Apothecaries.

Also it seems certain that if a sworn attorney, or other officer of the courts at Westminster, be chosen into this office, he may have a writ of privilege for his discharge, by reason of his necessary attendance in those courts: and Attornies.

WHO SHALL BE.

it hath been resolved, that such officers shall have this privilege, not only where there is no special custom concerning the election of constable, but also where they are chosen by a particular custom, in respect of their estates or otherwise; for that no such custom shall be intended to be more ancient than the usages of those courts, and therefore shall give way to them. 2 *Hawk.* c. 10, s. 39.

Barristers at law, servants to members of parliament.

And upon the like reasons it is taken for granted, that practising barristers at law and the servants of members of parliament have the same privilege; but there seem to have been no resolutions to this purpose. 2 *Hawk.* c. 10, s. 39.

Aldermen of London.

Also it hath been resolved that an alderman of London, for the like reasons, is not compellable to be a constable. 2 *Hawk.* c. 10, s. 40.

Captain of the guards.

But it hath been holden that a captain of the King's guards, being presented to serve as constable, in pursuance of a custom in respect of his lands in a town, cannot claim this privilege; for that notwithstanding he is bound by his office to personal attendance on the King's person, yet such office being of late institution, shall not prevail against an ancient custom. 2 *Hawk.* c. 10, s. 41.

Masters of arts.

Masters of arts are not exempted; (5 *Vin. Abr.* 429;) nor officers or

Officers of custom.

watchmen in the customs; (1 *Sid.* 272;) nor a younger brother of the Trinity

Trinity house.

House; (1 *T. R.* 679.)

Gentlemen, where there are others sufficient.

It has been said, that if such officers as before mentioned, or a gentleman of quality who hath no such office, or a practising physician, be chosen constable of a town, which hath sufficient persons besides to execute this office, and no special custom concerning it, perhaps he may be relieved by the King's Bench; but it seems that even a custom cannot exempt fitting persons from serving the office of constable, where there are not sufficient besides them to execute it. But these points seem not to be settled. 2 *Hawk.* c. 10, s. 41.

Publicans.

No man that keeps a public house ought to be a constable. *Per Holt*, C. J. 6 *Mod.* 42; *et vide* 1 *Ld. Raym.* 138; but the 3 Geo. IV. c. 77, s. 19, which absolutely disqualified alehouse keepers from being constables, is expired.

Seaman.

A seafaring man serving the office of headborough, is thereby exempted from being impressed. *Exparte Fox*, 5 *T. R.* 276.

Militia-man.

No serjeant, corporal, drummer, nor private man, serving in the militia, shall, during the time of such service, be liable to serve the office of constable, stat. 42 Geo. III. c. 90, s. 174.

Yeomanry cavalry.

And no officer, non-commissioned officer, or effective member of any yeomanry corps or volunteer cavalry, was, during the period of his continuing enrolled in and an effective member of such yeomanry corps or volunteer cavalry, compellable or compelled to serve the office of constable in the parish to which he belonged, stat. 57 Geo. III. c. 44, s. 3. But the yeomanry cavalry are now abolished.

Dissenting teachers.

Every teacher or preacher in holy orders, or pretended holy orders, that is a minister, preacher, or teacher of a congregation, shall, from the time of his subscription and taking the oaths, be exempted from the office of constable. 1 Will. III. c. 18, s. 11.

Protestant preachers.

And every teacher or preacher in any congregation or assembly for religious worship of protestants, who shall employ himself solely in the duties of such teacher, &c. and not follow any trade or other employment for his livelihood except that of *a schoolmaster*, and who shall produce a justice's certificate of having taken and made and subscribed the oaths and declaration specified in stat. 19 Geo. III. c. 44 (*a*), shall be exempt from the civil services and offices specified in stat. 1 Will. III. c. 18 (*a*), and from being balloted to serve, and from either serving in the militia or local militia of any county, &c. in any part of the United Kingdom, 52 Geo. III. c. 155, s. 9.

Foreigners.

Foreigners naturalized are exempt. *R.* v. *Ferdinand de Mierre*, 5 *Burr.* 2790.

Prosecutors of felons, &c.

Prosecutors of felons, the original proprietors of a certificate, (commonly called a Tyburn ticket,) are exempted from parish or ward offices within the

(*a*) See *post*, **Dissenters**, Vol. I.

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parish or ward in which the felony happened; 58 Geo. III. c. 70, s. 2; 10 & 11 Will. III. c. 23. This statute of Will. III. being passed for the encouragement and reward of persons exerting themselves for the public good in the apprehension and conviction of certain offenders, is to receive a liberal construction, and to be considered as extending to offices within the parish or ward not, in legal strictness, parish or ward offices; and, accordingly, a certificate under this act has been holden to exempt the party from serving the office of petty constable for a township within, though not co-extensive with the parish where the felony was committed, and for which the certificate was granted. 7 *East's Rep.* 174. But such a certificate does not extend to offices to be exercised beyond the bounds of the parish; as that would be to extend the exemption into a different district than that in which the party had the required merit, which must be confined to the parish where the felony was committed. *R.* v. *Derbyshire*, 2 *Burr*, 1182; *Moseley* v. *Stonehouse*, 7 *East's Rep.* 185, 6; 3 *Smith*, 181, S. C.

Special constables.

Special Constables]—Stat. 1 Geo. IV. c. 37, intituled "An Act to increase the power of magistrates in the appointment of special constables;" after reciting that "whereas doubts have arisen whether any person or persons can be compelled to act as special constables, except in any actual tumult, riot, or felony; and whereas it is expedient that justices of the peace should have the power of compelling certain persons to act as special constables, not only in case of actual tumult, riot, or felony, but also on the reasonable apprehension thereof, for the prevention of the same," enacts and declares, "that from and after the passing of this act, [8th July, 1820,] in all cases where it shall be made to appear to any two or more justices of the peace, acting for any county, city, division, riding or place, by the information on oath of five respectable householders of such county, city, division, riding or place, that any tumult, riot or felony has taken place, or is likely to take place, and may reasonably be apprehended, such justices may and are hereby authorised to call upon, nominate, and appoint, by precept in writing under their hands, any householders or other persons (not legally exempt from serving the office of constable) residing within their respective divisions, or the neighbourhood thereof, to act as special constables, for such time and in such manner as to the said justices shall seem fit and necessary for the preservation of the public peace, and for the prevention or suppression of any tumult, riot, or felony; and the said justices are hereby empowered to administer to such person so appointed the usual oaths administered by law to all special constables."

Who and how compellable to act as.

Sect. 2. "That in case any person (not legally exempted as aforesaid) so called upon, nominated and appointed by such justices as aforesaid, shall neglect or refuse to take upon themselves the office, and to act as such special constables, such person so neglecting or refusing shall be liable to such and the same fines, penalties, and punishments, as persons refusing to take upon themselves the office of constable are now by law subject to."

Punishments for refusing to act.

As to the expenses of special constables, *post*, 808.

Deputy constables.

Deputy Constables]—Inasmuch as the office of a constable is wholly ministerial, and no way judicial, it seems that he may appoint a deputy to execute a warrant directed to him, when by reason of sickness, absence, or otherwise, he cannot do it himself; yet it doth not seem to be settled that a constable can make a deputy, without some special cause. 2 *Hawk.* c. 10, s. 36.

In *Medhurst* v. *Wate*, 3 *Burr.* 1259, the high constable appointed a deputy to billet soldiers under the Mutiny Act; this appointment was by parol only, and the deputy was not sworn. By Lord *Mansfield*, C. J. and the court—The high constable had power by the act to billet soldiers, and he may appoint a deputy to this particular ministerial act. This is a ministerial (not a judicial) act, and a constable may appoint a deputy to do ministerial acts.

In *R.* v. *The Inhab. of Hope Mansell*, *Cald.* 252, it was considered that a constable could appoint a deputy.

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And in *R.* v. *Clarke*, 1 *T. R.* 682, it seemed to be admitted as a settled point that a constable may appoint a deputy.

The superior must be answerable for his deputy upon any miscarriage; unless the deputy is duly allowed and sworn, for then he is constable. *Wood's Inst.* b. 1, c. 7.

It has been held, that where a person is appointed constable, and he procures a deputy to serve for him, who is approved of by the inhabitants and sworn in at the leet, the liability of the principal is at an end, and he cannot afterwards be called upon to serve the office; if, therefore, the substitute abscond and do not serve, the principal is discharged notwithstanding. *Underhill* v. *Witts*, 3 *Esp.* 56.

By stat. 1 Will. III. c. 18, s. 7, if any person *dissenting* from the church of *England* shall be chosen high or petty constable, and shall scruple to take upon him the office in regard of the oaths, or any other matter required to be done in respect of such office, he may execute it by a sufficient deputy by him to be provided, to be allowed by such persons and in such manner as such officer should by law have been allowed.

And by stat. 31 Geo. III. c. 32, s. 7, the like privileges are given to *Roman Catholics* on their taking and subscribing the oath and declaration therein specified. See *post*, **Papists**, Vol. V.

Watchmen may be appointed by constables as their assistants, subject to the custom of the place for the appointment of watchmen. 1 *Bla. Com.* 357, 4th edit. 292. A watchman thus appointed has for the time being the authority of the constable and his deputy. 1 *Ch. C. L.* 24.

III. How Elected and Compellable to Act.

By whom to be chosen.

Regularly the constable is to be chosen by the jury in the leet, and if the party be present and refuse, the steward may fine him; if absent, the homage must present his refusal at the next court, and then he shall be amerced; also if the party chosen be present, he shall take the oath in the leet; if absent, before the justices of the peace, who still administer the oath to him as conservators of the peace at common law. *Fletcher* v. *Ingram*, 1 *Salk.* 175; 1 *Ld. Raym.* 69, 70; 1 *Ken. Rep.* 318.

By whom to be sworn.

Sometimes the election may be founded on a custom, as it frequently is in some parishes at a vestry meeting, wardmote, or otherwise. See *R.* v. *Francchard*, 2 *Stra.* 1149.

Anciently the practice was, that in every hundred where there was a feudal lord, the constables were sworn in and admitted by the lord or his steward in his leet; but where there was no such feudal lord, the sheriff in his turn had the swearing and placing of them in; also if there was no feudal lord of the hundred, an annual officer was chosen, who was to preside over the whole hundred, who was called the high constable; but if the hundred were feudal, as it often anciently was, then such lord of the hundred administered the office himself. 1 *Bac. Ab. Const.* A. 683.

Appointment at sessions, and by justices, of high constables.

But now the usual manner is, that the high constables of hundreds are chosen either at the quarter sessions of the peace, or if out of the sessions, then by the greater number of the justices of the division where they reside; and likewise that they are sworn either at the sessions, or by warrant from the sessions; which course hath been often allowed and commanded by the justices of the assize. *Dalt.* c. 28.

The reason thereof may be this, as hath been intimated above, namely, that their office at present doth not so much consist in executing the office of high constable as such, as in executing the justices' precepts, which they may do for the most part, whether they be indeed high constables or not.

Of petty constables.

And, moreover, every petty constable being a principal peace officer, and it being necessary for the preservation of the peace that every vill should be furnished with one, the justices of the peace have ever since the institution of their office taken upon them, as conservators of the peace, not only to

swear the petty constables, which have been chosen at a torn or leet, but also to nominate and swear those who have not been chosen at any such court, on the neglect of the sheriffs or lords to hold their courts, or to take care that such officers are appointed in them. Also, it seems, that such justices have always used for good cause to displace such officers which have been so chosen and sworn by them. And this power of justices of the peace having been confirmed by the uninterrupted usage of many ages shall not now be disputed, but shall be presumed to have been grounded on sufficient authority. And some have carried this point so far, as to allow the justices at their sessions to swear one who was chosen at the leet, and unduly rejected by the steward, who had sworn another in his place. 2 *Hawk.* c. 10, s. 49.

And in the case of *Dr. Franchard*, he was chosen constable of Milborne Port at the leet, which immediately adjourned; and he was afterwards sworn in by a *single* justice of the peace; and upon motion for an information as not being duly sworn, the court held this to be a good swearing. *R.* v. *Dr. Franchard*, 2 *Stra.* 1149.

Where no constable hath been before.

The justices of the county of Northampton at their general sessions chose a constable for Holmby, and for not coming in to take the oath proceeded against him; which proceedings being removed by *certiorari* into the King's Bench, it was moved on affidavits that there had not been a constable there for fifty years before, and that he might be discharged; alleging likewise, that Holmby was a privileged place, and that all the inhabitants were the Duke of York's tenants. But the court held, that they could not discharge him on motion, and said that they must determine the matter by action of false imprisonment, or some other way; and inclined strongly that he could not any way be discharged. For, *per curiam*, though originally constables were chosen in leets, yet the constable being an officer whose duty it is to keep the peace, the justices may choose him in cases of necessity. *Case of the Constable of Holmby*, 2 *Keb.* 557; 1 *Bac. Abr.* 684.

Where the leet shall make default. 13 & 14 Car. 2, c. 12.

Constables dying or leaving the parish.

However, it is certain that justices of the peace had power to nominate and swear constables, on the default of the torn or leet, before stat. 13 & 14 Car. II. c. 12, and therefore that they have such authority in some cases not mentioned in that statute, which enacts, (s. 15,) that if a constable shall die, or go out of the parish, any two justices may make and swear a new one, until the lord shall hold a leet, or till the next quarter sessions, who shall approve the officer so made and sworn, or appoint another; and if any officer shall continue above a year in his office, the justices in their quarter sessions may discharge him, and put in another till the lord shall hold a court as aforesaid. 2 *Hawk.* c. 10, s. 50. But justices, even in sessions, are not empowered by this statute to discharge constables chosen and sworn at the court leet. 2 *Stra.* 798. And the provisions of the act must be strictly complied with by the sessions; therefore an appointment in the disjunctive, "for a year or until others be chosen," was quashed. 2 *Stra.* 1090. The court will grant a *quo warranto* against a constable elected at a vestry and sworn in at the sessions under this statute, for *primâ facie* the right of appointing is in the leet, and the sessions have no power if there has been no default. 2 *Stra.* 1213; *Fitzg.* 192; *Dougl.* 536.

Appointment in towns corporate by charter justices.

Charter justices have the same authority in cases of this nature as justices under a general commission. *Wheatherhead* v. *Drewry and others*, 11 *East*, 168. The borough of Derby is a town corporate by a charter of Charles II. which charter, after creating a mayor and other officers, also declares that certain of these shall be justices of the peace within that borough. Until 1809 there had never been an appointment of a high constable within the borough. In that year there was one appointed; and for levying by distress a rate in the nature of a county rate imposed by the quarter sessions of the borough upon the said borough, an action of trespass was brought against the high constable and two magistrates And it was held, that it was competent to them to create such office, and that stat. 13 Geo. II. c. 18, extended to *charter* justices as well as to justices having commissions immediately from the crown. This doctrine had also been held in the case of *R.* v. *J. Green*, 6 *T. R.* 228.

HOW ELECTED AND COMPELLABLE TO ACT, &c.

Constable's oath.

Oath of Constable]—As the form of a constable's oath, in *Dalton*, doth not contain the hundredth part of the constable's duty, nor indeed the most material instances of it, it may be more eligible (as no particular form is directed by any statute,) to swear him (*a*) to the due execution of his office in general, than to descend to those particulars; lest, by mentioning some parts of his duty, and not others, he may be induced to think that those others are not so necessary.

By stat. 1 Geo. I. st. 2, c. 13, *high* constables are to take the oaths of allegiance, supremacy, and abjuration, as other persons who qualify for offices; but they are not within the stat. 25 Car. II. c. 2, as to receiving the sacrament, and subscribing the declaration against transubstantiation; and *petty* constables are exempted both from the one and from the other.

Security.

Security]—A high constable employed in collecting county rates may be required by justices to give security. 55 Geo. III. c. 51, s. 19.

Mandamus to compel the swearing a constable.

Mandamus to swear in]—The King's Bench hath power by mandamus to compel the court or judge to swear a constable duly chosen. 2 *Hawk.* c. 10, s. 47.

Quo warranto.

Quo Warranto]—The office of constable being a burthensome one, the Court of King's Bench will not put a person, *de facto* elected and sworn in by the court leet, to the expense of showing by what authority he holds the office, at the relation of a different body of persons claiming the right of election, where those persons do not expressly show an immemorial custom in their body to elect, and that the deponents believe there is such custom. *R.* v. *Lane*, 5 *B. & A.* 488; 1 *D. & R.* 6, S. C.

In the case of *R.* v. *Standard Hill*, 4 *M. & S.* 378, which was an application to have overseers appointed for a vill, it was held to be necessary to swear positively that it was a vill by reputation.

Constable refusing to be sworn.

Constable Refusing to be Sworn]—If constables when chosen refuse to be sworn, a justice of the peace may bind them over to the assizes or sessions, (there to be indicted.) *Dalt.* c. 28. *R.* v. *Lone*, 2 *Str.* 920.

But it seemeth there can be no commitment, but only indictment upon the refusal; and if found against him, to assess a good fine upon him, and then commit him for that cause. *R.* v. *Crawley*, *Cro. Car.* 567.

How punished.

It seems that the sheriff, or steward of the leet, cannot lawfully commit them for such refusal, without more; but it is said, that if the party be present in the court, he may be fined; and that if he be absent, and have a certain time and place appointed him by the sheriff or steward for the taking of the oath before a justice of the peace, and have also express notice of such appointment, and be presented at the next court, for having refused to take it accordingly, he may be amerced; also, it seems, that in either case he may be indicted (*a*) at the assizes or sessions. It is advisable in all pleadings in any action concerning such a fine or amerciament, and in all indictments for such refusal, especially and expressly to set forth the manner of every such election, appointment, notice, and refusal, and before whom the court was holden. And it hath been adjudged that it is insufficient to say in general that the party was duly elected, or lawfully elected, or that he had notice, without setting forth the special circumstances thereof. Also it is said to have been adjudged that an indictment for not finding a sufficient person to serve the office of constable, without showing that the party refused to serve it himself, is insufficient, 2 *Hawk.* c. 10, s. 46. And see further, as to the consequences of refusing to fill an office, *post*, Offices, Vol. III.

Indictments for refusal.

Special constables appointed under the 1 Geo. IV. c. 37, are compellable to act under the same penalties for refusal as other constables. *Ante*, 796.

(*a*) See form, (No. 2), post, 812.

IV. His Power as a Conservator of the Peace.

Constable a conservator of the peace.

Every high and petty constable are by the common law conservators of the peace. 2 *Hawk.* c. 8, s. 6; *Crom.* 6; *Dalt.* c. 1.

And, therefore, if any man shall make an affray or an assault upon another *in the presence of a constable*, or shall threaten to kill, beat, or hurt another, or shall be in a fury ready to break the peace, the constable may commit him to the stocks, or other safe custody for the present, and after may carry him before a justice or to gaol, until he shall find surety for the peace, which surety the constable himself may also take by obligation, to be sealed and delivered, to the King's use; and if the party will not find surety to the constable, he may imprison the party until he shall do it. *Dalt.* c. 1,

The observations and law already collected, *ante*, tit. **Arrest**, as to when and how constables should interfere and arrest offenders, or suspected offenders, will be here applicable.

It was formerly the practice for high and petty constables to make *presentments* of various matters at the sessions, but that course of proceeding is abolished by 7 & 8 Geo. IV. c. 38.

See also various duties of constables collected under titles, **Alehouses, Affray, Bawdy Houses, Blasphemy, Bridges, Customs, Disorderly Houses, Fires, Gaming Houses, Harbest, Hawkers and Pedlars, Hue and Cry, Lunatics, Military Law, Plague, Poor, Presentments, Riots, Servants, Sessions, Vagrants, Warrant, Weights, Wrecks**, &c.

V. His Duty as Officer to Justices.

Subordinate to justices.

It hath always been holden that the constable is the proper officer to a justice of the peace, and bound to execute his warrants; and therefore it hath been resolved, that where a statute authorises a justice of the peace to convict a man of a crime, and to levy the penalty by warrant of distress, without saying to whom such warrant shall be directed, or by whom it shall be executed, the constable is the proper officer to serve such warrant, and indictable for disobeying it. 2 *Hawk.* c. 10, s. 35.

Formerly a distinction existed between warrants directed to constables by *name* and such as were directed to them by the *description of their office*. It was considered in the former case, that a constable might execute the warrant any where within the jurisdiction of the magistrate issuing it; in the latter, only within the precincts of his office. *R.* v. *Weir*, 1 *B. & Cres.* 288; 2 *D. & R.* 444, S. C.

Constables may execute warrants out of their precincts, provided it be within the jurisdiction of the justice granting or backing the same.

Now, however, the stat. 5 Geo. IV. c. 18, s. 6, reciting, "that whereas warrants addressed to constables, headboroughs, tithingmen, borseholders, or other peace officers of parishes, townships, hamlets, or places, in their characters of and as constables, headboroughs, tithingmen, borseholders, or other peace officers of such respective parishes, townships, hamlets, or places, cannot be lawfully executed by them out of the precincts thereof respectively, whereby means are afforded to criminals and others of escaping from justice;" for remedy thereof enacts, "that it shall and may be lawful to and for each and every constable, and to and for each and every headborough, tithingman, borseholder, or other peace officer for every parish, township, hamlet, or place, to execute any warrant or warrants of any justice or justices of the peace, or of any magistrate or magistrates within any parish, township, hamlet, or place, situate, lying or being within that jurisdiction for which such justice or justices, magistrate or magistrates, shall have acted when granting such warrant or warrants, or when backing or indorsing any such warrant or warrants, in such and the like manner as if such warrant or warrants had been addressed to such constable, headborough, tithingman, borseholder, or other peace officer, specially by his name or names, and notwithstanding the parish, township, hamlet, or place, in which such warrant or warrants shall

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be executed shall not be the parish, township, hamlet, or place, for which he shall be constable, headborough, tithingman, or borseholder, or other peace officer, provided that the same be within the jurisdiction of the justice or justices, magistrate or magistrates so granting such warrant or warrants, or within the jurisdiction of the justice or justices, magistrate or magistrates by whom any such warrant or warrants shall be backed or indorsed."

Extent of act.

The act is not to extend to Scotland.

Inasmuch as before the passing of this act a constable was in no case *bound*, but only authorised, to execute a warrant addressed to him by name, out of the precincts of his office, neither is it now incumbent on him to execute such warrant beyond the boundary of his jurisdiction. *Gimbert* v. *Coyney*, 1 *M'Clel. & Y.* 469.

Mode of executing warrant.

The mode of executing warrants, and the law relative to the breaking open of doors under them, will be found under title **Warrant**, *post*, Vol. V.

VI. Punishment for Neglect of Duty.

Indictment.

It is the duty of a constable to execute the legal warrants of justices of the peace, and to perform the functions of his office with reasonable dispatch and care; and his omission so to do, or his misconduct or extortion in his office, is punishable by indictment, upon which fine or imprisonment may be adjudged against him. 2 *Hawk.* c. 10, s. 35; 2 *Hale*, 90.

If there be two constables appointed for a certain precinct, they are both officers throughout the whole of it, and each is responsible for any mischief from the neglect of duty throughout the whole, and punishable for not discharging his duty in every part of it, although there may have been a long continued usage for each of them to act only for one particular part of the precinct. *R.* v. *Taunton*, 3 *M. & S.* 470.

As to the liability of constables for their deputies, see *ante*, p. 796.

Justices may impose a fine.

By stat. 33 Geo. III. c. 55, s. 1, it is enacted, "that it shall and may be lawful for any two or more of his Majesty's justices of the peace, assembled at any special or petty sessions of the peace, upon complaint being made upon oath before them of any neglect of duty, or of any disobedience of any lawful warrant or order of any justice or justices of the peace by any constable, overseer of the poor, or other peace or parish officer, or upon complaint made to such two or more justices upon oath, by or on the behalf of any apprentice to any trade or business whatsoever, whether bound apprentice by any parish or township or otherwise, provided that not more than the sum of 10*l.* be paid upon the binding of such apprentice, against his or her master or mistress, of any ill usage of such apprentice by such master or mistress (such constable, overseer, or other officer, master or mistress, having been duly summoned to appear and answer such charge or complaint), to impose, upon conviction, any reasonable fine or fines, not exceeding the sum of 40*s.*, upon such constable, overseer, or other officer, master or mistress respectively, as a punishment for such disobedience, neglect of duty, or ill-usage, and by warrant under the hands and seals of any two or more of such justices assembled, at any such special or petty sessions as aforesaid, to direct such fine or fines, if not paid, to be levied by distress and sale of the goods and chattels of the person or persons so offending, rendering the overplus (if any), after deducting the amount of such fine or fines, and the charges of such distress and sale, to such offender or offenders; and such fine or fines which may be imposed upon any such constable, overseer, or other officer as aforesaid, shall be applied and disposed of for the relief of the poor of the parish, township, or place, where the offenders shall respectively reside, at the discretion of the justices imposing the same, and such fine or fines, which may be imposed upon any such master or mistress, shall, at the discretion of the justices imposing the same, be either so applied and disposed of as aforesaid, or be otherwise paid and applied to or for the use and benefit of such apprentice, for or towards a recompense or compensation for the injury which

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may have been by him or her sustained by reason of such ill-usage as aforesaid; and if any person shall be aggrieved by the imposition of such fine or fines as aforesaid, or by any order or warrant of distress for raising or levying the same, or by the judgment or determination of the said justices, or by any act to be done in the execution of such warrant of distress, such person or persons so aggrieved shall and may appeal to the next general or quarter sessions of the peace to be held for the county, riding, or division, within which such person shall reside, of which appeal ten days' notice at the least shall be given; and for want of such distress, such person or persons shall be committed to the house of correction for any space of time not exceeding ten days."

23 Geo. 3, c. 55. Appeal.

Sect. 2. "That no person acting under any such warrant of distress as aforesaid shall be deemed a trespasser *ab initio*, by reason of any irregularity or informality in such warrant, or in any proceedings thereon, but any person aggrieved by the issuing or execution of such warrant may recover the special damages thereby by him or her sustained, in an action of trespass, or on the case, in any of his Majesty's courts of record."

Persons not trespassers for irregularities of proceedings.

But by the stat. 27 Geo. II. c. 20, s. 2, the officer executing such warrant, if required, shall shew the same to the person whose goods and chattels are distrained, and shall suffer a copy thereof to be taken.

Stat. 5 Geo. IV. c. 83, s. 11, enacts, "that in case any constable or other peace officer shall neglect his duty in any thing required of him by this act, or in case any person shall disturb or hinder any constable or other peace officer in the execution of this act, or shall be aiding, abetting, or assisting therein, and shall be thereof convicted upon the oath of one or more credible witness or witnesses before one or more justice or justices of the peace where such offence shall be committed, every such offender shall for every such offence forfeit any sum not exceeding 5*l.*; and in case such offender shall not forthwith pay such sum so forfeited, the same shall be levied by distress and sale of the offender's goods, by warrant from such justice or justices; and if sufficient distress cannot be found, it shall be lawful to and for one or more such justice or justices to commit the person so offending to the house of correction, there to be kept for any time not exceeding three calendar months, or until such fine be paid; and the said justice or justices shall cause the said fine, when paid, to be forthwith delivered to the treasurer of the county, riding, division, or place, where such offence shall have been committed, to be by him added to and used as part of the stock of the said county, riding, division, or place."

Penalty on officers neglecting their duties under Vagrant Act.

Sect. 12. "That in case any constable or other peace officer shall be convicted before any one or more justice or justices of the peace, for any neglect of any duty required of him by this act, or of any disobedience of any lawful warrant or order of any justice or justices of the peace issued under the provisions of this act, and in case any two or more justices of the peace shall impose any fine, or direct any penalty to be paid by such officer, under and by virtue of the powers given to justices of the peace by an act passed in the thirty-third year of the reign of his late Majesty King George the Third, intituled, 'An Act to authorise justices of the peace to impose fines upon constables, overseers, and other peace or parish officers, for neglect of duty, and on masters of apprentices for ill-usage of such their apprentices, and also to make provision for the execution of warrants of distress granted by magistrates,' or under any other powers enabling such justices in that behalf, then and in every such case it shall be lawful for such justice or justices, upon conviction of any such offender, to reimburse and allow to the person or persons on whose complaint or information such offender shall have been convicted, all necessary costs and expenses which such person or persons may thereby have incurred, or by any appeal made in consequence thereof, by making an order under his or their hands and seals upon the treasurer of the county, riding, division, or place, to pay to such person or persons the amount of such costs and expenses, on producing the said order and giving a receipt for the same, and the same shall be allowed the said treasurer in his account."

On conviction of officers, &c. justices to make order for payment of expenses of prosecution.

See *post*, Vagrants, Vol. V.

ACTIONS AGAINST.

As to the penalties attendant on constables relating to **Alehouses**, **County Rates**, **Disorderly Houses**, **Excise**, **Highways**, and **Militia**, see those titles respectively.

VII. His Indemnity and Protection in his Office.

Not liable if he deliver a copy of the warrant.

Formerly the constable was bound to take notice of the jurisdiction of the justice; insomuch, that if the justice issued a warrant in any matter wherein he had no jurisdiction, the constable was punishable for the execution of it.

24 Geo. 2, c. 44.

But now, by stat. 24 Geo. II. c. 44, s. 6, it is enacted, "that no action shall be brought against any constable, headborough, or other officer, or against any person or persons acting by his order and in his aid, for any thing done in obedience to any warrant under the hand or seal of any justice of the peace,

Demand of warrant.

until demand hath been made or left at the usual place of his abode, by the party or parties intending to bring such action, or by his, her, or their attorney or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand; and in case after such demand and compliance therewith, by showing the said warrant to, and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such constable, headborough, or other officer, or against such person or persons acting in his aid for any such cause as aforesaid, without making the justice or justices who signed or sealed the said warrant defendant or defendants, that on producing or proving such warrant at the trial of such action, the jury shall give their verdict for the defendant or defendants, notwithstanding any defect of jurisdiction in such justice or justices, and if such action be brought jointly against such justice or justices, and also against such constable, headborough, or other officer, or person or persons acting in his or their aid as aforesaid, then on proof of such warrant the jury shall find for such constable, headborough, or other officer, and for such person or persons so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid; and if the verdict shall be given against the justice or justices, that in such case the plaintiff or plaintiffs

Costs.

shall recover his, her, or their costs, against him or them, to be taxed in such manner by the proper officer as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendant for whom such verdict shall be found as aforesaid."

No action but within six months.

Sect. 8. "That no action shall be brought against any justice of the peace for any thing done in the execution of his office, or against any constable, headborough, or other officer, or persons acting as aforesaid, unless commenced within six calendar months after the act committed."

7 Jac. 1, c. 5.

By stat. 7 Jac. I. c. 5, (made perpetual by 21 Jac. I. c. 12,) if an action is brought against a constable for any thing done *by virtue of his office*, he, and also all others which in his aid, or by his command, shall do a thing

General issue.

concerning his office, may plead the *general issue*, and give the special matter

Double costs.

in evidence; and if he recover, he shall have *double costs*. See the enactments in full, *post*, **Justices**, Vol. III. p. 497.

Venue local.

Sect. 5. Such action shall be laid in the county where the fact was committed, and not elsewhere.

When acting without warrant.

As to the protection of constables and persons acting without warrant under the 7 & 8 Geo. IV. c. 29, relating to larceny, see **Larceny**, Vol. III. p. 555; and as to the protection of constables, &c. acting under the 7 & 8 Geo. IV. c. 30, relating to malicious injuries, see *post*, **Malicious Injuries to Property**, Vol. III. p. 726; *Beechey* v. *Sides*, 9 *B. & Cres.* 806, Vol. III. p. 727.

Object and purport of statute of 24 Geo. 2, c. 44.

The object and purport of the 6th and 8th sections of the 24th Geo. II. differ very materially. The legislature intended by the 6th section to prevent the constable or other officer, when acting in *obedience* to the warrant, from being answerable on account of any defect of jurisdiction in the justice, and to afford him an absolute protection at whatever period of time the action might be brought against him; by the 8th section, to absolve him from responsibility to the law, after the lapse of six calendar months, where he has acted not in strict obedience to his warrant, but *bonâ fide* and in support

obedience thereto. *Parton* v. *Williams*, 3 *B. & A.* 330; *Smith* v. *Wiltshire*, 2 *B. & B.* 619; 5 *Moore*, 320, S. C. *Et per Abbott*, C. J., in the case of *Parton* v. *Williams*, "The legislature manifestly had very different objects in view in the 6th and 8th sections of the statute upon which the present question arises. By the common law, an officer, who merely executed the warrant of a magistrate, was answerable for the consequences, if the magistrate acted without authority. One object, therefore, of the legislature was to relieve the officer from that inconvenience, and to provide that if he acted in obedience to the warrant of the magistrate, he should be protected. That was the object of the 6th section, which makes it necessary to demand a copy of the warrant from the officer before he can be sued. If he gives that copy, although the party may be entitled to an action against the magistrate, yet, if he joins the officer in it, the production of the warrant will be a protection to the latter, and will entitle him to a verdict. The 6th section is, therefore, obviously intended to protect the officer in those cases only where the justice remains liable. And it is necessary, in order to bring the officer within it, that he should act most strictly in obedience to his warrant. And in that case the statute gives him an absolute protection at whatever time the suit may be brought against him. To give him any further protection, when he has so acted, does appear to me to be wholly useless. For I cannot understand why a limitation of time is to be imposed upon any action which the legislature has declared not to be maintainable at all. The 8th section must, therefore, have a very different object in view. It enacts, 'that no action shall be brought against any justice of the peace for any thing done in the execution of his office, or against any constable, headborough, or other officer or person, acting as aforesaid, unless within six calendar months after the act committed.' The justice, therefore, is protected absolutely, unless the action be brought within that period of time: he has the benefit of that statutable limitation for whatever he may do in the execution of his office, although he may do something not authorised by law. This provision, therefore, is evidently intended for the benefit of persons who intend to act right, but by mistake act wrong. The section then proceeds to state, 'or against any constable, headborough or other officer or person, *acting as aforesaid*.' And it has been argued that these latter words imply that the officer must be acting in obedience to the warrant to be entitled to the protection. But I am of opinion that they are to be taken as equivalent to those words of the 6th section, 'acting by his order and in his aid,' in which case they are coupled with the antecedent word 'person' alone. I have already assigned the reasons which induce me to think that this provision cannot be confined to cases within the protection of the 6th section. It may, perhaps, be too much to say that it will apply in all cases where the officer may have acted in what he may have supposed to have been the due execution of his duty. It is, however, unnecessary to decide that point here. Nor is it necessary to pronounce any opinion upon the case of *Postlethwaite* v. *Gibson*, (to be found in 3 *Esp. Rep.* 226,) where Lord *Kenyon* thought that unless the officer had a warrant, he was not protected by the 8th section. If it were necessary to determine whether a constable, who without a warrant acts in the execution of his office, and in the discharge of his ordinary duty, be entitled to the protection of this statute, I should wish for further time to consider of it. But in *Postlethwaite* v. *Gibson* the constable was not acting in the execution of his ordinary duty; for it is no part of that duty to arrest a man for a felony upon the order of a private individual. Any person who is not a constable may equally do it; but both do it at their peril. If it turn out that the party arrested has committed a felony, then they are justified. Here, however, the constable had a warrant, directing him to take the goods of *William Parton*. He went to the house where he really supposed those goods were to be found; and it occupied a jury a very considerable time to decide whether he was mistaken or not: he meant therefore to obey the warrant, and, as far as he was concerned, he was acting *bonâ fide* in obedience to it. It, afterwards, however, turned out that the goods belonged to the plaintiff, and, therefore, he was not obeying the warrant of the justice so as to make the justice responsible.

ACTIONS AGAINST.

As I consider, however, that the 8th section was intended to give a benefit in addition to that given by the 6th section, it appears to me that this case falls within it. And I think also that the officer, as far as regards himself, and as far as regards the law which protected him, may be considered as having acted *boná fide* in obedience to the warrant which he had received. This action ought, therefore, to have been brought within the period of six months." Rule absolute. And see *Beechey* v. *Sides*, 9 *B. & Cres.* 806, *post*, Vol. III. p. 727.

Demand of warrant.

When constable is protected by the act.

DEMAND OF WARRANT *when necessary, and when Constable is protected by the 6th Section of the Statute*]—When the constable has done an act in *obedience* to the warrant of a magistrate, *he* cannot be sued, but only the magistrate who has exceeded his jurisdiction, provided the constable give a copy of his warrant after the demand in pursuance of the 24 Geo. IV. c. 44, s. 6. But where a constable had no warrant *at all*, or he has acted beyond its authority, then he is liable for the excess, and no demand of the copy of the warrant is necessary.

As to what *actions* the act extends to, see *post*, 806.

A constable executing the warrant of a justice of the peace, and sued in trespass without the magistrate, is within the protection of stat. 24 Geo. II. c. 44, s. 6, and entitled to a verdict on proof of such warrant, having first complied with the plaintiff's demand of a perusal and copy of the warrant before the action brought, though not within *six days* after such demand, as the act directs. *Jones* v. *Vaughan*, 5 *East*, 445.

If the warrant direct the officer to seize "stolen goods," and he seizes goods which fall within the description contained in the warrant in other respects, although they turn out not to be stolen, he is still under the protection of the statute. *Price* v. *Messenger*, 2 *Bos. & Pul.* 158; 3 *Esp.* 96, S. C.

And a constable who assists a parish officer in levying a distress for poor's rates, under a warrant of magistrates directed to such officers, is not liable to an action of trespass, although a demand was duly made on such constable in pursuance of the 24 Geo. II., because the demand ought to be made of the parish officer. *Clarke* v. *Devey*, 4 *Moore*, 465.

When he is not protected by act.

The constable is not protected from an illegal act if he had no warrant at all; (*Postlethwaite* v. *Gibson*, 3 *Esp.* 226); or if he acted beyond the limits of the authority given him by the warrant, although he acted *boná fide*. *Money* v. *Leach*, 3 *Burr.* 1768; *Prestidge* v. *Woodman*, 1 *B. & C.* 13; 2 *D. & R.* 43, S. C. And, generally speaking, he is not protected from an illegal act, done under a warrant, unless the magistrate be liable. *Sly* v. *Stevenson*, 2 *C. & P.* 464; *Bell* v. *Oakley*, 2 *M. & S.* 260.

Therefore where a constable having a warrant to search for certain specific goods, alleged to have been stolen, found and took away those goods and certain others, also supposed to have been stolen, but which were not mentioned in the warrant, and were not likely to be of use in substantiating the charge of stealing the goods mentioned in the warrant; it was held, the constable was liable to an action of trespass, without any demand of the warrant. *Crozier* v. *Cundey*, 6 *B. & Cres.* 232.

Where a constable, acting under a warrant to take the goods of A., took the goods of B., believing them to belong to A.; the Court of King's Bench were clearly of opinion that he was liable, without any demand of the warrant. *Parton* v. *Williams*, 3 *B. & A.* 330; *ante*, 803.

Neither is such a demand necessary if, under a warrant to take up a disorderly person, the constable take up one that is not so; or, under a warrant to take up the author, printer or publisher of a libel, he take up one who was neither author, printer or publisher. *Money* v. *Leach*, 3 *Burr.* 1768.

Nor if, in order to levy a poor's rate under a warrant of distress granted by two magistrates, he break and enter the party's house, and break the windows, &c. *Bell* v. *Oakley*, 2 *M. & S.* 259.

Nor where he executes the warrant out of the jurisdiction of the magistrate without being expressly authorised by the warrant so to do. *Milton* v. *Green*, 5 *East*, 233; 1 *Smith*, 402, S. C. In that case goods were taken by

constables under a warrant of distress, granted by a justice of the peace for the county of Kent, directed "To the constables of the lower half hundred of C. and G. in the county of Kent;" which warrant recited, that the plaintiff, (whose goods were distrained) of the parish of G. in the said county, was balloted for the militia of the said county, and, having refused to serve, &c. was convicted in a certain penalty, for levying which the warrant was granted. The Court of King's Bench held, that if the warrant turn out to have been executed within a certain part of the parish of G. *within the jurisdiction of the cinque ports*, and *not within the county of Kent*, the constables are not within the protection of stat. 24 Geo. II. c. 44, s. 6, and may be sued in trespass without the magistrate's being made a defendant.

Nature of the demand, &c.

Nature, &c. of the Demand, and Refusal of Warrant, &c.]—The 6th section of the 24 Geo. II. *ante*, 802, points out the mode in which the demand should be made. The signature of the attorney to the demand, on behalf of the party demanding, is sufficient. *Jory* v. *Orchard*, 2 *B. & P.* 42. On the trial, if there be two copies, the one served and the other kept, the production of the latter is sufficient, without giving notice to produce the former. *Id.*

If the constable deliver a copy before the commencement of the action, although after the expiration of six days from the demand, it is sufficient. *Jones* v. *Vaughan*, 5 *East*, 445.

The constable is in no case required to return the warrant to the justice, or to part with the warrant out of his own possession, for that is his justification. 1 *East's P. C.* 319. He should either make a copy himself, or allow the party applying to take one, either from such party's reading it, or else from his own reading.

As to the duty of a constable, &c. showing his warrant when executing it, see *post*, **Warrant**, Vol. V. He must certify to the justice what he hath done in execution of the warrant.

Limitation of actions.

Limitation of Actions]—We have seen, *ante*, 802, that the 8th section of the 24 Geo. II. c. 44, limits an action against a constable, for any thing done under colour of his office, to be brought in six calendar months after the act committed.

This section we have also seen, *ante*, 802, is more extensive in its protection than the 6th section; for by this provision a constable is protected from liability to be sued, after six months, for a trespass manifestly beyond and not in obedience to a warrant. *Smith* v. *Wiltshire*, 5 *Moore*, 322; 2 *B. & B.* 619, S. C.; *Theobald* v. *Crickmore*, 1 *B. & A.* 227; *Parton* v. *Williams*, 3 *B. & A.* 330. And the circumstance of there having been *no* warrant is immaterial. *Id.*

Some constables, under a warrant to search a house for black cloth which had been stolen, finding no black cloth, took cloth of other colours, and carried it before a magistrate, refusing at the same time to tell the owner of the house searched whether they had any warrant or no: held, that they were within the protection of stat. 24 Geo. II. c. 44, and that an action against them ought to have been commenced within six months after the grievance complained of. *Smith* v. *Wiltshire*, 5 *Moore*, 322; 2 *B. & B.* 619, S. C.

Where a constable, acting under a warrant commanding him to take the goods of A., takes the goods of B., believing them to belong to A., he is entitled to the protection of the 8th section of the act. *Parton* v. *Williams*, 3 *B. & A.* 330.

Where a constable, having a magistrate's warrant of distress to levy a church rate under the 53 Geo. III. c. 127, broke the door of and entered the plaintiff's dwellinghouse, it was held that although he thereby exceeded his authority, yet no action could be maintained after the expiration of three calendar months. *Theobald* v. *Crickmore*, 1 *B. & A.* 227.

The action should be brought within the six calendar months *inclusive*, it should seem, of the day of committing the act. 4 *Moore*, 465; and *post*, **Justices**, Vol. III. p. 495; **Time**, Vol. V. Where the cause of action is a continuing one, as an imprisonment of plaintiff, it is sufficient to show that the action was commenced within six months of the end of such imprison-

ACTIONS AGAINST.

ment. *Massey* v. *Johnson*, 12 *East*, 67; *B. N. P.* 24; and see further as to proof of the commencement of the action, *post*, **Justices**, Vol. III. p. 496.

What acts the 24 Geo. 2 extends to.

The act extends only to actions of *tort*, as trespass or trover; (3 *C. & P.* 586;) but it does not extend to actions of replevin; (*Fletcher* v. *Wilkins*, 6 *East*, 283; *per Bayley*, J., in *Waterhouse* v. *Keen*, 4 *B. & C.* 211; 6 *D. & R.* 257, S. C.;) nor to actions of *assumpsit*. *Id.*; *B. N. P.* 246; *sed vide* 4 *T. R.* 487, 553; 5 *East*, 115.

Venue and plea.

VENUE AND PLEA]—We have seen, *ante*, 802, that the 21 Jac. I. c. 12, provides that the action against a constable shall be brought in the county where the act was committed, and that he may give the special matter of defence under the general issue. In construction of this act, it may be laid down that in an action against a constable or other officer, for an illegal act not done *bonâ fide* in the execution or under colour of his office, may be laid in any county, but if he reasonably thought it was his duty to act, though he was mistaken, it is otherwise. *Anon.* 1 *Stra.* 446; 2 *Esp. R.* 226, 542; *Staight* v. *Gee*, 2 *Stark.* 445; *Beechey* v. *Sides*, 9 *B. & Cres.* 806. *Per Pratt*, C. J., in 1 *Stra.* 446, "The 21 Jac. I. only applies where the action is for a matter relating to the execution of his office; but if after his authority is expired, he abuses the party, or if he meets a man, and knocks him down, he may be sued for it as all other people may."

The same act protects all who act in aid or by the command of such constable; but if a private person be the prime mover, and act as a principal in the transaction, he will not be entitled to its protection; (*Staight* v. *Gee*, 2 *Stark.* 445;) and with respect to the person who may be said to act in aid and by the command of the constable, it has been held, that if a person procures a warrant against another, and points out the latter to the constable, he is entitled to the protection of the act, and may plead the general issue, and give the special matter in evidence. *Nathan* v. *Cohen*, 3 *Campb.* 257.

The constable's deputy seems within the act. *Moore*, 845; *Bac. Ab. Const.* (D); *sed vide*, 3 *B. & C.* 762; 5 *D. & R.* 654, S. C.

Parish Officers]—Where a person is not an officer or person within the meaning of this or a similar act, though he may have supposed he was so, he is not within the protection of the act. See *Copland* v. *Powell*, 8 *Moore*, 400; 1 *Bingh.* 369, S. C.; *Jones* v. *Williams*, 3 *B. & C.* 762; 5 *D. & R.* 654, S. C.

Costs.

COSTS]—To entitle a defendant to double costs under the 21 Jac. I. *ante*, 802, there must be a certificate from the judge. *Grindley* v. *Holloway*. *Dougl.* 307. It may be granted either at the trial or after. *Harper* v. *Carr*. 7 *T. R.* 448; 2 *B. & C.* 621. But such certificate is not necessary if the fact appear on a special verdict. *R.* v. *Poland*, 1 *Stra.* 49; *Devenish* v. *Mertins*, 2 *Stra.* 974.

As to how to calculate double costs, and other points as to the costs, see *Tidd's Prac.* 9th ed. 987, &c.

OFFENCES IN OBSTRUCTING, &c. CONSTABLES.

Indictment for.

It is an indictable offence at common law to assault or interfere with a constable or peace officer whilst in the execution of his office. See *post*, **Escape**, Vol. I.; **Rescue**, Vol. V.; 3 *Chit. C. L.*

Punishment.

We have already seen that by the 9 Geo. IV. c. 31, s. 25, assaults on peace officers are punishable with a severer punishment than common assaults, *ante*, 278; and see a precedent of indictment for an assault on a peace officer, *ante*, 281.

By the Metropolitan Police Act, 10 Geo. IV. c. 114, s. 8, persons assaulting or resisting police officers, or assisting therein, are subject to a penalty of not exceeding 5*l.*, to be recovered before two justices; *post*, **Police**, Vol. V. p. 126.

VIII. His Expenses.

By stat. 27 Geo. II. c. 20, s. 2, it is enacted, "that the officer making such distress shall, and is hereby impowered to deduct the reasonable charges of taking, keeping, and selling such distress, out of the money arising by such sale; and the overplus (if any) after such charges, and also the said penalty or sum of money shall be fully satisfied and paid, shall be returned on demand to the owner of the goods and chattels so distrained; and the officer executing such warrant, if required, shall show the same to the person whose goods and chattels are distrained, and shall suffer a copy thereof to be taken." Charges of making distress.

By stat. 3 Jac. I. c. 10, s. 1, it is enacted, "that all and every person and persons whatsoever, that from and after the end of this present session of parliament, shall be committed to the common or usual gaol within any county or liberty within this realm, by any justice or justices of the peace, for any offence or misdemeanor to any such gaol, that the said person or persons so to be committed as aforesaid, having means or ability thereunto, shall bear their own reasonable charges for so conveying or sending them to the said gaol, and the charges also of such as shall be appointed to guard them to such gaol, and shall so guard them thither: and if any such person or persons so to be committed as aforesaid shall refuse, at the time of their commitment and sending to the said gaol, to defray the said charges, or shall not then pay or bear the same, that then such justice or justices of the peace shall and may, by writing under his or their hand and seal, or hands and seals, give warrant to the constable or constables of the hundred, or constable or tithingman of the tithing or township where such person or persons shall be dwelling and inhabit, or from whence he or they shall be committed as aforesaid, or where he or they shall have any goods within the county or liberty, to sell such and so much of the goods and chattels of the said persons so to be committed, as by the discretion of the said justice or justices of the peace shall satisfy and pay the charges of such his or their conveying and sending to the said gaol, the appraisement to be made by four of the honest inhabitants of the parish or tithing where such goods or chattels shall remain and be, and the overplus of the money which shall be made thereof to be delivered to the party to whom the said goods shall belong." Charges of conveying an offender to gaol.(a)

And by stat. 27 Geo. II. c. 3, s. 1—4, if he have not money nor goods within the county sufficient to bear the charges of himself and of those who convey him to the gaol or house of correction, the constable may make application to a justice, who may upon oath examine into and ascertain the reasonable expenses, and shall by his warrant (without fee) order the treasurer to pay the same, except in Middlesex, where the same shall be paid by the overseers of the parish where the person was apprehended. 27 Geo. 2, c. 3.(a)

By the 5 Geo. IV. c. 83, s. 8, the expenses of carrying to gaol, and maintaining an idle and disorderly person, rogue, vagabond, or incorrigible rogue, are to be paid out of the money found upon him, or arising from the sale of any property in his possession and use, *post*, Vagrant, Vol. V.

And by stat. 41 Geo. III. U. K. c. 78, s. 1, it is enacted, "that from and after the passing of this act, it shall and may be lawful to and for any two justices of the peace for any county, city, division, riding or place, within that part of the United Kingdom called England, when any person or persons shall have been nominated or appointed a special constable or special constables, for the purpose of executing any warrant or warrants in any case or cases of felony, to order, by any writing or writings under their hands, such proper allowances to be made to such special constable or special constables, for his or their expenses, trouble, and loss of time in executing or endeavouring to execute such warrant or warrants, as to him or them shall seem reasonable and necessary; which orders shall be afterwards laid before and When special constables shall be appointed in England to execute warrants in cases of felony, two justices may order proper allowances to be made for their expenses and loss of time, which order shall be submitted to quarter sessions;

(a) See these acts more fully, *ante*, Commitment, p. 763.

EXPENSES OF.

41 Geo. 3, c. 78.

submitted, on the oath of such special constable or constables, to the consideration of the justices assembled at the next general quarter sessions of the peace to be holden for such county, city, division, riding or place, as the case may be; and the justices so assembled at such general quarter sessions may allow or disallow the whole or any part or parts of such allowances so ordered by such justices issuing such warrant or warrants, and shall and may thereupon then order and direct the treasurer for such county, city, division, riding or place, to pay such sum or sums of money to such special constable or special constables, as to the said justices so assembled shall seem reasonable and necessary; and such treasurer shall, and he is hereby authorised and required forthwith to pay the sum and sums of money so ordered and directed to be paid to the person or persons empowered to receive the same; and such treasurer shall be allowed the same in his accounts."

and to high constables in case of riot, &c.

Sect. 2. "That it shall and may be lawful to and for any two justices of the peace, within their respective jurisdictions, to order and direct, by any writing or writings under their hands, such reasonable and necessary allowances to be made to any high constable or high constables for any county, city, division, riding, hundred, or place, within that part of the United Kingdom called England, for any extraordinary expenses incurred by him or them in the execution of their respective duties, in any case or cases of tumult, riot, or felony; and such orders shall be laid before and submitted, on the oath of such high constable or constables, to the consideration of the justices assembled at the next general quarter sessions of the peace to be holden for such county, city, division, riding or place, as the same may be; and the justices so assembled at such general quarter sessions may allow or disallow the whole or any part or parts of such allowance so ordered, and shall and may then order and direct the treasurer for such county, city, division, riding or place, to pay such sum or sums of money to such high constable or high constables as to the said justices so assembled shall seem reasonable; and such treasurer shall, and he is hereby authorised and required forthwith to pay the sum or sums of money so ordered and directed to be paid, to the person or persons empowered to receive the same; and such treasurer shall be allowed the same in his accounts."

In the case of *R.* v. *Js. of Leicester*, 7 *B. & C.* 8, where the high constable of a borough, by the direction of the justices, employed and paid a number of special constables to suppress riots at an election, and the ordinary constables were also constantly employed by him during the same period in endeavouring to keep the peace, for which service he made them a compensation; it was held that the justices were warranted in considering the monies so expended as "extraordinary expenses," incurred by the high constable in case of riot, within the meaning of the 41 Geo. III. c. 78, s. 2, and in making an order upon the treasurer to reimburse him those expenses.

Justices at sessions to give allowance to special constables, appointed under 1 Geo. 4, c. 37.

The 1 Geo. IV. c. 37, s. 3, enacts, "that it shall and may be lawful for the justices of the peace, assembled at the general or quarter sessions holden for any county, city, division, riding or place, where special constables shall have been called out as aforesaid, (*ante*, 795) to order and direct such reasonable allowances for trouble and expenses, to be made to any person or persons so called out by authority of this act, as to the said justices shall seem fit, which allowances the said justices may order the treasurer of such county, city, division, riding or place, to pay to such persons as the said justices shall direct; and such treasurer shall, and he is hereby authorised and required, forthwith to pay the sum or sums of money so ordered and directed to be paid, to the person empowered to receive the same; and such treasurer shall be allowed the same in his accounts."

Court may allow costs.

Sect. 4. "That the court before which any indictments may be tried under the provisions of this act shall have the power to award reasonable costs of trial to such persons as may prefer the said indictments, and may order the treasurer of such county, city, division, riding or place, wherein such indictment shall be tried, to pay the sum or sums of money so ordered, to such persons as the said court shall direct; and such treasurer shall, and he is

hereby authorised and required forthwith to pay the sum or sums of money, so ordered and directed to be paid, to the persons empowered to receive the same; and such treasurer shall be allowed the same in his accounts."

1 Geo. 4, c. 37.

Sect. 5. "That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded."

Public act.

By the 7 & 8 Geo. IV. c. 31, s. 7, if the high constable sued on this act shall produce and prove before two justices of the jurisdiction, residing in or acting for his hundred or district, an account of the just and necessary expenses which he shall have incurred in the prosecution of such action, they shall make an order for payment thereof on the treasurer of that jurisdiction; and if in such action judgment shall be given against the plaintiff, the high constable shall in like manner be reimbursed the just and necessary expenses incurred by him in consequence of such action, over and above the taxed costs to be paid by the plaintiff; and if it shall be proved to two such justices that the plaintiff is insolvent, so that the high constable can have no relief as to such taxed costs, they shall make a similar order for payment of the amount of such taxed costs. See Hundred, Vol. III.

In actions against the hundred, &c.

By 55 Geo. III. c. 55, s. 16, the justices in general or quarter sessions, or at any adjournment thereof, may make allowances and compensations to the constables, &c. for collecting the county rate under this act.

County rate.

As to the rewards for taking deserters, see *post*, Military Law, Vol. III.; and for collecting the fines for not furnishing the complement of militia. *Id.*

Deserters.

Militia.

By stat. 18 Geo. III. c. 19, s. 4, after reciting "whereas constables, headboroughs, and tithingmen, are or may be at great charge in doing the business of their parish, township, or place, and in many cases are not sufficiently indemnified by the laws, enacts, that every constable, headborough, or tithingman, shall every three months, and within fourteen days after he shall go out of such office, deliver to the overseers of the poor of the said parish, township, or place, for the time being, a just account in writing, fairly entered in a book to be kept for that purpose, and signed by him, of all sums so by him expended on account of the said parish, township, or place, in all cases not hitherto provided for by the laws heretofore made, or by this act, and also of all sums received by him on the account of the said parish, township, or place; and the said overseers of the poor, or their successors, shall, within the next fourteen days after the said account or accounts shall be so delivered, lay the same before the inhabitants of the said parish, township, or place; and in case the said account or accounts be approved of by the majority of such inhabitants, the overseers of the poor of the said parish, township, or place, for the time being, are hereby authorised and required to pay out of the poor rates, made or to be made for such parish, township, or place, such sum or sums of money as shall appear to be due on the said account or accounts; but in case the said account or accounts, or any part thereof, shall be disallowed, then the said overseers of the poor for the time being shall then deliver back to the said constable, headborough, or tithingman, such book of accounts; and it shall and may be lawful to and for the said constable, headborough, or tithingman, then to produce the said book before any one or more of his Majesty's justices of the peace in and for the county, riding, division, city, town corporate, franchise, or liberty, wherein such parish or township shall be situate, giving reasonable notice thereof to the overseers of the poor of the said parish, township, or place, for the time being; which said justice or justices is and are hereby authorised to examine the same, and to hear and determine any objection or objections that shall be made to the said accounts, and to settle the sum which to him or them shall appear due on the said account, and to enter the same in the said account, and to sign his or their name or names thereto; and the overseers of the poor of the said parish, township, or place, for the time being, are hereby authorised and required to pay the said sum, out of the money which shall come to their hands by virtue of any rate or assessment made or to be made for the relief of the poor."

Charges in the business of the parish.

To deliver accounts to overseers every three months, and also within fourteen days after he shall go out of office.

Such accounts to be laid before a vestry within the next fourteen days.

If approved of, to pay the same out of the poor rates.

If any such account shall be disallowed, a justice may settle the same.

And the overseers to pay the balance.

EXPENSES OF.

Appeal to the quarter sessions.

Sect. 5. "That in case the overseer or overseers of the poor of the said parish, township, or place, for the time being, shall find that the said parish, township, or place is aggrieved by any neglect, act, or thing done or omitted by the said constable, headborough, or tithingman, or by any of his Majesty's justices of the peace, or shall have any material objection to such account, or any part thereof, or to such determination as aforesaid, it shall and may be lawful for such overseer or overseers, in any of the cases aforesaid, giving reasonable notice to the said justice, constable, headborough, or tithingman, to appeal to the next general or quarter sessions of the peace for the county, riding, division, city, town corporate, franchise or liberty, where such parish, township, or place lies; and the justices of the peace there assembled are hereby authorised and required to receive such appeal, and to hear and finally determine the same; but if it shall appear to the said justices that reasonable notice was not given, then they shall adjourn the said appeal to the next quarter sessions, and then and there finally hear and determine the same, and the said justices may award and order, to the party for whom such appeal shall be determined, reasonable costs, in the same manner that they are empowered to do in case of appeals concerning the settlement of poor persons by an act made in the eighth and ninth years of King William the Third, intituled, 'An Act for supplying some defects in the laws for the relief of the poor of this Kingdom.'"

Proviso relating to corporations, &c.

Sect. 6. "That in all corporations or liberties which have not four justices of the peace, it shall and may be lawful for the overseer or overseers of the poor of the parish, township or place, for the time being, where an appeal is given by this act, to appeal, if he or they shall think fit, to the next general or quarter sessions of the peace for the county, riding, or division wherein such corporation or liberty is situate."

Sessions may make regulations.

Sect. 9. "That it shall and may be lawful for his Majesty's justices of the peace, in and for any county, riding, division, city, town corporate, franchise or liberty, in quarter sessions assembled, to lay down or alter, from time to time, such rules and regulations as to any costs or charges thereafter to be allowed to any person whatsoever, by virtue of any part of this act, for the better carrying the intent of any part of this act into execution, and for the preventing any unnecessary expense, as to them shall seem most just and reasonable; which rules and regulations, having received the approbation and signature of one or more of his Majesty's judges of oyer and terminer, or general gaol delivery, at the assizes for the county wherein such rules and regulations shall have been made, shall be binding, and not otherwise, on all persons whatsoever; and no person whatsoever shall be allowed any greater sum of money, by virtue of this act, than according to the said rules and regulations so approved of as aforesaid, any thing herein contained to the contrary thereof in anywise notwithstanding."

Expenses of prosecutions.

Though a constable be not entitled to the allowance of the expenses he has incurred in a prosecution arising within his precinct, yet if he have charged them in his accounts, and the item has been allowed under this statute of 18 Geo. III. by two justices, though after disallowance by the vestry, the sessions cannot give redress unless a majority of the churchwardens and overseers concur in the appeal. *R.* v. *Js. Lancashire*, 5 *B. & A.* 757.

But if the appeal be made by proper persons, although the justices in sessions should confirm the allowance of the two justices, made after the disallowance by the vestry, the Court of King's Bench will quash their order, unless in cases where it is the duty of a parish or township to prosecute such offenders, or the constable have previously to the prosecution received from the inhabitants some authority to proceed. *R.* v. *Saville*, 5 *B. & A.* 182.

Nor is the constable entitled to be allowed in his accounts the costs of a prosecution, although for an assault made on one of the overseers, and although the proceeding were directed by a justice and approved by the court which tried it; and if an overseer take upon him to pay such costs to the constable, he is not entitled to have it allowed by the parish in his account; and even if allowed by the vestry, afterwards by two justices, and that allowance by the

sessions on appeal, the Court of King's Bench will quash the order. *R. v. Bird*, 2 *B. & A.* 526.(*a*)

IX. His Account and Removal from his Office.

High constables to account at the sessions.

The high constables shall at the general or quarter sessions, if thereunto required, account for the general county rate by them received, on pain of being committed to gaol until they shall account, and shall pay over the money in their hands, according to the order of the said court, on the like pain. And all their accounts and vouchers shall, after having been passed at the sessions, be deposited with the clerk of the peace, to be kept amongst the records, and inspected by any justice without fee. 12 Geo. II. c. 29, s. 8; and see 55 Geo. III. c. 51, s. 12.

Removal from office.

And in such manner as constables are to be chosen, in the same manner, and by the like authority, are they to be removed; so as if there shall be cause to remove and put a high constable from his place, it hath not been though fit that any one or two justices should do it upon their discretion, but that it should be done by the greater part of the justices of that division, and that for some just cause; or else that it be done at the sessions. *Dalt.* c. 28.

And it seems clear that the sheriff or steward of the leet, having power to place a constable in his office, have by consequence a power of removing him. 2 *Hawk.* c. 10, s. 38.

And also the justices of the peace have used, for good cause, to displace all such constables as have been chosen and sworn by them. 2 *Hawk.* c. 10, s. 38.

Constable continuing above a year.

By stat. 13 & 14 Car. II. c. 12, s. 15, if a constable shall continue above a year in his office, the sessions may discharge him, and put another in his place till the lord shall hold a leet.

And if the court or other judge shall refuse to discharge a constable, the King's Bench may compel them by *mandamus*. 2 *Hawk.* c. 10, s. 47.

(*a*) The following is a list of fees usually allowed to the constables of most parishes in England:

Table of fees.

	£.	s.	d.
For the oath of office,	0	1	0
For the service of any warrant at the instance of the parish, (if served in the parish,)	0	1	0
For every mile beyond the limits of the parish,	0	0	6
If beyond the distance of five miles, and not exceeding a day's journey,	0	5	0
For every journey of one day or more, per day, including all expenses,	0	10	0
For attending the bench of justices at their petty sessions,	0	1	6
The like at their general or quarter sessions, (including expenses,)	0	10	0
Attending the coroner with notice of a death,	0	4	6
Summoning a jury, and attending the inquisition,	0	6	8
Expenses of the jury,	0	10	0
Billeting of soldiers,	0	0	0
Pressing of waggons for soldiers' baggage,	0	0	0
Attending on a search night, or at a fair in the parish,	0	2	0
Attending to see that shops and public houses are shut during divine service on Sundays,	0	0	0
Attending on the day of election of a member of parliament, *unless paid by the candidate*,	0	5	0
For conveying a felon or other prisoner to gaol, when the parish is liable to pay the expenses, (including expenses,)	0	10	0
Making a list of jurors to return to the sessions,	0	0	0
Verifying the same,	0	1	0
Making out a list of persons to serve in the militia, or any other military force,	1	1	0
Verifying the same,	0	1	0
Summoning any person balloted in the militia, &c.	0	1	0
Service of any poor's rate summons	0	0	4
Attending as a peace officer within the parish on any public occasion, or at an execution of any sentence on any criminal,	0	2	6

FORMS.

X. Forms. (a)

(No. 1.)

Constable's Oath.

YOU shall well and truly serve our sovereign lord the King, [and the lord of this leet, if sworn in a court leet,] in the office of constable for the [township] of for the year ensuing, or until another be sworn in your stead, according to the best of your skill and knowledge. So help you God.

(No. 2.)

Indictment against a petty constable for not taking the office after being chosen at a court leet. (b)

County of } late of in the [township] of in the said county, [yeoman,] to wit. } on the day of in the year of the reign of and long before, and always after until the day of taking this inquisition, was and still is an inhabitant and residing within the [township] of aforesaid, in the county aforesaid, and a fit and able person to serve the office of constable for the said [township]; and he the said A. O. on the day and year aforesaid in the [township] and county aforesaid, at the court leet of G. H. lord of the manor of aforesaid, holden before I. K. [gentleman,] steward of the said court, was elected and chosen, according to the ancient custom of choosing constables for the said [township], for one year from thence next following, to do and execute all and singular those things which belong to the office of constable, [or otherwise according to the custom for choosing constables]; and that the said A. O. afterwards, to wit, on the day and year aforesaid, at the [township] and county aforesaid, had due notice given to him by A. B. bailiff of the aforesaid manor, of his being so elected and chosen constable as aforesaid, and then and there was by him the said A. B. required to appear before J. P. Esquire, then and there and yet being one of his Majesty's justices assigned to keep the peace in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, on the said day of in the year aforesaid, to take his oath for the due execution of the said office of constable for the same [township], according to the duty of that office; nevertheless the said A. O. not regarding his duty in that behalf, but contriving and intending wholly to neglect to serve the said office of constable, after he the said A. O. was so elected and chosen into the said office as aforesaid, to wit, on the day and year last aforesaid, and continually afterwards until the day of taking this inquisition, at the [township] aforesaid, in the county aforesaid, unlawfully and contemptuously did neglect and refuse, and still doth neglect and refuse, to take his said oath for the due executing the said office of constable, and in any wise to execute the same office, to the great hindrance of justice, in contempt of our said lord the King, and to the evil example of all others, and against the peace of our said lord the King his crown and dignity.

(No. 3.)

The like where defendant was elected at a vestry.

—— THE jurors for our lord the King upon their oath present, that C. D. late of, &c. on, &c. and long before, was and still is an inhabitant and resiant within the parish aforesaid, in the county aforesaid, and a fit and able person to execute the office of constable for the said parish; and that the said C. D. on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, at a vestry then and there duly holden in and for the said parish, at the vestry room of and in the parish church of the said parish there situate, lawfully, in due manner and form, and according to the custom of the said parish, was elected and chosen by the men inhabiting and resiant within the same parish, to be one of the constables of and for the said parish, for one year, from thence next following, to do and execute all and singular those things which belong to the office of constable; and that the said C. D. afterwards, to wit, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, had due notice thereof, and then and there was required to appear before A. B. Esquire, then and yet being one of the justices of our said lord the King in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, &c.

(a) See other forms referred to 3 Chit. C. L. index, tit. Constable; see forms for assaulting constables, *ante*, 280, 281; also post, **Extortion**, Vol. I.; **Grant**, Vol. III.; **Rescue**, Vol. V.

(b) See other forms, 3 Chit. C. L. 266, &c.

other misdeeds committed in the said county, on, &c. in the year aforesaid, to take his oath for the due execution of the said office of constable for the said parish, according to the duty of that office. Nevertheless, the said C. D. not regarding his duty in that behalf, but contriving and intending the due execution of justice to hinder and prevent, afterwards, to wit, on the day and year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully, wilfully, obstinately, and contemptuously did refuse, and from thence continually until the day of taking this inquisition, unlawfully, wilfully, obstinately, and contemptuously hath refused, and still doth refuse, to take his said oath for the due execution of the said office of constable, or in any wise to take upon himself or execute the said office; contrary to his duty in that behalf, in manifest contempt of our said lord the King and his laws, and against the peace of our lord the King his crown and dignity.

Contempt. *See ante,* **Attachment**; *post,* **Order,** Vol. III.

As to the power of justices to commit for, see *post,* **Examination,** Vol. II. p. 99; **Justices,** Vol. III. p. 469.

As to the power of sessions to commit for, see *post,* **Sessions,** Vol. V. p. 477.

Conviction. (*a*)

UNDER this title will be considered only those convictions which take place before magistrates in a summary way, and without the intervention of a jury.

Observations on justices' power to convict.

The power of a justice of the peace to convict an offender in a summary way without a trial by jury is in restraint of the common law, and in abundance of instances a tacit repeal of that famous clause in the Great Charter, that a man shall be tried by his equals, which also was the common law of the land long before the great charter, even from time immemorial, beyond the date of histories and record. Therefore generally nothing shall be presumed in favour of this branch of the office of a justice of the peace; but the intendment will be against it. (*b*) For which reason where this special power is given to a justice of the peace by act of parliament, it must appear that he hath strictly pursued it; otherwise the common law will break in upon him, and level all his proceedings. So that where a trial by jury is dispensed withal, yet he must proceed nevertheless according to the course of the common law in trials by juries, and consider himself only as constituted in the place both of judge and jury.

Therefore there must be an information or charge against a person; then he must be summoned or have notice of such charge, and have an opportunity to make his defence; and the evidence against him must be such as the common law approves of, unless the statute specially directeth otherwise; then if the person be found guilty, there must be a conviction, judgment, and execution, all according to the course of the common law, directed and influenced by the special authority given by statute; and in the conclusion, there must be a *record* of the whole proceedings, wherein the justice must set forth the particular manner and circumstances, so as if he shall be called

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(*a*) See in general Paley on Convictions, Boscawen on Convictions, Archbold on Convictions.

(*b*) See rules of construction, *post,* 835.

CONVICTION.

to account for the same by a superior court, it may appear that he hath conformed to the law, and not exceeded the bounds prescribed to his jurisdiction.

We will proceed to enquire into—

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2*d*. *Time when to be laid*, 816.

Computation of Time, 816.

3*d*. *Who to be Informer*, 817.

4*th*. *Before whom to be laid*, 817.

Magistrate Refusing to Receive Information, 817.

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6*th*. *The Joinder of Several Offences*, 818.

7*th*. *Form of Information*, 818.

When must be in Writing, 818; *On Oath*, 818; *Statement of Time of laying it*, 818; *Of Place where laid*, 818; *Of Name of Informer*, 818; *Of Party aggrieved*, 819; *Of Magistrate and his Authority*, 819; *Of Offender*, 819; *Of Time of Committing Offence*, 819; *Of Place where Offence Committed*, 820; *Of the Offence itself*, 821; *Certainty*, 821; *Must be Positive*, 821; *And not by way of Recital*, 822; *Or in Disjunctive*, 822; *Or Argumentative*, 822; *Scienter*, 822; *Offence must be stated within the Terms of the Statute*, 822; *Precise Words of the Act*, 823; *Sometimes a more minute Description necessary*, 823; *Negativing Exceptions in Statute*, 824; *Presumptions of Law*, 824; *Matters of Defence, Evidence, &c.* 824; *Technical Words*, 825; *Statement of Statute itself*, 825; *Written Instruments*, 825; *Chattels, Monies, &c.* 825; *Quantity and Value*, 825; *Conclusion as to Offence being against the Statute*, 826; *Construction of Information*, 826; *Defects in Information*, 826; *Surplusage*, 826.

[3 Geo. IV. c. 23, s. 2; 31 Eliz. c. 5.]

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Adjournment, 833.

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IV. *The Conviction, Form, &c. of*, 835 to 848.

(1.) *Form of Convictions in General*, 835 to 846.

1*st. General Requisites and Construction of*, 835.

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2*d. Particular Parts of, in General*, 836, 837.

The Information or Charge against Defendant, 837; *The Summons*, 838; *The Appearance on Default*, 838; *The Confession or Defence*, 838; *The Witnesses and Evidence*, 839 to 843; *The Adjournment*, 843; *The Adjudication or Judgment*, 843 to 846; *The Subscription and Date*, 846.

[3 Geo. IV. c. 23.]

(2.) *Form of, when pointed out by Statute*, 846 to 848.

Certain Expressions used in particular Forms explained, 847; *Alternative Punishments*, 847; *Blanks*, 847. *Titles of Acts*, 848; *Defects in Form*, 849.

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I. The Information before Conviction.

We have already stated, *ante*, 813, that there must be an information or charge against an offender before he be convicted, and such information or charge is the first step to be taken. Upon this the magistrate grants a summons or warrant requiring the defendant to appear before him, which is in general requisite, unless the defendant appear without it. In this way the charge is brought on for hearing.

THE INFORMATION.

Division of subject.

We will now consider the law and practice as regards the information:—1st, As to where an Information is necessary;—2d, The Time when it is to be made;—3d, Who is to be the Informer;—4th, Before whom Information to be laid;—5th, Against whom to be laid;—6th, The joinder of several Offences—and 7th, Its form.

(1.) When information necessary.

(1.) WHEN NECESSARY]—It is absolutely essential in all proceedings to convict a party of an offence created or prohibited under a penal statute, that there should be some information or complaint before the convicting or some other justices. *Brookshaw* v. *Hopkins, Lofft*, 240; *R.* v. *Fuller*, 1 *Ld. Raym.* 510.

Such information is indeed dispensed with where a justice is authorised to convict on *view* of the offence; as by the 19 Geo. II. c. 21, s. 2, for profane swearing; by the 13 Geo. III. c. 78, s. 60, for riding on a waggon in the highway; as by the Vagrant Act, 5 Geo. IV. c. 83; or by the General Turnpike Act, 3 Geo. IV. c. 126, s. 132. See *Jones* v. *Owen*, 3 *D. & R.* 600; 1 *D. & R. Mag. Ca.* 290, S. C.

(2.) Time when to be laid.

(2.) WHEN TO BE LAID]—In general the penal statute on which the information is founded *limits* the time as to when the conviction must take place, and the information must be laid accordingly within that time.

Some statutes appoint an interval which must elapse *before* any prosecution; as 19 Geo. III. c. 50, s. 2, &c.

31 Eliz c. 5.

By stat. 31 Eliz. c. 5, s. 5, 6, all actions, suits, bills, indictments, or *informations* on any *penal statute*, whereby the forfeiture is limited to the King only, shall be brought within two years after the offence committed: if limited to the King and *to any other* who shall prosecute, then within one year; and in default of such prosecution, then to be brought for the King in two years after that year ended. Provided, that if they are or shall be limited by statute to be brought within shorter time, then they shall be brought within such time limited.

If an offence prohibited by a penal statute be also an offence at common law, the prosecution of it as of an offence at common law, is no way restrained by this statute. 2 *Hawk.* c. 26, s. 44.

The party *grieved* is not a common informer within the restraint of this statute, but he may sue in the same manner as before. 2 *Hawk.* c. 26, s. 47.

It will be observed that this statute applies to all actions and informations for penalties.

The statutes of 18 Eliz. c. 5, s. 1, requiring the time of the information to be entered, &c. and the 21 Jac. I. c. 4, s. 3, requiring an oath to be made at the time of exhibiting the information, do not apply to informations before justices out of sessions.

Computation of time.

As regards the computation of the time limited by penal statutes.

If the time be expressed by the *year*, or any aliquot part thereof, as a half or quarter, &c. of a year, the computation is by *calendar* months of twelve months to the year. But if *months* are mentioned, and not the year, they are always computed by *lunar* months of four weeks to the month. *R.* v. *Peckham, Carth.* 406; *R.* v. *Bellamy*, 2 *D. & R.* 727; 1 *B. & Cres.* 500; 1 *D. & R. Mag. Ca.* 376, S. C. *Vide R.* v. *Cussens*, 1 *Sid.* 181. And see fully, *post*, Time, Vol. V.

Where the time is dated from the offence committed, the day on which it was committed is to be reckoned as one; but otherwise if it be from the day of doing the act in question. See *R.* v. *Green*, 10 *Mod.* 212; *R.* v. *Adderley, Dougl.* 465.

If goods are found, subjecting the party having them in his possession to a forfeiture for receiving them illegally, the day on which they are found will be presumed to be the day whereon such forfeiture was incurred. *R.* v. *Bass*, 5 *T. R.* 251.

See further as to the computation of time in actions against justices, *post*, Justices, Vol. III. p. 495.

It a statute say, that the offender shall be *convicted* in a limited time, the

conviction must take place within that time, and the laying the information will not suffice. See *R.* v. *Bellamy, supra. Aliter* where it is not so peculiarly expressed. *R.* v. *Barrett*, 1 *Salk.* 383.

(3.) Who to be the Informer]—Generally speaking any person may be the informer; see *Esp. Penal Statutes*, p. 11; but sometimes the statute giving the penalty allows only particular persons to be informers. (3.) Who to be informer.

Where the informer is entitled to any part of the penalty he is not in general a competent witness to support the conviction. See 2 *Ld. Raym.* 1545; Evidence, Vol. II. p. 74.

Where the information is for the recovery of a penalty given to the party grieved, he must be the informer; or else it must appear that the information is laid at his instance. See *R.* v *Daman*, 2 *B. & A.* 378; 1 *Chit. Rep.* 147; *R.* v. *Harpur*, 1 *D. & R.* 222; 1 *D. & R. Mag. Ca.* 67; *R.* v. *Corden*, 4 *Burr.* 2279; *post*, 818, 819; Game, Vol. II.

(4.) Before whom Information to be laid]—The information must be laid before a justice having jurisdiction to hear it and determine as to the offence. The penal statute frequently points out before whom the conviction is to take place. See further as to the jurisdiction of justices of the peace to receive these informations, *post*, Justices, Vol. III. p. 464 to 473. (4.) Before whom to be laid.

One justice may receive the information and grant a summons or warrant upon it in all cases. Even in those in which the conviction must be by two or more justices. This is enacted by the 3 Geo. IV. c. 23, s. 2, in the following words: "That in all cases where two or more justices, deputy lieutenants, or others, are authorised and required to hear and determine any complaint, one justice, deputy lieutenant, or such other person shall be competent to receive the original information or complaint, and to issue the summons or warrant requiring the parties to appear before two or more justices of the peace, deputy lieutenants, or others, as the case may require; and after examination upon oath into the merits of the said complaint, and the adjudication thereupon, by any such two justices, deputy lieutenants, or other persons, being made, all and every the subsequent proceedings to enforce obedience thereto or otherwise, whether respecting the penalty, fine, imprisonment, costs, or other matter or thing now enacted, or to be hereafter enacted, may be enforced by either of the said justices, deputy lieutenants, or other persons, or any other justice of the peace or deputy lieutenant for the same county, riding, or place, in such and the like manner as if done by the same two justices, deputy lieutenants, or other persons, who so heard and adjudged the said complaint; and where the original complaint or information shall be made to any justice or justices of the peace, deputy lieutenant or deputy lieutenants, or other person or persons different from him or them before whom the same shall be heard and determined, the form of conviction shall be made conformable and according to the fact." 3 Geo. 4, c. 23, s. 2. One justice may receive original information, &c. where two or more justices, &c. are empowered to hear and determine.

A justice of the peace cannot properly refuse to receive an information regularly laid before him within his jurisdiction, and upon refusal in some cases a *mandamus*, and in others a criminal information, might be awarded against him; see *Stra.* 413; *R.* v. *Newton*, *id.* 530; *R.* v. *Benn*, 6 *T. R.* 198; *Paley*, 17, 18. Some statutes inflict a penalty on his refusal; see *Smith* v. *Langham*, 2 *Stra.* 234. Where, however, a justice has a reasonable ground for doubting his jurisdiction, the Court of King's Bench will not enforce him to hear the information. *Semble*, *R.* v. *Js. Buckingham*, 2 *D. & R.* 689; 1 *D. & R. Mag. Ca.* 369; 1 *B. & Cres.* 485, S. C. Magistrate refusing to receive information.

(5.) Against whom it may be laid]—The party against whom the information may be laid must depend on the words of the penal statute, and the facts constituting the offence within it. See the various titles of offences under penal statutes throughout this work. (5.) Against whom it may be laid.

A feme covert may be convicted on a penal statute; see *R.* v. *Crofts*, 2 *Stra.* 1120; *Foster's case*, 11 *Rep.* 61; *post*, 819; Wife, Vol. V.

THE INFORMATION.

So may an infant. 4 *Bla. Com.* 308; 2 *B. & P.* 98, 580; 8 *T. R.* 545; see *post*, Infants, Vol. III.

In some cases a man may be responsible for the act of his servants and of those he employs, even where the act is done without his privity or knowledge. See *Mitchell* v. *Toruss*, *Parker's Rep.* 227; 1 *Vent.* 190, 238; *post*, Servants, Vol. V.; Libel, Vol. III.

As to who may be joined as defendants in the same conviction, see post, Indictment, Vol. III.; *post*, Game, Vol. II. Where the act is such that several may join in it, all the offenders may be included in the same information and conviction, see *post*, 818.

(6.) Several offences.

(6.) What Offences may be joined]—There does not seem any objection to the joining and stating of several offences, in a distinct manner, in the same information and conviction. See *R.* v. *Swallow*, 8 *T. R.* 286.

(7.) Form of information. When must be in writing.

(7.) Form of the Information—*When in Writing*]—When the information is required by statute to be in *writing*, that form must be observed, and this is usually directed where power is given to apprehend the offender in the first instance; but unless expressly so directed, it does not seem necessary that it should be in writing. *R.* v. *Willis*, *Bosc.* 16; *Paley*, 18. In practice the magistrate always requires an information in writing, drawn up in regular form, to be lodged with him before he will grant a summons against an offender on a *penal* statute. When the statute requires the information to be in writing, the conviction should state it was so. *R.* v. *Willis*, *Bosc.* 16; see also *Basten* v. *Carew*, *infra*.

On oath.

Oath]—The information need not be upon *oath*, if not expressly required by the statute authorising the conviction. *R.* v. *Willis*, *Bosc.* 16; *Basten* v. *Carew*, 5 *D. & R.* 558; 3 *D. & R. M. C.* 563; 3 *B. & Cres.* 649, S. C. If the statute requires such oath, it must be administered and taken before the magistrate receives the material part of the information. See *R.* v. *Kidd*, 1 *D. & R.* 734; 3 *D. & R. Mag. Ca.* 364. The information, when required to be on oath, should state it was exhibited on oath.

Time of laying information.

Day of exhibiting it]—The day and year on which it is exhibited must be stated therein, as well that it may appear to be subsequent to the offence and prior to all the other proceedings, as in order to ascertain that the prosecution is within the time limited by the particular statute on which it is founded. 2 *Ld. Raym.* 1546; 1 *Id.* 510; *Paley*, 58.

In *R.* v. *Kent*, 2 *Ld. Raym.* 1546, the conviction was quashed because the information was set out to be exhibited on 2d *Nov.* 1 Geo. II. and the conviction was laid to be on 2d *Oct.* 1 Geo. II. See *R.* v. *Picton*, 2 *East*, 19.

Place where laid.

Place of exhibiting it]—The *place* also where the information is stated to be received must be stated in it, in order to show that the magistrate at the time was acting *within* his jurisdiction. *Bosc.* 24; and see *Kite and Lane's case*, 1 *B. & C.* 101; 2 *D. & R.* 212, S. C.

Name of informer.

Name of Informer, &c.]—The name of the *informer* should be set forth in all cases, that the person convicted may know *who* is his accuser. *Sed vide Paley on Conv.* 80, n. p.

It is absolutely necessary that it should be set forth where any part of the penalty is given by the statute to the informer, in order that the conviction may appear to be founded upon other evidence than that of the informer himself, who is in such cases an incompetent witness. *R.* v. *Stone*, 2 *Ld. Raym.* 1545.

And where a statute directs that certain things shall be forfeited to the person seizing the same, the information must show that the person to whom the thing is adjudged is *the person who seized it*, and it is not enough that this is stated in the adjudication *R.* v. *Smith*, 5 *M. & S.* 133.

But it is not necessary (as in penal actions) to allege that the informer sues *as well for himself* as for the other parties. *R.* v. *Lovet*, 7 *T. R.* 152.

It does not seem necessary, though advisable and proper, to state the informer's abode and addition.

Party aggrieved.

Where the penalty is given as a compensation to a party aggrieved by the offence, it must appear either that he is the informer, or that the information is laid at his instance. *R.* v. *Corden*, 2 *Burr.* 2279; and the later case of *R.* v. *Daman*, 2 *B. & A.* 378; 1 *Chit. Rep.* 147, S.C.; fully noticed, *post*, Game, Vol. II.

Name and authority of the magistrate.

Name, &c. of Magistrate]—Summary convictions before magistrates being by virtue of a circumscribed and extraordinary power, the name and style of the justice or justices, before whom the information is lodged, must be set forth in the statement of the information, from which it must appear that he or they had authority to take such information. 2 *Salk.* 471; *R.* v. *Johnson*, 1 *Stra.* 261; *Paley*, 79.

It is not sufficient therefore to describe him as a justice *in* the county, without saying *of* or *for* the county. *R.* v. *Dobbyn*, 2 *Salk.* 473. It is, however, no objection that he is described as *being* a justice, &c., without the word "*there* being a justice, &c." for that is implied. *R.* v. *Chipps*, 1 *Stra.* 711.

If the statute give cognizance of the offence to the *next* justice of the county, the convicting magistrate should be so described, for no other but the *next* has any jurisdiction. *Sanders's case*, 1 *Saund.* 263; *Dalt.* c. 6. But if the act only mentions justices *in or near* the place, it is but directory, and they need not be so described; 2 *Keb.* 559; nor if the statute speaks of justices *acting for the division* need they be so alleged, for any justice of the county comes within that condition. *R.* v. *Price*, *Cald.* 305; 3 *Bac. Ab.* 793.

The omission of the word *assigned* in the description of the style of a magistrate has been once held to be fatal. 1 *Saund.* 263. Such an omission, however, does not now seem material. 2 *Burnard.* 383; *Paley*, 79. And see the 3 Geo. IV. c. 23, *post*, 836.

By 26 Geo. II. c. 27, no order or adjudication of justices is now invalid, though it is not expressed that either justice is of the *quorum*.

Name and description of offender.

Name, &c. of Offender]—The *name* of the *offender* should be correctly stated, otherwise the proceedings would be unavailable if he did not appear. If there be several offenders, each must be named. A conviction against "*Messrs. Harrison and Company*," was considered bad, and this although none of the parties even objected to the conviction on that ground. *R.* v. *Harrison*, 8 *T. R.* 508.

The addition of the offender is not material, and need not be stated, though it is usual. See *R.* v. *Burnaby*, 2 *Ld. Raym.* 900; 1 *Salk.* 181.

The General Turnpike Act allows proceedings against a driver misbehaving himself to be carried on against him without describing his name, if he refuse to disclose it. See 3 Geo. IV. c. 126, s. 132; *post*, Highways, Vol. III. p. 198.

Feme covert.

It is no objection that the defendant appears to be a *feme covert*, for a *feme covert* may be convicted on a penal statute, without joining her husband. This point was so decided in the case of a conviction on stat. 9 Geo. II. c. 23, for selling gin, to which exception was taken, that the defendant appeared to be a *feme covert*, and therefore could make no contract for the sale; or that if she could be convicted of the offence, that the husband ought to have been joined for uniformity. But it was held that the conviction was right, for it was an offence which the woman might commit alone. *R.* v. *Crofts*, 2 *Stra.* 1120; *vide Foster's case*, 11 *Rep.* 61; *Paley*, 82.

Time of committing offence.

Time of Offence]—The *time of committing the offence* should be stated, in order that the magistrate may appear to have proceeded in the first instance upon a legal charge, and also that it may appear the information has been commenced within the limited time. *R.* v. *Pullen*, 1 *Salk.* 369; *R.* v. *Ca*

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theral, 2 *Stra.* 900; 14 *East*, 272; *Paley*, 61, 82. The *precise day*, however, it seems, need not, as in indictments, be named, if the offence be alleged to have been committed *between* such a day and such a day, provided the first of the days be between the time limited by the statute. 2 *Hawk.* c. 25, s. 82; *R.* v. *Chandler*, 1 *Salk.* 378; 1 *Ld. Raym.* 581; *Carth.* 502; 5 *Mod.* 446; *R.* v. *Simpson*, 10 *Mod.* 248.

It is more regular, however, to fix the charge to a *certain* day, where it can be done. *Paley*, 85.

Where an information appeared to be exhibited on the 29th May, 1805, and the offence was charged to have been committed "*within three months*, to wit, on the 12th *May now last past*:" it was held, that the words *last past* might refer to the *day* of the month and not to the *month* itself, so as to obviate the objection of the information being out of time, by supposing it to refer to *May*, 1804. *R.* v. *Crisp*, 7 *East*, 389.

Stating the offence to have been on the "20th day June," omitting the word "of," would not, it seems, be bad. *R.* v. *Huggins*, 3 *C. & P.* 602.

See further as to the mode of stating time, *post*, **Indictment**, Vol. III. p. 344.

In all cases, notwithstanding the necessity to state a time, it is not essential that it should be stated truly. If there afterwards appear to be a variance in this respect between the information and the evidence, it will be immaterial, if it appear from the evidence that the prosecution was actually commenced in due time.

Place where offence committed.

Place where Offence committed]—The *place, viz.* the parish, &c. and the county, wherein the offence was *committed* should be stated in the information, in order that the offence may appear to have been committed in the place over which the magistrate's jurisdiction extends. *Paley*, 85. And this, though the conviction pursues the form given by the statute, which does not expressly require that the place where it was committed should be shown. *R.* v. *Hazell*, 13 *East*, 139; *Kite and Lane's case*, 1 *B. & C.* 101.

The mention of the county in the margin does not supply the want of an allegation of the fact being committed in the county; for the insertion of it in the margin is only to show in what county the conviction was made. *R.* v. *Austin*, 8 *Mod.* 309. But where a place has been once named, as "at B. in the county of H.," it is enough afterwards to say, "at B. aforesaid," without saying "in the county aforesaid," for it will not be presumed to lie in two counties. *R.* v. *Burnaby*, 2 *Ld. Raym.* 901.

Courts and magistrates are bound *ex officio* to take notice of the known divisions of the kingdom, as, whether such a place is within or without the bills of mortality; *R.* v. *Vasey*, *Bosc.* 138; but not so of the local situation and distances of different places in the counties from each other *Deybel's case*, 4 *B. & Ald.* 243. And see further as to this 1 *Chit. Plead.* 5th edit.

Notwithstanding a place must be stated, it is not in general essential, unless perhaps in averments of local situation, necessary to prove the offence was committed at the place stated. See *post*, **Indictment**, (*a*) Vol. III. p. 335.

(*a*) A conviction before the lord mayor of London, on stat. 16 & 17 Car. II. c. 2, for selling coals short of measure, was quashed, because it was not proved that the coals were sold in London, or the liberties thereof, without which the lord mayor had no jurisdiction. *Q.* v. *Highmore*, 2 *Ld. Raym.* 1220; *Paley on Conv.* 85.

So also in a conviction for illegally insuring lottery tickets against stat. 22 Geo. III. c. 47, the information laid the offence in Great Queen Street, in the parish of St. Giles, &c. The evidence was as follows: T. J. deposeth, "that on the 10th of March last, he insured personally (not stating where) with the said Jefferies the defendant, No. 18,432, and paid 2*s.* 9*d.* to receive one guinea if drawn blank or prize on the 30th day of drawing." It was objected, that the evidence did not prove the offence to be committed in the place laid in the information, which it ought to have done, for wherever the jurisdiction of the magistrates is local, the offence must be proved to have been committed within their jurisdiction. And of this opinion were the court. Therefore the conviction was quashed. *R.* v. *Jefferies*, 1 *T. R.* 241.

The strictness with which this proof is

If indeed it be an information for an offence where the statute creating it gives a part of the penalty to the poor of the parish in which it is committed, a material variance between the parish laid and that proved would be fatal.

Statement of the offence.

Statement of the Offence itself]—All acts which subject men to new and other trials than those by which they ought to be tried by the common law, ought to be taken strictly. The information must, therefore, contain an exact *description of the offence;* which, in order to give the justice a jurisdiction, must appear to be within both the letter and spirit of the statute that creates it, and which must be exactly described, that the defendant may know what charge he is to answer. *Bosc.* 25.

The evidence subsequently stated in the conviction can only support the original charge, but can by no means extend or supply what is wanting in the information. *Paley*, 86; *R.* v. *Baines*, 2 *Salk.* 680; 2 *Ld. Raym.* 1268; *R.* v. *Wheatman*, *Dougl.* 232; *R.* v. *Denman*, 1 *Chit. Rep.* 155; *post.*

Most of the observations relative to the general requisites of an indictment will be here applicable, and the reader is referred thereto, *post*, **Indictment**, Vol. III. p. 324 to 327.

Certainty.

The statement as to the offence should be made with sufficient certainty, and the offence so definitively described that the defendant may know what he is called upon to answer, and so that his conviction on or acquittal against the charge may insure his subsequent protection.

The statement should be with as much certainty as the nature of the case will admit of. It ought to be certain to every intent.

The information and conviction must have as much certainty in it as in an indictment. See *R.* v. *Pain*, 7 *D. & R.* 678; 3 *D. & R. M. C.* 517, S. C.

Statement must be positive;

A *direct and positive* charge must be stated against the defendant; it does not suffice to state merely facts amounting to a presumption of guilt, however sufficient such facts may be as *primâ facie* evidence against him. Thus where the charge in an information (under the 8 Ann. c. 18, s. 3, *for selling bread under the assize*) was that the bread wanting so much weight, &c. was bought *in the shop* of the defendant: it was held, that the charge ought to have been more direct, *viz.* of the sale of so much bread *by the defendant*, for though the fact of a servant selling in his master's shop is good evidence

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required is exemplified by the following case:

R. v. *Hazell*, 13 *East*, 139; *Paley*, 85. This was a conviction on 41 Geo. III. (G. B.) c. 38, against a manufacturer for combining to refuse work. The act gives a general form for the conviction, in which it is merely required to state the offence, without any thing pointing to the date or place. The offence was in substance stated in the following manner, *viz.* "that the defendant on a certain day (he being then employed by G. S., &c. of Wallington, in the county before mentioned, in the trade of a calico printer, carried on by them at Wallington aforesaid, and whilst he was such workman, and so employed as aforesaid,) refused to work with one S. B., then also employed by G. S., &c. in the said manufacture carried on by them at Wallington aforesaid." This conviction was quashed, because it was not expressly averred *where* the refusal was given, so that it did not appear to be within the jurisdiction of the magistrate. Lord *Ellenborough*, C. J. in delivering the judgment observed, that the words *then and there* were not to be exploded altogether, and they had sometimes more meaning than was commonly imagined. And see *R.* v. *Edwards*, 1 *East*, 278.

Stat. 12 Car. II. c. 24, s. 45, giving summary jurisdiction in offences against the excise, to two or more justices of the peace residing *near* to the place where such offence shall be committed, must be understood to be confined to justices of the *county* wherein the offence was committed. Therefore where a defendant was convicted by two resident justices on stat. 19 Geo. III. c. 50, s. 2, for having in his custody and possession a private and concealed still for illicit distillation; and the evidence only showed that his *house* was in the county and that the still was found concealed in the *garden* of the said house, such *garden* not appearing to be in the same county, the conviction was held bad. *R.* v. *Chandler*, 14 *East*, 267.

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against the master, still it is but evidence, and what is evidence merely is not enough to be laid in the information. *R.* v. *Bradley*, 10 *Mod.* 155.

All the facts necessary to support the proceeding must be expressly alleged, and not left to be gathered by inference or intendment. Thus in a conviction for having concealed brewing utensils, the deposition, which appeared to be taken on a day subsequent to the information, only made the witness state that the defendant *now has* two concealed vessels, &c., and the conviction was quashed because it should have appeared that the defendant had them at the time of the information, for though the words might be made to imply as much, yet Lord C. J. *Holt* said, "a conviction must be certain and not taken by collection." 1 *Ld. Raym.* 509.

and not by way of recital;

A statement of the offence by way of *recital* will not do. 2 *Str.* 900; *Sess Ca.* 159; 2 *Ld. Raym.* 1363.

or in disjunctive or argumentatively.

It must not be stated in the alternative or the disjunctive. See 2 *Hawk.* c. 25, s. 58; *R.* v. *Middlehurst*, 1 *Burr.* 399; *R.* v. *North*, 6 *D. & R.* 143; 3 *D. & R. M. C.* 38, S.C.; *R.* v. *Pain*, 7 *D. & R.* 678; 3 *D. & R. M. C.* 517, S.C.; though this seems otherwise in an order. *Id.*

Or in an argumentative way. 1 *Salk.* 373.

Scienter.

If the *knowledge* of the party is mentioned by the statute as an ingredient of the offence, nothing short of a direct averment to that effect is sufficient unless indeed equivalent words are used. The words "unlawfully, fraudulently, and *against the form of the statute*," are not equivalent to "knowingly." *R.* v. *Jukes*, 8 *T. R.* 536; *Paley*, 88. In a late case, however, upon a conviction against a carrier for having game in his possession contrary to the 5 Ann. c. 14, s. 2, it was considered the *scienter* need not be alleged, the word "knowingly" not being used in the statute. *R.* v. *Marsh*, 4 *D. & R.* 260; 2 *D. & R. M. C.* 182; 2 *B. & Cres.* 720, S. C.; *post*, Game, Vol. II.

It was there said, that if the word "knowingly" had been in the statute, undoubtedly "knowledge" must have been averred in the information, and some evidence must have been given on the part of the informer, to show that the act complained of was committed with the defendant's privity. But in the case before the court no averment or evidence to that effect was necessary. It was quite enough for the informer to prove that the defendant, being a carrier, had, in the language of the act, "in his custody or possession," the things prohibited. After such proof, it was for the defendant to show such a degree of ignorance as would excuse him, but that was to come by way of defence.

Offence must be stated within the terms of the statute.

The offence must in every respect be brought within the terms of the statute, by a statement of the circumstances which make up the statutable definition of the offence.

A conviction on 3 W. & M. c. 10, s. 2, for *killing deer*, was quashed for not describing the place where they were killed as being *inclosed*, according to the terms of that statute. *R.* v. *Moore*, 2 *Ld. Raym.* 791; *R.* v. *Sadler*, 2 *Chit. Rep.* 519. And the like where the defendant was convicted under the 33 Hen. VIII. c. 6, merely for *having* a hand gun in his house, and the words of that statute are "*use to keep* in his house." *R.* v. *Llewellyn*, 1 *Show.* 48.

Convictions on the game laws for keeping and using a *dog* to destroy game or for using a *hound*, have been set aside, for neither of these denominations is contained in the statutes. *Renson* v. *Lisle*, *Com.* 567; *Hooke* v. *Wilks*, 2 *Str.* 1126. But *a dog called a greyhound* is sufficient. *R.* v. *Hartley*, *Cald.* 175. And see other instances stated, *post*, Game, Vol. II.

So a conviction on stat. 22 & 23 C. II. c. 25, s. 7, against unlawfully killing and taking fish in any river, &c. without the license or consent of the lord or owner of the water, was quashed, because it did not describe the offence in the words of the statute, or say that the defendant *stole* the fish, or took and killed the fish of *another person*, or *in another person's pond*. *R.* v. *Mallinson*, 2 *Burr.* 682.

So in *R.* v. *Trelawny*, 1 *T. R.* 222, the conviction, (which was on stat.

22 Geo. III. c. 47, s. 13, against insuring tickets in any state lottery to be authorised by act of parliament,) was quashed, because the information did not express that the ticket insured was a ticket in the state lottery, though the lottery was described as being authorised by stat. 25 Geo. III. c. 59.

So where the 45 Geo. III. c. 121, s. 7, made all *British subjects* liable to arrest on being found on board any ship liable to forfeiture under the *smuggling acts*, and a conviction under that act did not allege that the party was a *British subject*, the conviction was quashed, though it pursued the general form given by the 3 Geo. IV. c. 110. *Exparte Hawkins*, 2 *B. & C.* 31; 3 *D. & R.* 209, S. C.

Where the act of 9 & 10 Wil. III. c. 27, required a license to be taken out by every hawker, pedlar, &c. *going from town to town* to sell goods; and a conviction under that act only described the defendant as a hawker and pedlar and offering to sell goods, but said nothing about his *going from town to town;* the conviction was quashed. For though it was stated that the defendant was found trading as a hawker and pedlar, yet this (being a conclusion of law) was held too general a description to bring the defendant within the terms of the act; and it was also agreed, that the defect was not helped by the defendant's confession, which went only to the offence as charged in the information. *R.* v. *Little*, 1 *Burr.* 613; *Paley*, 90; *post*, **Hawkers and Pedlars**, Vol. II.

Precise words of the act.

The statement of the charge in the information, however, need not be always expressed in the *precise and technical words* of the act, but it is sufficient if the words used in the one are synonymous with and equivalent to the words contained in the other.

As an information, under the 39 & 40 Geo. III. c. 106, s. 4, (which prohibited "combinations *to obtain* an advance of wages,") stating that defendant attended a meeting for carrying on a combination of journeymen "*for the purpose* of obtaining an advance of wages," was held to be correct. *R.* v. *Ridgway*, 5 *B. & A.* 527; and see 1 *Chit. C. L.* 283, and cases there cited.

It is, however, always safest to follow the words of the act, and we have already seen instances in which a departure from this may render the proceedings fatal.

Words and matters of form must be as strictly observed in informations and convictions as in indictments. See *per cur. Exparte Paine*, 5 *B. & Cres.* 251; 7 *D. & R.* 678, S. C.

Sometimes a more particular description necessary.

It generally suffices to state the offence in the words of the statute, *per Holt*, C. J. *R.* v. *Speed*, 1 *Ld. Raym.* 583; but sometimes a circumstance plainly implied though not expressly contained in the act, forms a necessary ingredient in the offence, and must be stated. *Paley*, 104, 95. Where the 24 Geo. III. c. 47, s. 1, prohibited vessels from hovering on the coasts of the kingdom with certain goods on board, and a conviction under this act merely stated that a vessel was found hovering, &c. but omitted to add, *without any lawful excuse*, or words to that effect; the conviction was held bad, though it pursued the general form given by the 3 Geo. IV. c. 110; for a vessel may be hovering for an innocent purpose, as for a pilot or by stress of weather, and the hovering contemplated by the act is hovering with power to proceed on the voyage and without any sufficient cause for not doing so. *Exparte Hawkins*, 2 *B. & C.* 31; 3 *D. & R.* 209, S. C.; and see 2 *Hawk.* c. 25, s. 11.

In *R.* v. *Jarvis*, 1 *Burr.* 154, 1 *East*, 647, n. Mr. *J. Denison* said, "that it is not always sufficient to pursue the words of the statute; it may be necessary to go farther." It was so determined in *R.* v. *Chapman*, *Say.* 203, upon a conviction of a person *for robbing an orchard;* which the court held not sufficient, but it ought to have appeared of what, and how the orchard was robbed, that they might judge whether it were a robbery within the meaning of stat. 43 Eliz. c. 7.

And when a statute, in describing an offence, makes use of general terms which will include a variety of circumstances, it is not enough that the information should follow the very words of the statute, but it is necessary to state

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what particular fact prohibited has been committed, or what particular fact enjoined has been omitted. *Paley*, 102; *R.* v. *James*, *Cald.* 458, there cited: *R.* v. *Jarvis*, 1 *Burr.* 152; *R.* v. *Perrott*, 3 *M. & S.* 379; and see *post*, **Indictment**, Vol. III. p. 346.

Negativing exceptions in statute.

Negativing Exceptions in Statute]—It has been said, "that a conviction on a penal statute ought expressly to show, that the defendant is not within any of its provisoes; for," continues the author, "since no plea can be admitted to such a conviction, and the defendant can have no remedy against it, but from an exception to some defect appearing in the face of it, and all the proceedings are in a summary manner, it is but reasonable that such a conviction should have the highest certainty, and satisfy the court that the defendant had no such matter in his favour as the statute itself allows him to plead." 2 *Hawk.* c. 25, s. 113. But this is to be understood with the following limitation, that where the enacting clause of a statute constitutes an act to be an offence under certain circumstances, and not under others, there, as the act is an offence only *sub modo*, the particular exceptions must be expressly specified and negatived; but where a statute constitutes an act to be an offence generally, and in a subsequent clause makes a proviso or exception in favour of particular cases, or in the same clause, but not in the enacting part of it, by words of reference or otherwise, makes such proviso or exception, there the proviso is a matter of defence or excuse, which need not be noticed in the information. See 1 *Stra.* 555; 2 *Id.* 1101; 1 *T. R.* 144, 145; 1 *B. & A.* 94; *R.* v. *Matters*, 1 *B. & A.* 362; *R.* v. *Smith*, 5 *M. & S.* 103; 2 *M. & S.* 539.

Thus the case of *R.* v. *Clarke*, 1 *Coup.* 35, was a conviction on stat. 23 Hen. VIII. c. 9, s. 16, against playing at bowls; and the court quashed the conviction because it was not alleged in the information, that the playing at bowls was *out of the defendant's own orchard*, and it is only unlawful *sub modo*.

So in the case of informations on stat. 5 Ann. c. 14, s. 4, for killing game, in which it is now fully settled that it is necessary to state and negative all the qualifications enumerated in stat. 22 & 23 Car. II. c. 25. See 1 *Stra.* 66; *R.* v. *Hill*, 2 *Ld. Raym.* 1415; *R.* v. *James*, 1 *Burr.* 148; *post*, **Game**, Vol. II. And this is so necessary, that if the qualifications mentioned in stat. 22 & 23 Car. II. c. 25, are not set out and negatived in these informations, their being negatived by the evidence will not supply the defect. *R.* v. *Wheatman*, *Dougl.* 346, *post*, **Game**, Vol. II.

A summary conviction for any offence created by statute must negative every exception contained in the clause creating the offence; and a defect in omitting so to do is not aided by a proviso in the statute, that "no conviction for any offence in the act shall be set aside for want of form, or through the mistake of any fact, circumstance, or other matter, provided the material facts alleged were proved;" for this in effect requires all *material facts* to be alleged; and it is a material fact that the defendant did not come within the exception in the enacting clause. *R.* v. *Jukes*, 8 *T. R.* 542.

But if a subsequent statute make any exception to a former one, it is incumbent on the defendant to show by way of defence that he comes within such exception; and when the prosecutor is not obliged to negative the exceptions in a statute, and he negatives some of them only, that part of the information will be rejected as surplusage. *R.* v. *Hall*, 1 *T. R.* 320.

So where negatives are descriptive of the offence, they must be set forth: for what comes by way of proviso in a statute must be insisted on by way of defence by the party accused; but where exceptions are in the enacting part of a law, it must appear in the charge that the defendant does not fall within any of them. *R.* v. *Jarvis*, 1 *East*, 646, 647, n.

Presumptions of law.

Facts *ex officio* noticed.

Matters of defence.

Matters which need not be stated]—Presumptions of law need *not in general* be stated; nor need facts *ex officio* taken notice of by all courts and justices. See *post*, **Indictment**, Vol. III. p. 325.

Matters of defence, or facts more peculiarly in the defendant's own knowledge, need not in general be stated. *Id.* 326.

Conclusions of law, resulting from the facts, need not be stated, and are best omitted. See *post*, **Indictment**, Vol. III. p. 325.

Mere matters of evidence need not be stated. *Id.* 326.

Conclusions of law.

Matters of evidence.

Technical Words, &c.]—There is no rule that other words shall be employed in the conviction than such as are in ordinary use.

Many of the technical phrases which may be requisite in indictments are not so in convictions, although it has been said that more particularity is required in convictions than in indictments. See *R.* v. *Chandler*, 1 *Ld. Raym.* 581; *R.* v. *Green*, 1 *Cald.* 391. The fact need not be charged "against the peace of the King." 1 *Ld. Raym.* 581. Neither is the omission of the word "unlawfully," (*R.* v. *Chipp*, 11 *Stra.* 711,) or "knowingly," (*R.* v. *Marsh*, 4 *D. & R.* 260; 2 *B. & C.* 717; 3 *D. & R. M. C.* 182, S. C.;) any objection, unless used in the act as part of the description of the offence. *R.* v. *Speed*, 1 *Ld. Raym.* 583.

Technical words.

General Epithets]—If the charge falls short of the necessary legal description of the offence, the omission is not cured by any allegations of its being done *unlawfully* or *fraudulently*, or the like, or by stating that it was against the form of the statute; *R.* v. *Jukes*, 8 *T. R.* 536; *R.* v. *Jarvis*, 1 *Burr.* 148; for the last allegation is no more than a legal inference, which must be supported by the previous allegation. *Dyer*, 363; 1 *Stra.* 493; and see 4 *D. & R.* 83. So the word "*duly*" is of no avail. See some cases collected, 1 *Chit. Pl.* 4th edit. 216, 233.

General epithets, as "*duly*," &c.

Statement of Statute itself]—There is no necessity to state any public statute, the justices being bound *ex officio* to notice it. But a *private* statute must be set out in its parts relating to the offence. See *post*, **Indictment**, Vol. III. p. 345. If the statute be described, a substantial variance in the statement of it would be fatal. See 2 *Hawk.* c. 26, s. 10, 104.

Statement of statute itself.

Written Instruments]—The mode of stating written instruments will be found pointed out, *post*, **Indictment**, Vol. III. p. 347.

Written instruments.

Chattels, Monies, &c.]—Personal chattels should be described specifically by the names usually appropriated to them. As to the mode of such description, see *post*, **Indictment**, Vol. III. p. 348. A conviction for hawking goods without a license must specify the goods that where sold. *R.* v. *Selway*, 2 *Chit. Rep.* 522; and see *Chance* v. *Adams*, 1 *Ld. Raym.* 77; *R.* v. *Gibbs*, 1 *Stra.* 497; *R.* v. *Gilbert*, 1 *East*, 583. In *R.* v. *Rabbits*, 6 *D. & R.* 341; 3 *D. & R. M. C.* 269, it was held, that an order and adjudication on the 11 Geo. II. c. 19, s. 4, for fraudulently and clandestinely removing goods to avoid a distress need not specify the goods.

Chattels, monies, &c.

Quantity, Value, &c.]—The information should specify a particular value or quantity where any things turns upon it.

The value or quantity of the chattels, &c. is more especially necessary to be shown in cases where it is the measure of the penalty or damages to be given by the justice. Thus a conviction upon stat. 43 Eliz. c. 7, s. 1, against cutting of trees, &c. was questioned for not mentioning the number of trees cut, being the measure of the damages to be given in that case. *Q.* v. *Burnaby*, 2 *Ld. Raym.* 900; 1 *Salk.* 181.

In an information on the 5 Geo. III. c. 14, for taking and destroying fish, the information should state the number or quantity of fish taken, killed, or destroyed. *R.* v. *Marshall*, 2 *Keb.* 594.

But it is sufficient if the conviction be for swearing 150 oaths in these words, viz. (specifying the words once) without repeating each 150 times. *R.* v. *Roberts*, 1 *Stra.* 608. Thus in the case of swearing, before the legislature, by stat. 19 Geo. II. c. 21, had directed a summary form of words for the conviction, it was required not only to set forth that the person had cursed or sworn in general, but the particular oaths and curses were to be set forth, that the court might judge thereupon, whether they were indeed oaths

Quantity and value.

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and curses or not. *R.* v. *Sparling*, 1 *Stra.* 497; *R.* v. *Popplewell*, 1 Stra. 686; *R.* v. *Chaveney*, 2 *Ld. Raym.* 1368.

A conviction for buying a certain quantity of wheat, to wit, 15 bushels of wheat, (contrary to 22 & 23 Car. II. c. 12,) has been held sufficiently certain. *R.* v. *Arnold*, 5 *T. R.* 353.

Although it may be essential to specify the number, quantity, and value of chattels, &c. it does not appear absolutely requisite to prove the precise number and quantity stated.

See further, *post*, **Indictment**, Vol. III. p. 348, 349.

Statement of offence being against the statute.

Conclusion against Statute]—In analogy to indictments for offences created by statute, it is, it should seem, absolutely requisite that the information and conviction should state that the offence was against the form of the statute, which is usually done after stating the offence by the following words, "against the form of the statute in such case made and provided." See the cases and law fully collected, *post*, **Indictment**, Vol. III. p. 351.

Where one statute is relative to another, as where one creates the offence and the other the penalty, the information and conviction should conclude against the form of the *statutes*. See *id.*

As to the general rules of construing the information, see *post*, 835.

Construction of information.

Defects in]—If the information be incorrect in any of the above particulars, the magistrate may dismiss the complaint.

Defects in information.

The mistatement or omission of any material averment in the information is not cured by any statement in the *evidence* specified in the conviction, for the defendant can be convicted *only of the charge in the information*; and *that* must be sufficient to support the conviction, the evidence being held to *prove* only, and not *supply* the defects in the information. *R.* v. *Wheatman*, *Dougl.* 232. In *R.* v. *Denman*, 1 *Chit. Rep.* 155, *Holroyd*, J. said, "it is a rule with respect to summary proceedings before justices in penal statutes, that after a conviction nothing can be intended so as to get rid of any defect in point of form. Every thing necessary to support the conviction must appear on the face of the proceedings, and must be established by regular proof, or by the admission of the party of that which is proved."

See further as to what defects in information and conviction are cured, *post*, 848.

The 7 Geo. IV. c. 64, s. 20, *post*, Vol. III. p. 352, does not, it seems, apply to informations before justices out of sessions. See *Davies* v. *Bint*, 5 *D. & R.* 353; 3 *B. & Cres.* 586, S.C.

A judgment by conviction being an *entire act*, cannot be severed, and be bad in part, and good as to the rest, even though their several parts may be in their nature distinct. *R.* v. *Patchet*, 5 *East's Rep.* 344; 1 *Smith's Rep.* 547; *R.* v. *Catherall*, 2 *Stra.* 900. Thus a conviction for not accounting for tolls, and also for not paying over the receipts, being defective as to the latter offence for not specifying the sums, though correct as to the former, was discharged altogether. *R.* v. *Catherall*, 2 *Stra.* 900. This position does not militate against that immediately preceding, because in the case of superfluous insertions they are taken as if they had not been part of the conviction, and, therefore, errors in *them* do not affect the other parts which are correct, nor the *whole* taken together. By consent, however, it seems a conviction may be set aside as to part of the judgment. *Comp.* 728. See as to commitments in execution, *ante*, 772; and as to commitments for safe custody, *ante*, 762.

Surplusage.

Surplusage]—Any defect in the manner of stating that which is in itself *surplusage*, and might be omitted altogether, does not vitiate the *rest* which is sound. The principle difficulties arise from the impracticability of fixing absolutely and incontrovertibly any definite rule or criterion by which to determine at once what shall be considered words of surplusage. This is a difficulty not to be entirely removed, because every case must stand on its own peculiar circumstances; but besides, the determinations on convictions

noticed hereafter and throughout this work, some tolerably precise notion on the subject may be deduced from the law of indictments, *post*, **Indictment**, Vol. III. p. 326, 327. Thus if an indictment conclude "contrary to the form of the statute," when in fact there is no statute applicable to the case, and, therefore, no uncertainty can ensue, but it is an offence at common law; this conclusion may be rejected as surplusage, and the proceedings supported. *Cowp.* 683; 5 *T. R.* 162; 2 *Leach*, 585. So if the word "there" be inserted when locality makes no part of the charge and need not be averred, it may be rejected as immaterial and surplusage, because there probably can be no preceding matter to which it can be referable. 2 *Sess. Ca.* 7. And generally all words that are entirely useless or without particular sense or meaning, especially if they contravene the intent or purpose of the indictment, ought to be struck out as surplusage. 1 *Ld. Raym.* 502; 2 *Leach*, 536, 525. But though perhaps not absolutely necessary to be inserted at all, if any averments be introduced so connected with the main charge that they cannot be separated, and still leave the necessary part *a charge sufficiently made* by itself, all must be proved, and no part can be struck out as surplusage; but if they can be separated, and after such separation the material part remain sensibly true and grammatically correct, and containing a sufficient charge in law, that which has been unnecessarily introduced may be struck out as surplusage. 2 *Leach*, 594; 2 *Campb.* 135, 584; see *Dick. Sess.* 3d ed. 594.

II. The Summons.

Summons to be issued.

When the information is laid, if the justice or justices think it sufficient, and see cause for calling upon the party complained of for an answer to it, it is their duty to issue a summons. If they refuse to issue it, they may be compelled to do so by *mandamus*. *R.* v. *Benn*, 6 *T. R.* 195.

Where necessary.

It is absolutely requisite in all cases, unless where the legislature has dispensed therewith, that the defendant should be *summoned*, in order that he may have an opportunity of being heard and making his defence. This is but natural justice, and if a magistrate should proceed against a person without summoning or hearing him, he would be guilty of a misdemeanor, punishable either by information or indictment. *R.* v. *Allington*, 2 *Stra.* 678; *R.* v. *Venables*, 2 *Ld. Raym.* 1406; *R.* v. *Constable*, 7 *D. & R.* 663; 3 *D. & R. M. C.* 2 *Stra.* 630; 6 *T. R.* 198; *R.* v. *Colamins*, 8 *D. & R.* 344; *Paley*, 21.

But if the defendant appear and be present during the whole hearing of the information against him, and do not ask for further time for the hearing of it, he may be convicted without a summons. See *R.* v. *Stone*, 1 *East*, 649; *R.* v. *Johnson*, 1 *Stra.* 261; 1 *Salk.* 383; 3 *Burr.* 1785.

In the case of *orders* a summons is in general requisite, though it need not in general be stated on the face of the order to have been issued. *Paley*, 125; *post*, **Order**, Vol. III.

In all proceedings for penalties, though a summons be dispensed with by statute, if there be no ground for supposing that the party will abscond, it is but reasonable the first process should be by summons to attend and show cause.

Form of.

Where a particular form of summons is required by the statute, the same must be adopted. *R.* v. *Croke*, *Cowp.* 30.

The summons may be directed either to the offender, requiring him to appear, or to some third person, requiring him to summon the offender.

It should state the *substance* of the *charge* laid against the defendant.

It should name a *day* and time for the defendant's appearance. Natural justice requires that the defendant should have a *reasonable* time allowed him for making his defence. A conviction upon default of appearance, where the summons was to appear immediately upon the receipt of it, was held bad. *R.* v. *Mallinson*, 2 *Burr.* 679; and in *R.* v. *Johnson*, 1 *Stra.* 261, *post*, 828, an objection made to the summons, that it was to appear on the same day, was only removed by the fact of the defendant having actually appeared, and so waived any irregularity in the notice.

In the summons it is usual, and upon many accounts convenient, to fix not

THE SUMMONS.

only a day, but a particular time of the day for the appearance of the party; but if he appear at the time, and the justices shall not attend, he is not to go away, but must wait during the remaining part of the day, for many things may happen to hinder the justice's immediate attendance.

The summons must not require the defendant to appear on an impossible day. In *Reg.* v. *Dyer*, 1 *Salk.* 181, it was stated that the defendant was summoned to appear, and did appear on Tuesday, the 17th of April, 1802, &c. The 17th April fell on a Friday, not Tuesday; and it being objected that the time of the summons being impossible, it was the same as if there had been no summons; the court quashed the conviction, saying, "there could be no such day, and, therefore, he could not appear thereupon; and when the day is not set forth, his appearance on another cannot be intended." See *R.* v. *Picton*, 2 *East*, 196, *post*, 838.

The summons should name a certain *place* for the defendant's appearance. *R.* v. *Simpson*, 1 *Stra.* 46.

In *R.* v. *Johnson*, 1 *Stra.* 261, the defendant was convicted for keeping a gun to kill game, not being qualified. It was objected that there was not a reasonable summons; for it was made to appear the same day, which might be impossible upon account of the distance, or the summons being served late; and his witnesses might not be got together on so short a warning; then it was to appear at the parish aforesaid, whereas there were two parishes mentioned before; so that the man might have gone to one, whilst they were convicting him at the other. It was answered that the defendant appeared at the time, and made defence; so that cures all defects in the summons; and by the court, the answer is right.

The summons must not bear date on a day earlier to that on which the information was laid; if it does, the conviction will be bad. *R.* v. *Kent*, 1 *Ld. Raym.* 1546.

It should be *signed* by the justice by whom it is issued. *R.* v. *Stevenson*, 2 *East*, 365.

We have already noticed the 3 Geo. IV. c. 23, s. 2, which allows one justice to receive the information and issue a summons where two or more justices are empowered to hear and determine, *ante*, 817.

Service of summons.

In general it is necessary that the service of the summons should be on the *person* of the defendant, unless where personal service is dispensed with, as is sometimes the case by statute; or by defendant's appearance. *R.* v. *Hall*, 6 *D. & R.* 84; 3 *D. & R. M. C.* 19; *R.* v. *Colamins*, 8 *D. & R.* 344; 10 *Mod.* 344; *Paley*, 23.

Lord C. J. *Parker* was of opinion, 10 *Mod.* 345, (and the provisions specially introduced into many acts of parliament, to make a service at the dwellinghouse sufficient, seem to justify the inference,) that the law in other cases is understood to require a service upon the person.

Several statutes expressly direct that a service of the summons at the defendant's dwellinghouse shall suffice. See Excise, Vol. II.; Stage Coaches, Vol. V. p. 551. In these and the like cases, leaving a *copy* at the house is sufficient; *R.* v. *Chandler*, 14 *East*, 268; and the delivery may be to a person on the premises apparently residing there as a servant. *Id.* and see *R.* v. *Clement*, 4 *B. & A.* 218.

Consequences of defect.

If the summons be defective in any of these particulars, or be not duly served, the party commits no default by not appearing, and the magistrate cannot proceed in the defendant's absence upon such a defective summons; and if he did so proceed, knowing of the defect, he would make himself liable to an information or indictment. *R.* v. *Simpson*, 1 *Stra.* 44; *R.* v. *Venables*, 2 *Ld. Raym.* 1407; *R.* v. *Allington*, 1 *Stra.* 678; *Paley*, 21.

But we have already seen, if the defendant appears and pleads, and does not question the validity of the summons, he cannot afterwards take any advantage of the defective form or service thereof, *ante*, 827.

As to the mode of stating the summons in the conviction, see *post*, 838.

III. Proceedings at the Hearing.

Before whom to take place]—The jurisdiction of justices of the peace in general, as it regards the place where the offence was committed, the time of

the offence, and its nature, will be noticed hereafter under title **Justices**, *post*, Vol. III. p. 464 to 473; and see the various titles of offence throughout the work. PROCEEDINGS AT HEARING.

Whether the conviction should take place before one or more justices, depends entirely on the statute giving cognizance of the offence. If the statute allow one justice to convict, the conviction may be by two or more; but where the statute requires the conviction to be by two justices, a conviction by one would be *coram non judice*, and void, and the justice making the conviction, and the constable executing it, would be liable to an action of trespass, if the party's goods were distrained upon, or himself committed. See *post*, **Justices**, Vol. III. p. 466.

Appearance or Default]—The defendant either appears or makes default. Upon the accused party's appearing before the justice, either in obedience to the summons, or upon being apprehended and brought there under a warrant, or where, after personal service of the summons, the party does not attend at the time and place appointed by it, and *oath* is duly made of the service, the justice then proceeds to the hearing of the case. Appearance or default.

The information (if one have been drawn up in form) is first read to the defendant; or if no information have been drawn up, then the charge is read to him from the summons or warrant: and he is asked what he has to say to the charge thus made against him. Such information must be read or stated to defendant, who should be apprized of the charge against him, and put to plead thereto; (*per Grose*, J., 2 *T. R.* 23;) after this the defendant either confesses the charge or denies it, and makes defence immediately, or prays time.

By his appearance he cures any defect or irregularity in the summons or even the want of a summons altogether; (*R.* v. *Johnson*, 1 *Stra.* 261; *R.* v. *Barrett*, 1 *Salk.* 383; 2 *Salk.* 428; 3 *Burr.* 1785; 1 *East*, 649;) except in a case where a special form of summons is required by the act which is not complied with. *R.* v. *Croke*, *Cowp.* 30.

The defendant has a right to have the presence and assistance of counsel or attorney, or such legal advice or assistance as he can procure, in the conduct of his defence, on the final hearing of the information, for on such hearing the magistrate is sitting *judicially*, and with power to decide upon law, fact, and punishment, and not as a mere *ministerial* officer in taking examinations, when the defendant has no such right. This appears fully settled by the late case of *Daubney* v. *Cooper*, 10 *B. & Cres.* 237, where it was held, that the proceedings against a party in a summary manner, under the 5 Ann. c. 14, for keeping and using a gun to destroy game, is of a judicial nature, at which all persons have a *primâ facie* right to be present; and, therefore, where a magistrate had, without any specific reason, caused a party, who claimed a right to be present, to be removed from a justice-room, where such a proceeding was going on, it was held, that he was liable to an action of trespass. (*a*) Presence of adviser, counsel, &c.

(*a*) *Daubney, Gent. one, &c.* v. *Cooper, Clerk, and others*, 10 *B. & Cres.* 237. The declaration alleged that the defendants, on, &c. at, &c. made an assault on plaintiff, and beat him and forced and compelled him to go from and out of a certain room, there called the justice-room, in which the defendants, as justices of our Lord the King, assigned to keep the peace, &c., were then and there holding a certain court, to wit, a court of petty sessions for the administration of justice, whereby the plaintiff was hindered and prevented from exercising his business as an attorney in the said room. 2d count, for a common assault and battery. 3d, for an assault only. Plea, not guilty. At the trial before *Best*, C. J. at the Lincolnshire Lent Assizes, 1829, it appeared that on the 14th day of Feb. 1828, one Preston was summoned to appear before the defendants, on the 18th of the same month, to an information charging that he, on the 3d of January preceding, did unlawfully keep and use a gun to kill game. Preston requested the plaintiff to attend for him as his attorney, and did not go in person. The plaintiff attended accordingly in the justice-room, when the defendant Cooper, being informed that he attended on behalf of Preston, said, that the magistrates

PROCEEDINGS AT HEARING.

Confession of charge.

If the defendant *confess* charge, the magistrate then, after taking a formal minute of such confession, passes judgment, and imposes the penalty or punish-

had resolved not to allow an attorney to appear, and desired him to leave the room. The plaintiff refused to do so, and Cooper ordered the constable to remove him, which was done. For the defendants it was contended, that the plaintiff had no right to attend before the magistrates as attorney for a party summoned, and that he must be nonsuited. A verdict was then entered for the plaintiff by consent, with 1*s.* damages, subject to an application to the Court of K. B. for a nonsuit. A rule *nisi* was accordingly obtained in Easter Term, 1829, against which

Denman and *Fynes Clinton*, showed cause, and contended, 1st, that the magistrates, proceeding on the stat. 5 Ann. c. 14, had no power to compel the appearance of the party summoned, and that, consequently, he might appear by attorney; and that the plaintiff, being an attorney of the Court of King's Bench, had a right to practise in any inferior court: on this point they cited *Gilman* v. *Wright*, 2 *Keb.* 477; 1 *Vent.* 11; 1 *Sid.* 410; *Hasting's case*, 1 *Mod.* 23; *R.* v. *Simpson*, 1 *Stra.* 44; *Hurst's case*, 1 *Lev.* 75; *Anon. March.* 141, pl. 214. And 2dly, that as this was a proceeding in the nature of a trial, and not a preliminary enquiry, the party accused had a right to avail himself of professional assistance. *Cox* v. *Coleridge*, 1 *B. & C.* 16.

Adams and *Goulburn*, Serjts. contrà, contended that at common law no persons had a right to appear by attorney; and they relied upon 2 *Inst.* 249, *Bac. Abr. Attorney* (B); where it is said, "on an indictment, information, or action for any crime whatsoever, under the degree of capital, the defendant may (by the favour of the court) appear by attorney." The information in this case cannot be distinguished from any other case not capital; and the party charged had no right to appear by attorney, the court not having thought fit to allow it. The only ground on which any doubt can exist is, whether or not the plaintiff had a right to appear as an advocate for Preston: but, in the first place, he did not claim that right; and next, the proceeding was not necessarily taken at the petty sessions, but the conviction might have been by any single magistrate. Lastly, there was nothing to show the magistrate that the plaintiff was duly authorised to appear as attorney or advocate for Preston, even supposing that the latter had power to give such authority. (During the course of the argument, the court intimated an opinion that as the proceeding in question was of a judicial nature, it could only be *in a court*, and that all persons, whether attornies advocates or not, had a *primâ facie* right to be present.) *Cur. adv. vult.*

The judgment of the court was delivered by *Bayley, J.* In this case, the court, during the argument, intimated an opinion upon one particular point; and after thinking further upon the subject, and having had a conference with Lord *Tenterden* also, we adhere to the opinion we then formed. It was an action by the plaintiff against three justices for having turned him out of a room: and one of the questions which the parties were desirous of having agitated was, whether upon a summary conviction upon the game laws the defendant had a right, as a matter of right, to appear by attorney in the case. He himself was not present, but he insisted upon a right to appear by his attorney. We do not think it at all necessary to give any opinion upon that point. Whether it may be matter of right, whether it may be matter of indulgence or not, or whether the magistrates have or have not a right to exercise a discretion upon that subject, are questions upon which we say nothing. When any such question shall arise we will decide it; but the ground upon which our present opinion is formed is, that the magistrate was proceeding upon a summary conviction, and, therefore, exercising a judicial authority. He was, as it were, a court of justice for that purpose; and we are all of opinion, that it is one of the essential qualities of a court of justice that its proceedings should be public, and that all parties who may be desirous of hearing what is going on, if there be room in the place for that purpose,—provided they do not interrupt the proceedings, and provided there is no specific reason why they should be removed,—have a right to be present for the purpose of hearing what is going on. And in this instance, one of the three defendants, without any authority, without any ground of offence given by the party who was the plaintiff in this case, took upon himself to turn him out. It appeared in evidence that he was there as the friend of the then defendant, he might be there as one of the public: but as the friend of the defendant he might be desirous of knowing what evidence there was to support the case, and who were the witnesses; and it might be of great importance to the defendant, with a view to ulterior pro-

ment. It has been determined, that though the act only empowers the justice to convict upon the oath of one or more witnesses, this implies a power to convict upon the confession of the party alone. *R.* v. *Gage*, 1 *Stra.* 546. As the confession supplies the want of evidence, so it cures any objection to the manner of taking the depositions; such, for instance, as that they were not made in the presence of the defendant. *R.* v. *Hall*, 1 *T. R.* 320; *Mann* v. *Davers*, 3 *B. & A.* 103, *post*, p. 839.

Denial of the charge or neglect to appear.

If the defendant *denies* the charge, or *neglects to appear*, after being duly summoned, in the latter case, after due proof of the summons, the next step is to substantiate the information by testimony. For this purpose the prosecutor or informer must produce his witnesses (*a*) to prove the facts alleged, and after that, if the defendant appear, he may produce witnesses for the defence.

Proof of charge.

Oath and examination of witnesses.

The examination of such witnesses must be upon oath, and no legal conviction can be founded upon evidence not so taken. There is a difference in the manner in which the acts are worded in regard to the mode of examination to be pursued. For while some acts expressly mention the testimony of witnesses *on oath*, others in general terms authorise the magistrate *to hear and determine*, or to convict or give judgment *on the examination of witnesses*, without noticing the oath. But such general expressions seem, in legal construction, necessarily to refer to the only kind of testimony known to the law, *viz.* that upon oath: "For," says *Dalton*, "in all cases wheresoever any man is authorised to examine witnesses, such examination shall be taken and construed to be as the law wills, *i. e.* upon oath." *Dalt.* c. 6, s. 6. This was the opinion of Lord C. J. *Broke* and Mr. *Lambert*, and the rather, (adds the latter,) because in these cases of conviction by justices of the peace the trial dependeth wholly upon these examinations. *Id.* c. 115, 164; *Plow.* 12 a.; *Lamb.* 517; and see *Exparte Aldridge*, 4 *D. & R.* 83; 2 *D. & R. M. C.* 120. S. C.

The oath must be administered before the witnesses are examined, and administering it afterwards is irregular; for at the time the witness is giving evidence he ought to be under the sanction and controul of an oath. *R.* v. *Kiddy*, 4 *D. & R.* 734, 2 *D. & R. M. C.* 364, S. C.; *post*, **Examination**, Vol. II. p. 95.

The power of justices to administer an oath by virtue of that jurisdiction, which is conveyed in the authority to hear, examine, and convict, without any express mention of a power to administer an oath, does not seem, from any thing now extant, to have been ever questioned so as to be brought to a judicial decision. See *Paley*, 34, 35; 15 Geo. III. c. 39; *post*, title **Justices**, Vol. III. p. 468; **Oaths**, Vol. III.

Competency of witnesses.

The *competency of witnesses* will be treated of hereafter under title **Evi-**

ceedings, if there should be misconduct on the part of the witnesses, and if the witnesses should state more than the facts warranted and beyond the truth, that he should have the opportunity of knowing what it was that was proved against him, and of calling the party in question for that misconduct. The point which we decide is, that the magistrate, in the exercise of a duty of this description, namely, by summarily convicting a party, is a species of court, and is exercising a judicial function, and that his proceedings ought not to be private, but ought to be public; and therefore he was not warranted in removing the party now complaining of that removal. The action was brought against three defendants; Cooper was the only one who in any respect interfered as to turning the plaintiff out of the room, the other two defendants taking no part in this transaction. The verdict was against all. We are of opinion that it ought to stand against Cooper only, and that a verdict ought to be entered in favour of the other two defendants.

(*a*) The magistrate has in general no authority to compel the attendance of witnesses for the purpose of a summary trial, unless where it is specially given by act of parliament. This in many cases has been done; and in sundry acts, the provision is accompanied with a penalty on refusal to attend for the purpose of being examined. See *Paley*, by *Dowling*, 33; *post*, **Evidence**, *Mode of compelling Attendance of Witnesses*, Vol. II. p. 82, 95.

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dence, Vol. II. p. 64 to 78; and especially as to when informers or inhabitants of a parish are competent. The term "credible" witness, so often used in acts of parliament, must be construed to mean a *competent* witness, and such witnesses, therefore, only, as are competent in a court of justice are competent on hearing the information before a magistrate. See *Paley*, 36. Magistrates should, therefore, be careful as to what witnesses they admit as competent.

Mode of examination.

With respect to the *mode of examination*, it is observed by *Paley*, in his *Treatise on Convictions*, p. 39, that "although no mode be pointed out by the statutes giving jurisdiction over the offence, yet as justice requires that the accused should be confronted with the witnesses against him, and have an opportunity of cross-examination, it is required by law, in the summary mode of trial now under consideration, that the evidence and depositions should be taken in the presence of the defendant, where he appears; for though the legislature by a summary mode of inquiry intended to substitute a more expeditious process for the common law method of trial, it could not design to dispense with the rules of justice as far as they are compatible with the method adopted. Indeed it may be useful upon this occasion to notice the general maxim which has been laid down as a guide to the conduct of magistrates in regulating all their summary proceedings, *viz.* that "acts of parliament, in what they are silent, are best expounded according to the use and reason of the common law." *Verb. Parker*, C. J. *R.* v. *Simpson* 1 *Stra.* 45. Unless, therefore, the defendant forfeits the advantage by his wilful absence, he ought to be called upon to plead before any evidence is given; (1 *T. R.* 320;) and the witnesses must be sworn and examined in his presence; (*R.* v. *Vipont*, 2 *Burr.* 1163;) or if the evidence has been taken down in his absence and is read over to him afterwards, the witness must, at the same time, (unless the defendant upon hearing the evidence should confess the fact (*R.* v. *Hall*, 1 *T. R.* 320,) be re-sworn in his presence, and not merely called upon to assert the truth of his former testimony; (*R.* v. *Crowther*, 1 *T. R.* 125;) for the intent of the rule is that the witness should be subjected to the examination of the defendant upon his oath. 2 *Burr.* 1163; *R.* v. *Kiddy*, 4 *D. & R.* 734."

What the evidence must establish.

The evidence must fully establish the offence with which the defendant is charged; as it regards the time when it was committed, the place where it was committed, and every fact and circumstance necessarily constituting the offence: for if any one of these be not proved, or cannot fairly be presumed from other facts or circumstances which have been proved, the defendant should not be convicted. See further, *post*, p. 839 to 843. Where the facts constituting an offence are all of a positive nature, there can be no doubt that they must be established in proof, by the prosecutor, before any judgment of conviction can be pronounced; but with regard to such offences as are made penal only by the want of certain qualifications in the offender, or by the absence of several exculpatory circumstances, a difficulty will sometimes occur in determining the degree of *negative* proof which ought to be required by the magistrate. *Paley*, 40; *R.* v. *Turner*, 5 *M. & S.* 206. The defendant's own representations or admissions afford a legitimate and strong ground for the conclusion; and it has been decided that justices, before whom an information was exhibited on the game laws, were justified in founding the want of the defendant's qualification upon the fact of his having sworn before them, acting in another capacity, as commissioners of the income tax, to an estate under 100*l.* a year. *R.* v. *Clark*, 8 *T. R.* 120; *Paley*, 43.

The defence.

After hearing all the evidence in support of the charge, the defendant should be called upon for his defence; and the magistrate is bound to hear the evidence tendered by him.

Besides protesting against and commenting on the validity or effect of the evidence tendered against him, the accused may defend himself by proving that he is within some proviso or exception which excuses or qualifies the fact charged, or that the act complained of was done under an asserted authority, or pursuant to a *claim of right or property*; for where the title to

Claim of right.

to *property* comes in question, the exercise of a summary jurisdiction by justices of the peace is ousted. *R.* v. *Burnaby*, 1 *Salk.* 181; 3 *Salk.* 217; 2 *Ld. Raym.* 900. This principle is not founded upon any legislative provision, but is a qualification which the law itself raises in the execution of penal statutes, and is always implied in their construction. See *Paley*, 48, 49. From the cases decided on the point, and collected in *Paley*, 48, 49, &c. it will be seen, that without entering into the substantial merits of the title set up, it is sufficient to stop the summary interference of a magistrate by conviction, that even a *colour of title* appears to be in question, and that the act was really done under an assertion of that supposed title, however weak the claim may appear to be. Thus it has been held, that the act of killing fish in a private fishery after notice given to the owner that it was done to try the right to the place in question, did not subject the party to penalties under 5 Geo. III. c. 14, s. 4, although the same title had before been tried and determined by a verdict against the party now claiming it, the act of parliament having expressly excepted persons who have a just right *or claim*. *Kinnersley* v. *Orpe*, *Dougl.* 500; see *Hunt* v. *Andrews*, 3 *B. & A.* 341. The rule, however, ought not to be so extended as to enable an offender to arrest the summary jurisdiction of the justice by a mere fictitious pretence of title. An assertion of right, therefore, is not to be regarded, where it evidently appears that no colour or pretext for it exists; as where the party's own showing or other manifest circumstances prove the claim to be wholly groundless. *Calcraft* v. *Gibbs*, 5 *T. R.* 19; *Grant* v. *Hulton*, 1 *B. & A.* 134. It is said, *per Holt*, C. J., 2 *Ld. Raym.* 901, that upon a suggestion of title, the Court of King's Bench, at any time while the conviction remains below, and has not been removed by *certiorari*, will grant a prohibition after conviction to stay the justice from proceeding upon it. See further, *post*, **Game**, Vol. II.

Claim of right.

The justice should, for his own protection, take down with great care the examination, or the material part of the examination of the witnesses, formally in writing, in the exact natural language and peculiar expressions used by the witnesses. Mere memorandums, or such minutes as may satisfy the justice at the moment, are not sufficient; for the magistrate is bound, as we shall see hereafter, (see *post*, 840,) to set out the evidence on the record of the conviction, as nearly as possible in the words used by the witnesses, and if he neglects so to do a *mandamus* lies to compel him. See *post*, *Re Rix*, 4 *D. & R.* 352; 2 *D. & R. M. C.* 249; *R.* v. *Marsh*, *id.* 260; and see *R.* v. *Warnford*, 5 *D. & R.* 489. Should therefore the justice have omitted to take regular and formal minutes of the evidence, he will have considerable, if not insurmountable difficulty in obeying such a *mandamus*; and see further as to the mode of taking down examinations, *post*, **Examination**, Vol. II.

Taking down the examination in writing.

The 7 Geo. IV. c. 64, s. 2, 3, provides that the magistrates in cases of felony and misdemeanor shall put the examination, or the material part of it, into writing. *Post*, **Examination**, Vol. II.

If the defendant pleads not guilty, and requires time for his defence, and to produce his evidence, it is reasonable, and the law seems to require that the party should be allowed a proper interval for that purpose. See *R.* v. *Stone*, 1 *East*, 469; *Paley*, 30, 31; and the hearing may, either upon the application of the defendant, or for any other cause, be adjourned to a subsequent day; taking care not to exceed the time, (if any), limited by the act for *making the conviction*. *R.* v. *Folley*, 3 *East*, 467; *R.* v. *Bellamy*, 1 *B. & Cres.* 500; *post*, **Game**, Vol. II. But if the limitation refers only to the time within which the offence must be prosecuted, (as in 29 Car. II. c. 7, and many other acts,) and not (as in the game acts, 22 & 23 Car. II. c. 25, 5 Ann. c. 14, *post*, **Game**, Vol. II.) to the time of making the conviction, then, provided the information has been laid in due time, the hearing and subsequent proceeding to judgment will be valid, though postponed to a term beyond the period mentioned in the act. *R.* v. *Barratt*, 1 *Salk.* 363; *Paley*, 32.

Adjournment.

Time of making conviction.

When the case and evidence have been heard and concluded on both sides,

The judgment.

PROCEEDINGS AT HEARING.

it remains for the magistrate to convict or acquit the party, according to his judgment upon the circumstances. The degree of credit due to the evidence on either side is entirely for his consideration In summary proceedings before a justice of peace, he is substituted for a jury, as far as relates to the conviction, that is, to the finding of the party guilty or not guilty. He should judge therefore of the guilt or innocence of the defendant from the evidence, in the same manner as if he were upon a jury: if the evidence be such as to leave no reasonable doubt upon his mind of the guilt of the defendant, he should convict him; if otherwise, he should acquit him. *R.* v. *Reason*, 6 *T. R.* 375; *R.* v. *Smith*, 8 *T. R.* 590.

The judgment.

If any reasonable doubt exist in the mind of the magistrate, the party charged is entitled to the benefit of that doubt. Such cases, it is to be recollected, differ very materially indeed from those where mere civil rights are concerned, and where the mere preponderance of evidence may be sufficient to decide the question. 2 *Stark. Ev.* 414.

It is sufficient to authorise a conviction, that there is such evidence before the magistrate as might in an action, or on an indictment, be left to a jury: and the Court of King's Bench, when the conviction is brought before it, will not examine further, to see whether the conclusion drawn by the magistrate be or be not the inevitable conclusion from the evidence. *R.* v. *Davis*, 6. *T. R.* 178. And if the magistrates think fit to dismiss the charge, although there appears *primâ facie* ground for a conviction, their acquittal cannot be questioned; since no other court can judge of the credit due to witnesses which it did not hear examined. *R.* v. *Reason*, 6 *T. R.* 376; see *R.* v. *Ridgway*, 1 *D. & R.* 132; 1 *D. & R. M. C.* 38; 5 *B. & A.* 527; *Paley*, 53; *post*, 843.

Fixed punishments.

In some cases the statute is peremptory as to the penalty or punishment, giving no discretion to the justice to lessen or vary it; and in such case the justice of course can only pursue the directions of the statute. In other cases the penalty or punishment is left in some measure in the discretion of the justice, as to the amount and nature of the penalty or punishment: in such cases he should guide his discretion according to the circumstances of the case and the condition in life of the defendant, and the circumstances of aggravation or extenuation, under which the offence is proved to have been committed. See *post*, 843, 844.

Fixing penalty.

The magistrate is not obliged to fix the penalty or punishment at the instant of conviction, but may take time, either for the purpose of informing himself of the legal penalty, or of considering the amount proper to be imposed. Therefore, though the forfeiture must necessarily appear as a part of the judgment in the conviction when formally drawn up, *post*, 837, (which will otherwise be irregular,) yet if it be ascertained and imposed at any time before the conviction is so drawn up, and appears in the record returned to the Court of King's Bench on a writ of *certiorari*, that court will not hear any objection on the ground that it was not in fact imposed by the magistrate at the time when he convicted the offender; *Ld. Raym.* 1514; 1 *Salk.* 359, for the court will not take notice of any defect which does not appear on the face of the conviction itself. *R.* v. *Liston*, 5 *T. R.* 338; *R.* v. *Cashiobury*, 3 *D. & R.* 35; 1 *D. & R. M. C.* 485; *Paley*, 53; *post*, 848, 849.

Drawing up conviction.

The conviction need not be drawn up at the time of the trial, and the conviction may be complete in operation of law before the formal instrument setting it out is drawn up. It may be drawn up at any time before a return to a *certiorari* or the sessions, though after a commitment, *Massey* v. *Johnson*, 12 *East*, 32, or after the penalty has been levied by distress. *R.* v. *Barker*, 1 *East*, 182; *Still* v. *Wells*, 7 *East*, 553; *post*, 848.

Where a magistrate in an action against him justifies under a conviction, it must be drawn up and produced at the trial. See *Bridgett* v. *Coyney*, 1 *M. & R. M. C.* 1.

As to giving a copy and returning the conviction, see *post*, 848.

...viction, we will treat of it as it affects—1st, Con-...ly, Convictions where the Form is pointed out by

of Convictions in general.

...their *General* Requisites and Construction—and ... Parts.

Convictions in general.

...ISITES AND CONSTRUCTION OF]—The conviction ...ll cases be upon parchment. (1.) General requisites and construction of.

...nd and seal of the justice; *Dalt.* c. 115; *R.* v. ...see *Basten* v. *Carew*, 5 *D.* & *R.* 558; 2 *D.* & *R.* ...610, S. C.; showing the time when it was made,

...nd figures at length. 2 *H. H.* 170; *Paley, Conv.*

...proceedings in the present tense; it may state ...v. *Hall*, 1 *T. R.* 320; *Paley*, 59.

...ses, should be in the present tense, for that is ...not of the parties. *Hall* v. *Clarke*, 1 *Mod.* 31.

...conviction are, that it should be precise and ...ecting magistrate has power to convict, that the ...y to the conviction have been duly taken, and ...ully of the offence charged upon him.

...ory, a term not easily explained or understood, ...21 to 826, and will be found further treated ...III. p. 324.

...ts have as much certainty in it as an indict-...*R.* 678; 5 *B.* & *Cres.* 251, S. C., *per*

...thing and indivisible, see *ante*, 826.

...of convictions, it was formerly more ...against this summary mode of pro- ...nnovation upon the boasted right of ... Experience, however, has taught ...rts vested in justices of the peace ...untry. Convictions now ...ive ...to be given consistent... ...ed there be a reaso... ...overing defects. ...nstrued with strict... ...be taken to be tr... ...ent certainty on t... ...ustice has been stri... ...s was created, that the ...similar to those adopt... ...e been adopted, it will suf... ...be clear, nice exceptions oug... ...141, Lord *Ellenborough* sa... ...ictions, and will intend ...v. *Denman*, 1 *Chit. Re...*

General rules of construction of convictions.

...same fact; 2 *Strs.* ... ...o that the evidence ... ...rt the charge, and ... ...ar appropriate to t... ...25, s. 57. 6 ed.

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GENERAL REQUISITES AND CONSTRUCTION OF.

it was said, that "no intendment can be made in favour of a conviction so as to get rid of an objection in point of form."

The courts will never presume injustice or impartiality in magistrates. *Skin.* 123, but give them credit to the truth of the facts stated, subject to the peril attending the wilful abuse of that credit by a false statement. 10 *Mod.* 382; *Basten* v. *Carew*, 5 *D. & R.* 558; 3 *B. & C.* 649.

Defects in form. 3 Geo. 4, c. 23.

By the third section of 3 Geo. IV. c. 23, it is enacted, "that in all cases where it appears by the conviction that the defendant has appeared and pleaded, and the merits have been tried, and that the defendant has not appealed against the conviction, where an appeal is allowed, or, if appealed against, the conviction has been affirmed, such conviction shall not afterwards be set aside or vacated, in consequence of any defect of form whatever; but the construction shall be *a fair and liberal construction*, as will be agreeable to the justice of the case." See the construction of the words *defect of form*, *post*, 848.

(2.) Particular parts of conviction.

2d. THE PARTICULAR PARTS OF A CONVICTION IN GENERAL]—The conviction, (which, as we have already seen, is a record of the summary proceedings before a justice or other convicting an offender,) in its particular parts consists of the statement of—1st, The Information, or Charge against the Defendant—2dly, The Summons or Notice of such Information, in order that he may make his defence—3dly, His Appearance or Non-Appearance—4thly, His Confession or Defence—5thly, The Witnesses and Evidence against him—6thly, The Adjournment—7thly, The Judgment or Adjudication—and 8thly, The Subscription and Date.

General form given by 3 Geo. 4, c. 23.

Before proceeding to inquire minutely as to how these statements should be made, we must notice the important act of 3 Geo. IV. c. 23, intituled "An Act to facilitate summary proceedings before justices of the peace and others," which in a great degree, to avoid the perplexity so often felt in drawing up a conviction, has provided an outline of a form to be used and filled up in all cases where the statute creating the offence, or regulating the mode of prosecuting it, has not given a specific form. The first section of the act (reciting that great inconveniences often arise in summary proceedings before justices of the peace, deputy lieutenants and others, from the want of a general form of conviction) enacts, "that from and after the passing of this act, in all cases wherein a conviction shall have taken place, and no particular form for the record thereof has been directed, the justice or justices, deputy lieutenant or deputy lieutenants, or other person or persons duly authorised to proceed summarily therein, and before whom the offender or offenders shall have been convicted, shall and may (*a*) cause the record of such conviction to be drawn up in the manner and form following, or in any words to the same effect, (*b*) *mutatis mutandis*; (that is to say,)

County [or as the case may be] *of* } *BE it remembered, that on the day of in the year of our Lord at in the county of A. B. of in the county of labourer*, [or as the case may be,] *personally came before me*, [or, *before us, &c.*] *C. D. one* [or *more*, as the case may be], *of his Majesty's justices of the peace for the said and informed me*, [or *us, &c.*] *that E. F. of in the county of on the day of at in the said did* [here set forth the fact for which the information is laid] *contrary to the form of the statute in such case made and provided, whereupon the said E. F. after being duly summoned to answer the said charge, appeared before me*, [or *us, &c.*] *on the day of at in the said and having heard the charge contained in the said information, declared he was not guilty of the said offence*, [or as the case may happen to be,] *did not appear before me*, [or *us, &c.*] *pursuant to the said summons*, [or *did neglect or refuse to make any defence against the said charge*]: *whereupon I* [or *we &c.* or, *nevertheless, I*, or *we, &c.*] *the said justice*, [or *justices*,] *did proceed to*

(*a*) The act is compulsory, and not merely directory. See *Re Rix*, 4 *D. & R.* 352, *post*, 837.

(*b*) As to these words, see *post*, 848.

PARTICULAR PARTS OF.

examine into the truth of the charge contained in the said information, and on the day of aforesaid, at the parish of aforesaid, one credible witness, to wit, A. W. of in the county of upon his oath deposeth and saith, [if E. F. be present, say, *in the presence of the said E. F.*] *that, within months* [or as the case may be] *next before the said information was made before me* [or *us, &c.*] *the said justice by the said A. B., to wit, on the day of in the year the said E. F. at in the said county of* [here state the evidence, and as nearly as possible in the words used by the witness, and if more than one witness be examined, state the evidence given by each] [or, if the defendant confess, instead of stating the evidence, say,] *and the said E. F. acknowledged and voluntarily confessed the same to be true: therefore it manifestly appearing to me* [or *us, &c.*] *that he the said E. F. is guilty of the offence charged upon him in the said information, I* [or *we, &c.*] *do hereby convict him of the offence aforesaid, and do declare and adjudge, that he the said E. F. hath forfeited the sum of of lawful money of Great Britain, for the offence aforesaid, to be distributed* [or, *paid*, as the case may be] *according to the form of the statute in that case made and provided. Given under my hand* [or, *our hands, &c.*] *and seal, the day of in the year of our Lord .*

One justice may receive information, &c.

The second section of the act enacts, that one justice, &c. may receive the original information, &c. where two or more justices are empowered to hear and determine. See the enactment, *ante*, 817.

Where the merits have been tried, convictions not to be set aside for defect of form. (*a*)

Sect. 3. "That in all cases where it appears by the conviction that the defendant has appeared and pleaded, and the merits have been tried, and that the defendant has not appealed against the said conviction where an appeal is allowed, or if appealed against, the conviction has been affirmed, such conviction shall not afterwards be set aside or vacated in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as will be agreeable to the justice of the case."

This act not to extend to Scotland.

Sect. 4. "That nothing herein contained shall extend, or be construed to extend, to that part of the United Kingdom called Scotland."

The act is compulsory.

This act is compulsory on the magistrates as to the mode of drawing up the conviction, and not merely directory; and they may be compelled by *mandamus* to adopt the form prescribed, or one like it in effect. *Re Rix*, 4 *D. & R.* 352.

Form not to be adhered to literally.

It is to be observed, however, that it is not sufficient to adhere literally to the form given by this act, where, from the nature of the case, the general terms adopted in the form do not show in reality the facts, and this observation, as will be hereafter seen, will in many cases peculiarly apply to that part of the form stating the adjudication of the penalty and its distribution. See *post*, 847. And see as to the construction and mode of drawing up forms of convictions, when the form is expressly pointed out by a statute, *post*, 846 to 848.

We will now proceed to take notice, in regular order, of the different statements in the conviction, and herein,

The information, offence, &c.

First, THE INFORMATION OR CHARGE]—The conviction must recite the information. This it usually does in the past tense, until the prayer of process against the defendant. The conviction must set out the information, and it is conceived that it should be set out exactly as it was laid before the justice, without any material variation.

We have already seen how the information, when in writing, should be framed, and especially as to the statement therein of the *time* of making it, the *place* where made, the *authority* before whom made, the *informer* making it, and the *offence* and *charge* made. Such observations will be found here applicable; for all objections that can be taken to an information, and which are not merely for a defect in form, may be taken also to this part of the conviction. See fully, *ante*, 818 to 826.

In describing the offence, therefore, all that the framer of the conviction has to do, is to follow the form of the information.

(*a*) As to a clause of this nature, see *post*, 848.

PARTICULAR PARTS OF.

Where there has been no information in writing, drawn up in *form*, and which is not unfrequently the case where it is not otherwise expressly required, and where the proceedings are not at the suit of a common informer for a penalty, the mode of stating the offence may be collected from the observations, *ante*, 818 to 826.

Where there has been *no information*, but the magistrate has convicted on his own view (as in a few instances he is authorised by statute so to do), after stating such view, the offence may be described in the mode pointed out, *ante*, 818 to 826.

The summons.

Secondly, THE SUMMONS]—The *necessity* for, the *form*, and the service of the summons upon the offender, have been already considered, *ante*, 827.

It must be stated in the conviction that the defendant was summoned to answer the information; unless in those cases (which are not many) in which particular statutes have allowed justices to convict persons without a summons, or on view of the offence, in which latter case the view must be stated.

If the offender be stated to be *present* at the time of the proceeding, and to have heard all the witnesses, and not to have asked for any further time to bring forward his defence, if he had any, this at all times has been deemed sufficient. *R.* v. *Stone*, 1 *East*, 649. See also 1 *Str.* 261, *ante*, 827.

A statement that the defendant was *duly summoned*, will now, since the form prescribed by the 3 Geo. IV. c. 23, s. 1, in all cases suffice, unless where there is another form of conviction pointed out by the statute. See 1 *Stra.* 261; 1 *East*, 639; 1 *Salk.* 383; 3 *Burr.* 1785.

Appearance or non-appearance of defendant.

Thirdly, DEFENDANT'S APPEARANCE]—The defendant's appearance or non-appearance should be stated according to the fact.

It was formerly doubted whether the justice, having summoned the defendant, might, if he did not appear, proceed to hear the evidence and convict him, in cases where the statute does not expressly give such a power: but since the case of *R.* v. *Simpson*, 1 *Str.* 44, it seems perfectly settled that a party who does not appear after regular notice may be convicted in his absence. In that case, which was a conviction for deer-stealing, it was objected, that as no appeal would lie, the justices should not have proceeded in the absence of the party, especially where it might end in a corporal punishment, as it might have done there for want of a distress. *Parker*, C. J. delivered the resolution of the court: "We are all of opinion the offender may be convicted without appearing. The statute is silent as to the method of proceeding, and the law of England, it is true, in point of natural justice always requires the party charged with an offence to be heard before he be condemned in judgment; but that rule must have this exception, unless it is through his own default: were it otherwise, every criminal might avoid conviction." *Bosc.* 60; *Paley*, 21.

If the defendant appear, he cannot afterwards take advantage of any irregularity in the summons, except indeed if it be so that it did not allow sufficient time for defence; and if he waive that objection at the time of hearing, he cannot afterwards take advantage of that particular objection on an appeal. *R.* v. *Stone*, 1 *East's Rep.* 639.

If the defendant appear by attorney, and not in person, that fact should be stated. *R.* v. *Simpson*, 1 *Stra.* 44.

Defendant's confession.

Fourthly, DEFENDANT'S CONFESSION]—If the defendant appear, and confess that he is guilty of the offence imputed to him, the appearance and confession are recorded in the conviction; and then, if it be a confession of the entire offence, instead of stating any evidence, which is quite unnecessary in such a case, the justice may at once proceed to the conviction and adjudication; but if it be a confession merely of a fact, which forms but a part of the offence charged, the conviction then, after stating the confession in the words of the defendant, proceeds to state the evidence as to the other facts and circumstances constituting the offence charged, and, lastly, states the conviction

and adjudication. See *R.* v. *Gage*, 1 *Stra.* 546; *R.* v. *Hall*, 1 *T. R.* 320; *R.* v. *Little*, 1 *Burr.* 613; *R.* v. *Smith*, 3 *Burr.* 1475.

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The confession cures any objection to the *manner* of taking the evidence; as that it was not taken in the defendant's presence, or that improper evidence was taken, or the like. *R.* v. *Clarke*, *Cowp.* 35; *R.* v. *Hall*, 1 *T. R.* 320.

Defendant's confession.

The mode of stating the confession is pointed out by the form given by the 3 Geo. IV. c. 23, *ante*, 836.

The general rule, that if the defendant confess the offence it is needless to go into the proof of it, is to be understood of a confession to the full extent of a good and sufficient information; for where either the confession does not come up to the charge in the information, or is made upon an insufficient information, it will not supply the want of evidence in the one case, or of a sufficient charge in the other. Thus, in *R.* v. *Little*, 1 *Burr.* 613, confession by the defendant of a single fact of offering to sell silk handkerchiefs without a license, was holden not sufficient to convict him of a *trading* as a hawker, pedlar or petty chapman, without license; because a *single act* of selling a parcel of silk handkerchiefs to a *particular person* is not a proof that he was such a hawker, pedlar or petty chapman, as ought to have taken out a license. Conviction quashed. *Paley*, 93. But in another conviction upon the same statute, it was alleged that the defendant was apprehended for trading *as a hawker and pedlar*, and was charged upon oath before the justice with having sold a piece of muslin *as a hawker, pedlar and petty chapman*, which fact he confessed; this was held to be sufficient to warrant a conviction for not producing a license demanded by the justice. *R.* v. *Smith*, 3 *Burr.* 1475. *Paley*, 139. *R.* v. *Corden*, 4 *Burr.* 2279, was the case of a confession of an insufficient charge; and the conviction, which was on stat. 5 Geo. III. c. 14, for preserving fish, not being on the complaint of the owner, nor showing his dissent to the fishing, and the property not being proved on oath, was quashed; and see *ante*, 830, 831.

As to the power of the justices to take the confession of the defendant, it has been determined, that though the act only empowers the justice to convict upon the oath of one or more witnesses, this implies a power to convict upon the confession of the party alone; for *per curiam*, the intent of mentioning the oath of one witness was only to direct the justices that they should not convict on less evidence. *R.* v. *Gage*, 1 *Stra.* 546.

As to what confession is sufficient, and how far magistrates should be cautious of acting on confessions, see *ante*, **Confession.**

Fifthly, THE WITNESSES AND EVIDENCE]—With respect to the mode of taking the evidence and of the competency of witnesses, see *ante*, 831, 832; *post*, **Evidence**, Vol. II. p. 64 to 78; **Examination**, Vol. II.

The witnesses and evidence.

It is requisite to name the witness, that he may appear to be a different person from the informer (*a*), as the statutes generally give the latter a share of the penalty, and therefore he cannot be a witness, excepting where the act shall specially so direct. 2 *Ld. Raym.* 1545; 1 *Stra.* 316; *Andr.* 18, 240; *Bosc.* 69. The 3 Geo IV. c. 23, *ante*, 836, requires the name of the witness to be stated.

Witness to be named.

It is sufficient to set forth in a conviction that the witness was examined on oath, without adding that the magistrate had authority to administer the oath, if the statute gives such authority. *R.* v. *Picton*, 2 *East*, 195. In *R.* v. *Glossop*, 4 *B. & A.* 616, (*b*) it was held, that from a statement that certain witnesses came before the justices upon their oaths to them severally and respectively administered, it substantially appeared that the oath was administered to the witnesses in the presence of the magistrates. In *R.* v. *Selway*, 2 *Chit. Rep.* 522, it was held unnecessary to state how the witnesses were sworn. The 3 Geo. IV. c. 23, *ante*, 836, now gives a proper precise form as to these statements.

Justice's authority to administer the oath.

The oath.

(*a*) As to when informers may or may not be witnesses, see *post*, **Evidence**, Vol. II. p. 74.

(*b*) More fully noticed, *post*, **Players**, Vol. V. p. 102.

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The witness must be sworn and examined in the defendant's presence, even though he were sworn when the information was taken: and therefore it is not sufficient in such a case to read over the informant's deposition in the presence of the defendant. *R.* v. *Crowther*, 1 *T. R.* 125.

Witness must be sworn, &c. in defendant's presence.

In the case of *R.* v. *Vipont and others*, 2 *Burr.* 1163, the conviction was that the defendants *having heard the charge*, (of conspiring to advance their wages in the woollen manufacture,) and being called upon by the justices to show cause why they should not be convicted, and having nothing to say whereby to defend themselves, are therefore convicted: this was quashed by the court; because the evidence ought to be particularly set forth, that the court may judge thereof; and it must be given in the presence of the defendant, that he may have an opportunity of cross examination. *R.* v. *Crowther*, 1 *T. R.* 127, and *R.* v. *Benwell*, 6 *T. R.* 75; *Bosc.* 71.

The 3 Geo. IV. c. 23, s. 1, requires the justice to state that the witness gave his evidence in the defendant's presence, if such was the fact, *ante*, 836.

But, though the evidence ought to be given in the presence of the defendant, if the appearance of the defendant and the examination of the witness are both stated on the same day, the court will presume that the witness was examined in the presence of the defendant, though it be not expressly so stated. 3 *Burr.* 1786; *Coup.* 241, 242; 2 *T. R.* 23; and *R.* v. *Lant*, 7 *T. R.* 152.

Even though it be stated that the appearance was at A. and the evidence was given at B. *R.* v. *Swallow*, 8 *T. R.* 284.

Where, in a conviction, the information was stated to have been laid on the 29th May, 1805, and that the defendant appeared on the 4th June, (without mentioning the year,) and it concluded by stating the conviction as signed and sealed on this 4th of June, 1805; the court held that the proceedings appeared to have been all one continuing transaction, from the appearance of the defendant after the summons to the close of the conviction, and that this appeared, both from the antecedent date of May, 1805, and the date of the conviction, to have been June, 1805, because the defendant was stated to have appeared on the 4th June, and the conviction was signed and sealed on the 4th June, 1805; and they held that it therefore appeared that the evidence was given in the defendant's presence, as his departure pending the continuance of the transaction could not be presumed. *R.* v. *Crisp*, 1 *East*, 389.

The evidence itself must be fully set forth.

The 3 Geo. IV. c. 23, s. 1, *ante*, 836, in the form therein prescribed, directs that the evidence should be stated, *as nearly as possible, in the words used by the witness, and that if more than one witness be examined, then that the evidence given by each shall be stated.* Independently of this it was previously fully settled, that in all convictions, the evidence must be set out *particularly*, not merely the *result* of it; and that sufficient proof must appear upon the face of the record to sustain every material part of the charge, and to warrant the adjudication. *R.* v. *Lovet*, 7 *T. R.* 152. It was laid down by *Lord Mansfield*, in 1 *Burr.* 1163, as an undoubted maxim, that on a conviction the evidence must be set out in order that the superior court may judge of it. It has been likewise solemnly recognized as a known distinction between orders (*a*) and convictions, that in the former it is allowed to state the result only of the evidence, whereas the same mode of stating it would be undoubtedly bad in a conviction. (*R.* v. *Lloyd*, 2 *Stra.* 999.) In a very early case (*Reg.* v. *Green*, 10 *Mod.* 212,) the conviction was quashed, because the evidence was not set forth. It was only laid that the witness was sworn *de veritate premissorum*, and that it did not appear from what was sworn to the justice that the defendant was guilty; but it was said it ought so to have appeared to the court. Again, a conviction for taking pilchards *contra formam statuti* was quashed; and the reason assigned was, because the witness swore generally that the defendant was *guilty of the premises*; for that is taking the law upon himself. *R.* v. *Baker*, 1 *Str.* 316. A conviction on the candle act was set aside, because the evidence was not set out, it being only alleged that the offence was

(*a*) See Orders, Vol. III.

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fully and duly proved. *R.* v. *Baker*, 1 *Stra.* 316; *R.* v. *Theed*, 2 *Stra.* 919; 2 *Barnard.* 16, 73. (*a*)

Setting out evidence.

In *R.* v. *Marsh*, 4 *D.* & *R.* 260, 2 *B.* & *C.* 717, S. C., it was suggested that the magistrate might have great difficulty in setting out the evidence in the words used by the witnesses, it not being usual to take the depositions in writing; but the court said it was the duty of the magistrate to take down the evidence, and give the detail of it in the conviction.

It has been held that if a conviction state *in the words of the statute* the deposition of the witness to the fact, it is sufficient; but if the magistrate endeavour to shelter himself from detection by merely stating the fact of the offence in the terms of the act of parliament, as if it were the legal effect of the evidence, when the evidence itself would not warrant the conclusion, he subjects himself to a criminal information, upon a proper case laid before the court. *R.* v. *Pearse*, 9 *East*, 358. And in *R.* v. *Allen*, cited *Paley on Conv.* by *Dowling*, 165, n. *Abbott*, C. J., said, that no witness would swear in the words of the statute, and that the court could not, on a conviction stating a witness so swore, assume that the magistrate had done his duty; and the magistrate was there ordered to draw up a fresh conviction.

Exceptions in evidence.

In those cases where the offence is created in a section in a statute, which section contains particular *exceptions*, though it is necessary to negative every one of those exceptions in the information, (*Dougl.* 331,) it has been doubted whether or not it be necessary also to negative them in the evidence given in support of the charge. In *R.* v. *Jarvis*, 1 *Burr.* 154, Mr. J. *Denison* said it was necessary to negative, by *the evidence* and adjudication, that the defendant had any of the particular qualifications to kill game, that being a conviction on the game laws. But it was determined and fully settled by the Court of King's Bench in *R.* v. *Turner*, 5 *M.* & *S.* 206, 2 *Phill. Ev.* 25, 189, that a conviction which specifically negatives the several qualifications mentioned in the statute was sufficient, without stating evidence to negative those qualifications. And see the opinions of *Lawrence*, J., and *Le Blanc*, J., in *R.* v. *Stone*, 1 *East*, 653; *R.* v. *Marsh*, 4 *D.* & *R.* 260; 2 *B.* & *C.* 717, S. C.; *Paley*, 180, 184. *Vide post*, **Game**, Vol. II.

The evidence, both in support of the information and for the defence, must be stated where it is relevant to the matter at issue. *Per Abbott*, C. J. *Re Rix*, 4 *D.* & *R.* 354.

Matter of evidence, irrelevant to the charge contained in the information, need not be stated. *Id.*

Nor need every word used by the witness. *Per Abbott*, C. J. *R.* v. *Warnford*, 5 *D.* & *R.* 490.

The justices must use their discretion in the statement, but they must attend to the general direction contained in the act 3 Geo. IV. c. 23, s. 1. *Id.*

Mandamus.

If the justices omit to state the evidence in the conviction, as we have just seen they are bound to do, the Court of King's Bench will compel them to do so by *mandamus*. In *Re Rix*, 4 *D.* & *R.* 352, where justices omitted to set out on the record of a conviction on the Building Act, the evidence adduced on the hearing of the information as nearly as possible in the words used by each of the witnesses, in pursuance of the 3 Geo. IV. c. 23, a *mandamus* was issued to compel them; and so in the case of a game conviction. 4 *D.* & *R.* 354, n.; *R.* v. *Marsh*, *id.* 260; *R.* v. *Warnford*, 5 *D.* & *R.* 489; 2 *D.* & *R. Mag. Ca.* 511; *R.* v. *Allen*, 5 *D.* & *R.* 490.

Information.

Under circumstances, if the evidence be not set forth as it was given, a criminal information or indictment might be supported against a magistrate. See *R.* v. *Peace*, 9 *East*, 358. See *post*, **Justices**, Vol. III. p. 481 to 486.

Evidence must be sufficient to warrant conviction.

The evidence, when set forth, must contain sufficient to warrant the conviction. Therefore it must be of a fact existing at the time of the information; and so it must appear. In *R.* v. *Fuller*, 1 *Ld. Raym.* 509, a conviction on stat. 8 & 9 Will. III. c. 19, for keeping two concealed washbacks

(*a*) In *orders* it seems sufficient to state the result of the evidence. *R.* v. *Killett*, 4 *Burr.* 2063, *post*, **Orders**, Vol. III.

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was quashed, because, though the information, which was given on the 30th March, charged the defendant with then having the washbacks, the evidence, which was not given until the 3d of April, was merely that the defendant *habet et custodit eadem duo et concelata vasa;* confining it to the time when the evidence was given, and of course subsequent to the day of the information.

Setting out evidence.

As to place.

So it should appear that the fact was proved to have been committed in some place within the jurisdiction of the magistrate. *R.* v. *Jeffries*, 1 *T. R.* 241; *R.* v. *Smith*, 8 *T. R.* 588.

As to time.

When a certain time is limited by statute for a summary prosecution before justices of peace, it is necessary on that account also to fix the offence to a certain date, and state the time of committing the offence in that part of the conviction in which the evidence is set forth. *Paley*, 132. For if that be not shown either by positive proof of the day, or by express reference in the evidence to a date previously mentioned, the conviction cannot be supported; as is exemplified in this case—a conviction on the Malt Act, 42 Geo. III. c. 38, s. 30, stated an information to have been exhibited on the 29th of May, 1805, charging "that the defendant within three months now last past did wet certain corn," &c. The evidence stated was, that the witness, on the 22d of May, (without mentioning the year,) found a floor of malt then in the operation, &c. (so proceeding to state the fact of the offence.) The conviction was quashed on account of the defective manner in which the date was alleged in the evidence. Lord *Ellenborough*, C. J. "The evidence ought to appear to support the information, and the justices should either have stated the evidence of the witness to be that the offence was committed on the 22d May, 1805, if they really so understood the witness to mean; or if they had any doubt of that, they should have inquired of him more particularly as to the date of the fact. But here the date of the year neither appears expressly by the evidence, nor by any words of reference to any other date which is certain. And if they have done their business slovenly, we cannot supply their omission. As it stands on the conviction, the offence does not appear to have been committed within three months before the prosecution commenced, which is necessary to give them cognizance. *R.* v. *Woodcock*, 7 *East*, 146.

It is sufficient, however, to refer to a date already mentioned and ascertained. Thus where a conviction was dated the 4th of June, and the information exhibited the 29th of May, charged the offence within three months now last past, *viz.* on the 12th of May now last past; it was held sufficient that in the evidence, the fact was sworn to have happened on the said 12th of May. *R.* v. *Crisp*, 7 *East*, 389.

Identification of offence.

The evidence must go to establish the identical offence which forms the subject of the information. It is not sufficient that there appears to be evidence of another offence of the same kind and subject to the same penalty. See *R.* v. *Smith*, 8 *T. R.* 588; *R.* v. *Harper*, 1 *D. & R.* 214; 2 *D. & R. Mag. Ca.* 67, S. C.

As to persons.

If the offence be confined to persons of a particular description, there must be competent evidence of their answering that description. *R.* v. *Little*, 1 *Burr.* 609; *R.* v. *Smith*, 3 *Burr.* 1475; *Paley*, 199, 200, *by Dowling.*

The evidence must warrant conviction.

If the evidence set forth be such as might reasonably warrant the conclusion drawn by the justices, the conviction will be good. Thus in a conviction against defendant for causing to be acted at a place called the Coburg Theatre, for gain and reward, a certain entertainment of the stage called *Richard the Third*, the evidence set forth was, that the defendant was seen once or twice at the rehearsal of the piece, and that the defendant engaged an actor to perform, and gave him a check for the amount of his benefit; it was held, that the justices were warranted in drawing the conclusion that the defendant caused the play to be acted. *R.* v. *Glossop*, 4 *B. & A.* 616.(*a*) *Et per* Lord *Kenyon*, C. J. *R.* v. *Davis*, 6 *T. R.* 178; it is sufficient in convictions, if there were such evidence before the magistrate as in an action would be sufficient to be left to a jury.

(*a*) See this case more fully noticed, *post*, **Players**, Vol. V.

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Where a power of conviction is given by statute to a magistrate, he is the sole judge of the weight of the evidence given before him, and the Court of King's Bench will not examine whether or not he has drawn a right conclusion from the evidence. But if no evidence appear on the conviction to support a material part of the information, the court will quash the conviction. *R.* v. *J. Smith*, 8 *T. R.* 588. Magistrates are to be the judges of the evidence.

Where the justices acquitted the defendant upon evidence which *primâ facie* was sufficient to convict, and there being no contradictory or explanatory evidence; the court said that the evidence given was entirely and exclusively for the consideration of the justices below, who were placed in the situation of a jury; and as they had acquitted the defendant, the court could not substitute themselves in the place of the justices acting as jurymen, and convict him. That they could not judge of the credit due to the witnesses whom they did not hear examined. That they could only look to the form of the conviction, and see that the party, if convicted, had been convicted by legal evidence. *R.* v. *Reason*, 6 *T. R.* 375, *ante*, 834.

If the defendant, when put on his defence, sets up a claim of right to the thing he is accused of taking or destroying, and there is any pretence or colour for such right, the justice ought to acquit him. *Per* Lord Chief Justice *Holt*, in *R.* v. *Speed*, 1 *Ld. Raym.* 583; *ante*, 832, 833. Claim of right.

Sixthly, THE ADJOURNMENT]—If the magistrate adjourns the hearing of the information, (and which he may do if either the defendant or the prosecutor requires time for adducing further proofs, *ante*, 833,) the fact of the adjournment should be stated in the conviction. If a certain time be limited within which the *conviction* must take place, a conviction after that period cannot be supported, though it appears on the face of it to be upon an information commenced in time, and adjourned with the consent of the defendant to a future day. *R.* v. *Tolley*, 3 *East*, 467; and see *R.* v. *Bellamy*, 2 *D. & R.* 727; 1 *B. & Cres.* 508, S. C. Adjournment.

Seventhly, THE JUDGMENT OR ADJUDICATION]—The conviction must contain a judgment and adjudication of the defendant's having been convicted, and also an adjudication of the forfeiture incurred thereby. See *Paley*, 206, 208. Even in cases where the punishment is fixed by statute there must be an adjudication; for the want of which the conviction in *R.* v. *Harris*, 7 *T. R.* 238, was quashed. The judgment or adjudication.

In that case Lord *Kenyon*, C. J. said, "a conviction is in the nature of a verdict and judgment, and therefore must be precise and certain." And it may be observed as a general rule, that the adjudication on every point to which it refers must be *precise* and *certain*, and that a judgment for too little is as bad as one for too much; and this is so whether it respect the fine, the costs, or any other portion of the penalty which lies attached to the commission of the offence. *R.* v. *Salomons*, 1 *T. R.* 251. Must be certain

The form given by the 3 Geo. IV. *ante*, 836, points out the form of the judgment.

No formal style of adjudication is necessary as in other judgments. It has been held that a judgment in these terms, *viz.* "that *R. T.* (the defendant,) according to the form of the statute, is convicted," is a sufficient adjudication that he is convicted of the offence. *R.* v. *Thompson*, 2 *T. R.* 18; see *R.* v. *Chandler*, 14 *East*, 267; *R.* v. *Jeffries*, 4 *T. R.* 768. Adjudication of conviction.

In *R.* v. *Hawkes*, 2 *Stra.* 858, a conviction for killing a deer was quashed, because it was only "he is convicted," without any judgment of *forfeiture*. And in the case of *R.* v. *Vipont and others*, 2 *Burr.* 1163, *ante*, 840, the conviction *not adjudging the forfeiture*, was for that reason, as well as the other before mentioned, determined to be ill; especially as the statute upon which the conviction was made leaves the judgment discretionary concerning the duration of the punishment, the offender being subjected to be imprisoned by the justices for any time not exceeding three months; *et vide R.* v. *Ashton*, 8 *Mod.* 175. The 3 Geo. IV. c. 23, *ante*, 836, shows that a judgment of forfeiture should be stated. Of forfeiture.

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Of punishment.

In cases where a corporeal *punishment* is assigned, the adjudication should expressly and particularly state it. *R.* v. *Vipont*, 2 *Burr.* 1163; and see *ante*, **Commitment**, p. 770, as to what is a sufficient form of adjudication in this respect.

Amount or nature of penalty or punishment.

The penalty, whether pecuniary or corporeal, must be stated with sufficient certainty as to its amount and nature, and be such as is warranted by the statute; and more strictness is required in this respect where it is discretionary. *Paley*, 221, 224. See some cases, *post*, 845, 846, as to the mode of stating the costs and charges.

Where a statute inflicts a penalty and orders the offender to be committed or set in the pillory, on failure of payment or of sufficient distress, it is sufficient to adjudge the penalty and distribution, without noticing the contingent punishment. *R.* v. *Chandler*, *Carth.* 501.

Mitigation of penalty.

The *mitigation* of penalties is not of course, but depends upon the power given to justices by particular acts of parliament to exercise their discretion in this case, within certain bounds, in the instances mentioned in those acts. It is a general rule that where a statute gives a discretionary power of mitigating a penalty, there the legislature must have intended to place the matter under the jurisdiction of justices of the peace. See *per Abbott*, C. J., *Rex* v. *Poole*, 4 *B & Cres.* 156.

A judgment for too small a penalty is as bad as a judgment for too much. *R.* v. *Salomons*, 1 *T. R.* 252.

Whenever this discretionary power of mitigating penalties is exercised, it ought to be stated in the conviction; *Paley*, 209, 210; for otherwise it cannot appear to the court upon appeal, how or in what degree the magistrate has exercised the authority with which he was invested. Thus the conviction must first adjudicate the whole penalty inflicted by the statute, and then in a separate sentence state to what inferior sum he has mitigated it; for otherwise it could not appear that he had exercised his authority in both points according to the terms of the statute. See *Dick. Sess.* 3d ed. 595, see form, *post*, 851.

Several offences or penalties.

Several Offences or Penalties]—If the information be for two or more offences, and the justice find him guilty of all, the conviction must state him to be guilty of the "offences" charged upon him in the information; if on the other hand, the justice find him guilty of one of the offences only, the conviction should state that offence specially, thus: "that he the said E. F. is guilty of the offence firstly above charged upon him in the said information, for that he the said E. F. on at did," &c. stating the offence as in the information; if the conviction in such a case were to state that the defendant was guilty of the "offence" charged, &c. it would be quashed because it would be uncertain of which of the offences he was guilty. *R.* v. *Salomons*, 1 *T. R.* 249.

It is no objection to a conviction, that the defendant has been convicted of several penalties. It is the constant practice in actions on the game laws, and not unfrequent in convictions. *R.* v. *Swallow*, 8 *T. R.* 286; *Paley*, 211. Under particular acts of parliament only one offence can be committed on the same day. As under stat. 29 Car. II. c. 7, for exercising a trade on the Lord's Day. *Crepps* v. *Durden*, 2 *Cowp.* 640. So under stat. 5 Anne, c. 14, s. 4, for keeping or using a dog or gun. *R.* v. *Matthews*, 10 *Mod.* 26; and *Marriott* v. *Shaw*, *Com.* 274; *R.* v. *Lovett*, 7 *T. R.* 152. But under stat. 12 Geo. II. c. 36, for selling books originally printed here, and afterwards reprinted abroad and imported into this country, the party may incur several penalties on the same day for several distinct acts of sale of such books here. *Brooke*, q. t. v. *Milliken*, 3 *T. R.* 509.

This question must in all these cases depend on the nature of the statute which creates the offence.

Where a statute imposes a penalty if any person or persons shall do an act prohibited, if two persons do such act together, and are jointly convicted, it is deemed but one offence, and the magistrate can inflict only one penalty. Thus in *R.* v. *Bleasdale*, 4 *T. R.* 809, where the defendants were convicted in *5l. each*, under 5 Anne, c. 14, s. 4, for using a greyhound to destroy

game without being qualified, the court, without hearing any argument, said the conviction could not be supported, for that it was only one offence, and that the magistrate should only have convicted them in one penalty. And see *R. Swallow*, 8 *T. R.* 286. But if either the penalty imposed by the statute be upon *each person* convicted, or if the particular nature or quality of the offence be such that the guilt of each of the parties be essentially distinct from that of the others, in either of these cases the parties ought to be convicted in several and distinct penalties. *R.* v. *Clarke*, *Cowp.* 610; *Crepps* v. *Durden*, *Cowp.* 640. In the construction of the Toleration Act, 1 W. & M. c. 18, s. 18, which inflicts a penalty of 20*l.* on any person or persons who may disquiet or disturb any congregation permitted by that act, it has been decided that several persons for a joint disturbance are liable to separate penalties of 20*l.* each. *R.* v. *Hube and others*, 5 *T. R.* 542. *Vide post*, **Dissenters**, Vol. I. See the cases of *R.* v. *Smith and others*, *R. & R. C. C.* 368; *R.* v. *Southern*, *Id.* 444; decided on the act against night poaching; *post*, **Game**, Vol. II.

Judgment or adjudication.

Distribution of Penalty]—In general the application of the penalty constitutes a necessary part of the judgment. The 3 Geo. IV. c. 23, s. 1, directs that the form shall state the penalty "to be distributed (or 'paid' as the case may be,) according to the form of the statute in such case made and provided;" and such an adjudication would at all events suffice where the statute giving the penalty points out the mode of its distribution without leaving it discretionary in the justice. See *Salk.* 383; *Paley*, 225. Where, however, the statute does not positively and directly fix the mode of distribution of the penalty, but leaves it in any degree uncertain or discretionary, then the precise mode of distribution should it seems be stated. *R.* v. *Dempsey*, 2 *T. R.* 96.

Distribution of penalty.

In a case where the distribution directed by the statute was part to the party aggrieved, and the remainder to the *overseers of the poor* of the parish, a distribution to the *poor of the township* was held bad, because there may be many townships in the same parish, and therefore there was uncertainty; but it was admitted if it had been general, *viz.* to be distributed as the *law directs*, it would have been sufficient, for there would not necessarily have been any uncertainty in such a case. *R.* v. *Priest*, 6 *T. R.* 538. In *R.* v. *Smith*, 5 *M. & S.* 133, the defendant was convicted on the 12 Geo. III. c. 61, s. 18, for conveying at one time a larger quantity of gunpowder than is allowed by that statute, which authorises the seizure of such gunpowder, and directs that upon conviction of the offender, the same shall be forfeited for the use of the person making the seizure. The justices having adjudged the gunpowder to be forfeited "to the use of the aforesaid J. G. the person who seized the same," without showing previously by the evidence that there had been in fact a seizure, and that he was the person seizing, the court quashed the conviction. See *post*, **Gunpowder**, Vol. II.

Costs]—With respect to *costs*, by stat. 18 Geo. III. c. 19, s. 1, "where any complaint shall be made before any of his Majesty's justices of the peace for any county, riding, division, city, town corporate, franchise, or liberty, and any warrant or summons shall issue in consequence of such complaint, that then it shall and may be lawful to and for any justice or justices of the peace, who shall have heard and determined the matter of the said complaint, to award such costs to be paid by either of the parties, and in manner and form as to him or them shall seem fit, to the party injured: and in case any person, so ordered by the said justice or justices of the peace to pay such sums of money as aforesaid, shall not forthwith pay down or give security for the same to the satisfaction of the justice or justices, it shall and may be lawful for the said justice or justices, by warrant under his hand and seal, or their hands and seals, to levy the said sum or sums by distress and sale of the goods and chattels of such person so refusing or neglecting; and where goods and chattels of such person cannot be found, to commit such person to the house of correction for the county, riding, division, city, town corporate, franchise, or liberty, wherein such person shall reside, there to be kept to

Costs and charges. 18 Geo. 3, c. 19.

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hard labour for any time not exceeding one month, nor less than ten days, or until such sum or sums of money, together with the expenses attending the commitment of such person to such house of correction, be first paid."

Judgment or adjudication as to costs.

Before this act a justice had no power to award costs unless expressly authorised by statute.

When an act gives power to a magistrate, on a summary conviction, to award the reasonable charges of taking a distress, he must ascertain the amount in the conviction; and an adjudication that the defendant shall pay the *reasonable* charges of the levy is bad. *R.* v. *Symons*, 1 *East*, 189.

If the imprisonment be not for any certain period, but generally till the payment of a fine, or the performance of some other act, the condition must be distinctly expressed, and such as is authorised by statute. If it be till payment, the sum must be fixed. Thus a conviction and commitment for a forcible entry, "there to remain till they shall have paid a fine to the king," the justices not having assessed any fine, was held to be irregular. *R.* v. *Elwell*, 2 *Ld. Raym.* 1514; *Paley*, 190; see *ante*, tit. **Commitment**, p. 770. So under stat. 6 Geo. III. c. 48, s. 1, which empowers the magistrate to commit till the penalty and charges are paid, a commitment for nine months, or until the sum of 15*l.* "together with charges previous to and attending the conviction, shall be paid," was held to be bad, for want of ascertaining the exact sum by the payment of which the defendant might be released. *R.* v. *Hall*, 1 *Comp.* 60.

The justice himself must ascertain and award the amount of the costs, and he cannot delegate that act to another, or the conviction would be vitiated. *R.* v. *St. Mary, Nottingham*, 13 *East's Rep.* 57.

The rules before laid down as to the mode of stating the forfeiture and its distribution will for the most part apply here, see *ante*, 844, 845. As to costs in general, *post*, **Costs**, Vol. I.

Levying penalties.

The conviction need not adjudge that if the penalty, &c. be not paid the offender shall be committed. See *R.* v. *Helps*, 3 *M. & S.* 331; *R.* v. *Chandler*, *Carth.* 501; *ante*, **Commitment**, p. 769, 771.

Subscription and date.

Seventhly, THE SUBSCRIPTION AND DATE]—The conviction is complete by the convicting justice or justices subscribing and sealing it, by which act it becomes a record, and without which it cannot be produced before any court for any ulterior purpose, as for appeal, &c. *Dalt.* c. 115; *R.* v. *Eleval*, 2 *Str.* 794; see *Basten* v. *Carew*, 5 *D. & R.* 558; 2 *D. & R. M. C.* 563; 3 *B. & C.* 649, S. C. It seems immaterial as to the time when the magistrate puts his subscription and seal. *R.* v. *Picton*, 2 *East*, 198; and see *R.* v. *Barber*, 1 *East*, 185, *post*, 848.

The conviction must be dated, or else it must otherwise appear when it was made. In *R.* v. *Picton*, 2 *East*, 196, it was held, that an impossible or an incongruous date, if the conviction be *complete without it*, (*id. est*, if it otherwise appear truly and properly when it was made,) may be rejected as surplusage, and will not vitiate.

V. Form of Conviction when pointed out by Statute.(a)

Form pointed out by statute.

Many of the preceding rules as to the general requisites and formal parts of convictions in general will here apply.

If a statute prescribe any particular form of conviction it is best to adhere to it strictly, adopting the very words; at all events the conviction must be according to the *intent and purpose* of the act. See *R.* v. *Priest*, 6 *T. R.* 538, *ante*, 836, 837.

Indeed some statutes are so worded in this respect that the form must be literally pursued. Thus if a statute say, "*the conviction shall be in the form following*," the direction is peremptory and must be obeyed. *R.* v. *Jefferies*, 4 *T. R.* 769.

(a) These rules and observations will generally be found in *Dickenson's Sessions*, 2d and 3d editions.

FORM POINTED OUT BY STATUTE.

In convictions directed by statutes, wherein summary forms are given, (omitting the information, summons, and evidence,) the material part begins at the word "*convicted.*" It is equally necessary in those, as it is in common law convictions, that certain essential ingredients should appear on the face of the instruments, viz. the jurisdiction of the convicting magistrate, the time, the place, and the charge, in such terms as to bring the whole within the description given of the offence in the act of parliament; also that the defendant had not any such defence as *that* may have afforded him; for, without these being evident upon the inspection of the record, the court cannot say that he has incurred the penalty, or subjected himself to the forfeiture annexed. By way of example: under the Bread Acts, if the offence be laid where an assize has been set, it will be necessary to set forth what the assize is in that place, in order to show what is the deficiency of weight; to state the time of purchasing and of weighing, in order to show that the article was found deficient within the then limited terms for trial; the species of bread, to show that the object of the complaint does not fall within the exception. *Dick. Sess.* 3d. edit. 394, 5.

Certain expressions used in the summary forms explained.

In many of the summary forms inserted in statutes, the words "*(here state the offence)*" are used; when this is the case, the offence must be described as fully as is there insisted on; *ex. gr.* the statute against combinations among journeymen manufacturers, 39 & 40 Geo. III. c. 106, gave a summary form, and in which, by way of a parenthesis, these words were inserted. On these it was decided, that agreements among these workmen *for certain* specified *purposes* being the offence to be punished, it is necessary the agreement itself should be set out in the conviction, in order to show on the face of it that it was an agreement *for the special purposes* denounced by the statute *in the very terms used therein*, so that it might appear that the magistrate had authority to convict, and that the defendants had incurred the penalty. *R.* v. *Neild*, 6 *East's Rep.* 417; *R.* v. *Hazell*, 13 *East's Rep.* 139; *Dick. Sess.* 3d edit. 595.

Alternative punishments.

Sometimes it is said in the statute that the magistrate before whom the party is convicted, (and in consequence of which conviction the alternative punishments of pecuniary penalty *or* imprisonment, according to the circumstances in each particular case, are annexed,) "shall cause the said conviction to be made out *in manner and form following*, or in any *other form* of words, *mutatis mutandis;* which conviction shall be good and effectual to all intents and purposes, without stating the *case*, the *fact*, or the *evidence in any more particular* manner." In such instances it must be even more decidedly necessary to set out the *adjudication* with *particular* precision, for otherwise, without the statement of the *case*, the *facts*, or the *evidence*, it cannot appear to the court upon the face of the conviction appealed from, which of the alternative sentences has been pronounced; what is the subject or the object of the appeal; and what is the judgment they have to confirm or to reverse.

Blanks.

Where a blank is left for inserting the offence, the same accuracy is requisite in the description of it as in other cases. *R.* v. *Hazell*, 13 *East*, 139.

Titles of acts.

In some of these statutable forms the titles of acts are ordered to be set forth thus, "*(here set forth the title of the act).*" Wherever these directions occur they must be strictly complied with; that is to say, no word must be omitted or changed, lest such omission or alteration should make the whole taken together convey a different meaning from what was the design of the act. *Mills* v. *Wilkins*, 2 *Salk.* 609; *Dick. Sess.* 595, 3d edit.

Distribution of penalty.

In some cases it is necessary that the conviction should be *more particular* than even the words inserted in the statute itself. Thus where a statute leaves it discretionary in the justices to distribute the penalty in such proportions as they shall think fit, the distribution forms part of the judgment, and must therefore appear expressly on the conviction itself, although the statute gives a form of conviction stating generally the penalty "to be distributed according to the form of the statute in that case made and provided." *R.* v. *Dempsey*, 2 *T. R.* 96; and see *Dick. Sess.* 2d edit. 701; 3d ed. 591; *R.* v. *Barrett*, 1 *Salk.* 383; *R.* v. *Helps*, 3 *M. & S.* 331.

If a statute direct the conviction of any offence under it to be drawn up according to an annexed form, or *to the effect thereof*, and the convicting justice, *beside all* the requisites indicated by the statute itself, unnecessarily

FORM POINTED OUT BY STATUTE.

insert other particulars beyond what are absolutely necessary, they do not vitiate the instrument or invalidate its effect. *R.* v. *Jefferies*, 4 *T. R.* 768; *Massey* v. *Johnson*, 12 *East's Rep.* 67; and see further as to surplusage, *ante*, 826.

Surplusage.

Enactment as to defects in form being cured.

Although, as is often the case, the act directs "that no conviction under the act shall be set aside for defect in form or through the mistake of any fact, circumstance, or other matter, provided the material facts alleged be proved," yet, notwithstanding these words, every material fact must be alleged, and the omission, if any, is not aided by reference to such clause. *R.* v. *Jukes*, 8 *T. R.* 536. Lord *Kenyon*, in allusion to a provision in the terms just mentioned, says, with regard to the section in the act that no conviction shall be quashed for want of form, "I confess I am not able to understand it as applied to proceedings removed into this court. It enacts that no conviction on this act, (36 Geo. III. c. 60, s. 11,) shall be set aside by any court for want of form, or through the mistake of any fact, circumstance, or other matter whatsoever, provided the material facts alleged in such conviction, and upon which the same shall be grounded, be proved to the satisfaction of the court. I can understand it as far as respects the proceedings before the sessions by way of appeal. On an appeal the whole case is gone into, evidence is to be given to support the conviction, and then it may be known whether the material facts alleged in such conviction, and upon which the same shall be grounded, be proved to the *satisfaction of the court*. But when the conviction is removed here by *certiorari*, I do not understand how we can inquire into those facts." 8 *T. R.* 540.

VI. Proceedings after Conviction.

Copy of conviction.

Copy of Conviction]—A justice ought to give the defendant a copy of the conviction if he demands it, for it is a record, and he is entitled to it. *R.* v. *Midlam*, 3 *Burr.* 1720.(*a*)

It seems, however, that a defendant is not entitled, as of right, to have a copy of a conviction to enable him to appeal against it at the sessions for any matter of mere form, or to pick holes in it without regard to the merits. *R.* v. *Justices of Huntingdon*, 5 *D. & R.* 588; 2 *D. & R. M. C.* 594, S. C.

The copy, however, given is not to be conclusively taken as the true copy, at least so far as regards mere formal defects, for the court will notice only the record of the conviction returned by the magistrates. The defendant should, therefore, be cautious not to rely on mere formal defects in the copy given him. In a case where the sessions, upon proof that the appellant had received from the clerk of the convicting magistrates a copy of his conviction, signed and sealed by such justices, purporting on the face of it to have been made *upon the information of B. and C.*, (though such copy was drawn upon the back of the paper which contained the information of A., (the true informer B. and C. being only the witnesses who had been examined in support of the charge,) and though the same justices had returned to the sessions to be filed of record a regular conviction of the same date, signed and sealed by them, on parchment, stating it to have been made on the information of A., and supported by the evidence of B. and C., according to the truth of the case,) had quashed the latter conviction so returned by the justices, as being at variance with the minutes of the conviction delivered to the appellant, without entering into the merit of the case, upon a preliminary objection taken by the appellant, the Court of King's Bench quashed the order of sessions generally, thereby setting up again the registered conviction, considering that the variance arose from the mere mistake and irregularity of the justice's clerk, and that the appellant was not really surprised by it, but had received his appeal on the merits. *R.* v. *Allen*, 15 *East*, 332.

Conviction may be drawn up after penalty levied.

A conviction may be drawn up after the penalty has been levied. This was decided in *R.* v. *Barker*, 1 *East*, 186. On a motion by *Gibbs* and *Best* for a criminal information against the mayor of the borough of Great Yarmouth, for returning to a writ of *certiorari* a conviction of a party in

(*a*) As to the defendant's right to a copy of the record of an indictment against him, see **Indictment**, Vol. III. p. 357.

another and more formal shape than that in which it was first drawn up, and of which a copy had been delivered to the party convicted by the magistrate's clerk, Lord *Kenyon*, C. J. said, "If the magistrate has done no more than return the conviction in a more formal shape, instead of sending it up in the informal manner in which it was first drawn, and supposing that the facts as they really happened will warrant him in the return he has now made, I am of opinion, that it was not only legal but laudable in him to do as he has done; and he would have done wrong if he had acted otherwise. It is a matter of constant experience for magistrates to take minutes of their proceedings without attending to the precise form of them at the time when they pronounce their judgment, to serve as memorandums for them to draw up a more formal statement of them afterwards, to be returned to the sessions, and it is by no means unusual to draw up the conviction in point of form after the penalty has been levied under the judgment, nor is there any legal objection to this method, provided the facts will warrant them in stating what they do. It is no answer to say that a party convicted may be thereby induced to incur an unnecessary expense in suing out a *certiorari*, to get rid of an informal conviction; for a mere informality, in the manner of drawing up a conviction, ought not to be the inducement for removing it into this court, but some substantial defect in the justice and legality of the proceeding itself before the magistrate." And see *R.* v. *Js. of Huntingdon*, 5 *D. & R.* 588; 2 *D. & R. M. C.* 594, S. C.; *Massey* v. *Johnson*, 12 *East*, 32; *ante*, 834, 846.

Return of conviction to session.

RETURN OF CONVICTION]—In all cases a justice of the peace ought to return a conviction by him to the sessions, whether the party appeal or not, or whether an appeal is or is not given, that the crown may not be deprived of its share of forfeitures, as also for other reasons. *R.* v. *Eaton*, 2 *T. R.* 285.

In cases of convictions under the late acts, for larceny or malicious injuries to property, it is enacted, that every justice of the peace, before whom any person shall be convicted of any offence against these acts, shall transmit the convictions to the next court of general or quarter sessions, which shall be holden for the county or place wherein the offence shall have been committed, there to be kept by the proper officer among the records of the court. 7 & 8 Geo. IV. c. 29, s. 74; 7 & 8 Geo. IV. c. 30, s. 40.

In other statutes also the return of the conviction is particularly pointed out and directed, and especially in cases where a *second* conviction is to be visited by a severer judgment, because in such cases the first conviction, or a true copy thereof as returned and filed by the clerk of the peace, is usually declared to be sufficient evidence of the former conviction.

It seems that in all cases where a conviction is necessary, if the convicting justice, after receiving due notice of appeal, neglect to return the conviction, whereby the party is prevented from prosecuting his appeal, independently of any other punishment for such misdemeanor in his office, he is liable to an action for damages. See *R.* v. *Medlam*, 3 *Burr.* 1720.

Erroneous acquittal.

ERRONEOUS ACQUITTAL]—An acquittal by the justices is conclusive, and cannot be reversed by the Court of King's Bench, or otherwise, and that is so even though the justices state in return to a *certiorari* evidence which *primâ facie* is sufficient to convict. *R.* v. *Reason*, 6 *T. R.* 575, *ante*, 834; and see **Evidence**, Vol. II. p. 52.

ERRONEOUS CONVICTION]—An erroneous conviction may be set right by appeal or *certiorari*. See titles **Appeal**, **Certiorari**, *ante*.

Erroneous conviction.

A justice of the peace cannot be compelled to enforce an erroneous conviction where the error is in matter of *substance*, therefore he cannot be compelled to issue a warrant to levy the penalty adjudged; for where a mandamus was directed to a justice of the peace, commanding him to levy, or cause to be levied, a certain penalty, in a certain conviction, against T. L. the justice returned, "that the defendant was convicted of the penalty before him, (setting forth the manner and occasion,) but that the conviction was invalid in law, and was not a conviction of any offence for which the penalty was

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payable, or could be legally levied." *Per Curiam.* "The return to the mandamus is good and sufficient; for although when a justice has once fairly convicted a man he ought to proceed to enforce that conviction, yet if it be altogether a nullity the justice is not bound to proceed further in order to subject himself to damages." It is, however, otherwise if the error be merely *formal*. *R.* v. *Robinson*, 2 *Smith's Rep.* 274; *Dick. Sess.* 590, 3d ed.

Appeal, certiorari, and habeas corpus.

As to appeals and writs of habeas corpus and certiorari, see *ante*, **Appeal**; **Certiorari**; and *post*, **Habeas Corpus**, Vol. II.

Enforcing conviction.

As to the mode of enforcing the conviction, see *ante*, **Commitment in Execution**, p. 768; *post*, **Distress**, Vol. I.; **Fines**, Vol. II.; **Recognizance**, Vol. V.

Liability of magistrates, &c.

As to the liability of magistrates and officers, see **Constables**, *ante*, 804; *post*, **Justices**, Vol. III. p. 481, 487; and as to how far the conviction will protect them, see *post*, **Evidence**, Vol. II. p. 51, 52.

Forms.

(No. 1.)

General form of information on a penal statute. (*a*)

Kent } [The venue.] *BE it remembered, that on the day of* in the year
to wit. } *of our Lord* *at* *in the said county, C. D. of* in the county
aforesaid, [*labourer,*] [*who, as well for our sovereign lord the King,* or *who as well for*
the poor of the parish of *in the said county, as for himself, doth prosecute* in this
behalf,] (*b*) *personally cometh before me J. P. one of his Majesty's justices of the peace*
for the said county, and [*as well for our said lord the King,* or *the poor of the said pa-*
rish, as for himself,] *informeth me that A. B. late of the parish of* in the county
aforesaid, [*labourer,*] *within the space of six months* [or whatever time is limited by
the statute,] *now last past, to wit, on the day of* *in the year aforesaid, at*
the parish of *in the county aforesaid*; [here state the facts and circumstances
constituting the offence, as directed, *ante*; see the various titles of offences]:
contrary to the form of the statute in such case made and provided; whereby, and by
force of the statute in such case made and provided, the said A. B. hath forfeited for the
said offence the sum of * *Wherefore the said C. D.* [*who sueth as aforesaid,*]
prayeth the consideration of me the said justice in the premises, and that the said A. B.
may be convicted of the offence aforesaid, [*and that one moiety of the said forfeiture*
may be adjudged to our said lord the King, and the other moiety thereof to the said
C. D. according to the form of the statute in that case made and provided]; *and that*
the said A. B. may be summoned to appear before me or some other justice, and answer
the premises, and make his defence thereto. J. P.

(No. 2.)

The like, stating several offences. (*c*)

[Proceed as in the above form to the asterisk, and then state the second or subsequent offence, thus]: *And also that the said A. B, on* *at, &c.* [stating the offence as directed in the above form to the asterisk, and conclude the information as in the above form,] *wherefore the said C. D. &c.*

(No. 3.)

General form of a summons.

County of } *To the Constable of* *in the county of*

WHEREAS information and complaint have been made before me J. P. Esquire,
one of his Majesty's justices of the peace for the said county, that A. O. of in the
county aforesaid, [*labourer,*] *on the day of* *now last past, at* in the
county aforesaid, did [here set forth the offence as charged in the information]:
These are therefore to require you forthwith to summon the said A. O. to appear before me
at *in the said county, on the day of* *at the hour of* in
the *noon of the same day, to answer to the said information and complaint, and to*
be further dealt with according to law. And be you then there to certify what you shall
have done in the premises. Herein fail you not. Given under my hand and seal this
day of *in the year of our Lord* . J. P.

(*a*) See the observations as to the form of the information, *ante*, 818 to 826.

(*b*) If the penalty is given wholly to the informer, omit these words between brackets, and the other parts of the information not applicable to such a case.

(*c*) That several offences may be joined, see *R.* v. *Swallow*, 8 *T. R.* 286, *ante*, 844.

FORMS.

(No. 4.)

Summons of a witness.

County of } *To the Constable of*

WHEREAS information hath been made before me J. P. Esquire, one of his Majesty's justices of the peace for the said county, that [here set forth the substance of the complaint]; *and that A. W. of in the said county,* [*yeoman,*] *is a material witness to be examined concerning the same; these are therefore to require you to summon the said A. W. to appear before me at in the said county, on the day of at the hour of in the noon of the same day, to testify his knowledge concerning the premises. Herein fail you not. Given under my hand and seal, the day of in the year of the reign of . J. P.*

(No. 5.)

General form of conviction where the defendant appears and pleads or refuses to make a defence. (a)

County [or as the case may be] } *BE it remembered, that on the day of in the year of our Lord at in the* [*county*] *of A. B. of in the county aforesaid* [*labourer,*] *personally came before me, J. P. one* [or *us two*, &c.] *of his Majesty's justices of the peace for the said county, and informed me,* [or *us,*] *that C. D. of in the county of on the day of in the year aforesaid, at in the said did* [here set forth the fact for which the information is laid, *ante*, 818 to 826,] *contrary to the form of the statute in such case made and provided. Whereupon the said C. D. after being duly summoned,* [ante, 827,] *to answer the said charge, appeared before me,* [or *us,*] *on the day of instant, at in the said and having heard the charge contained in the said information,* [*declared he was not guilty of the said offence, or did neglect and refuse to make any defence against the said charge.*] *Whereupon I,* [or *us,*] *the said justice,* [or *justices,*] *did proceed to examine into the truth of the charge contained in the said information: and on the day of aforesaid, at aforesaid, one credible witness, to wit, E. F. of in the county of upon his oath deposeth and saith, in the presence of the said C. D. that* [here state the evidence, and as nearly as possible in the words used by the witness, *ante*, 839 to 843; and if more than one witness be examined, state the evidence given by each, thus]: *and one other credible witness, to wit, G. H. of in the county of upon his oath deposeth and saith, in the presence of the said C. D. that* [&c. stating his evidence, as noted on, *ante*, 839 to 843]; *and also a witness, produced and examined on the part of the said C. D. to wit, I. K. of in the county of upon his oath deposeth and saith, that,* [&c. stating his evidence.] *Therefore, it manifestly appearing* to me,* [or *us,*] *that he the said C. D. is guilty of the offence charged upon him in the said information, I,* [or *us,*] *do hereby convict him of the offence aforesaid,* [ante, 843,] *and do declare and adjudge that he the said C. D. hath forfeited* [ante, 843,] *the sum of of lawful money of Great Britain, for the offence aforesaid, to be distributed,* [ante, 845,] [or *paid*, as the case may be,] *according to the form of the statute in that case made and provided; [and also that the said C. D. shall forthwith pay unto the said A. B. the further sum of for his costs and charges,* [ante, 845,] *by him the said A. B. about the prosecution in this behalf expended.*] *Given under my hand and seal,* [or, *our hands and seals,*] *the day of in the year of our Lord J. P.*

(No. 6.)

The like where imprisonment or hard labour is added.

[Proceed as directed in the above form (No. 5), and state the adjudication thus]: *do declare and adjudge that the said C. D. for his said offence be imprisoned in the* [*there to be kept to hard labour,*] *for the space of calendar months. Given under my hand, &c.*

(No. 7.)

The like where a mitigation of penalty.

[Proceed as directed in the above form (No. 5), and state the adjudication thus]: *do declare and adjudge that the said C. D. hath forfeited for his said offence the sum of of lawful money of Great Britain, the one moiety thereof to the use of and the other moiety to* [the informer, or as the statute directs,] *according to the form of the statute in such case made and provided. And I the said justice, seeing cause to mitigate or lessen the said penalty, do at the request of the said defendant, according to the statute, mitigate and lessen the same to the sum of over and above the reasonable costs and charges of the said informer, by him laid out and expended in and about the said information, &c. to be distributed and go and be applied, one moiety thereof to, &c.* [as before,] *and the other moiety to, &c. and which costs and charges of the said A. B. the said*

(a) The 3 Geo. IV. c. 23, s. 1, *ante*, 836, prescribes this general form of conviction.

FORMS.

payable, or could be legally levied." *Per Curiam.* "The return to the mandamus is good and sufficient; for although when a justice has once fairly convicted a man he ought to proceed to enforce that conviction, yet if it be altogether a nullity the justice is not bound to proceed further in order to subject himself to damages." It is, however, otherwise if the error be merely *formal*. *R.* v. *Robinson*, 2 *Smith's Rep.* 274; *Dick. Sess.* 590, 3d ed.

Appeal, certiorari, and habeas corpus.

As to appeals and writs of habeas corpus and certiorari, see *ante*, **Appeal**; **Certiorari**; and *post*, **Habeas Corpus**, Vol. II.

Enforcing conviction.

As to the mode of enforcing the conviction, see *ante*, **Commitment in Execution**, p. 768; *post*, **Distress**, Vol. I.; **Fines**, Vol. II.; **Recognizance**, Vol. V.

Liability of magistrates, &c.

As to the liability of magistrates and officers, see **Constables**, *ante*, Vol. I. *post*, **Justices**, Vol. III. p. 481, 487; and as to how far the conviction will protect them, see *post*, **Evidence**, Vol. II. p. 51, 52.

Forms.

(No. 1.)

General form of information on a penal statute. (*a*)

Kent } [The venue.] *BE it remembered, that on the day of* in the year *to wit.* } *of our Lord at in the said county, C. D. of* in the county *aforesaid,* [*labourer,*] [*who, as well for our sovereign lord the King,* or *who as well for the poor of the parish of in the said county, as for himself, doth prosecute in this behalf,*] (*b*) *personally cometh before me J. P. one of his Majesty's justices of the peace for the said county, and* [*as well for our said lord the King,* or *the poor of the said parish, as for himself,*] *informeth me that A. B. late of the parish of* in the county *aforesaid,* [*labourer,*] *within the space of six months* [or whatever time is limited by the statute,] *now last past, to wit, on the day of in the year aforesaid, at the parish of in the county aforesaid*; [here state the facts and circumstances constituting the offence, as directed, *ante*; see the various titles of offences] *contrary to the form of the statute in such case made and provided; whereby, and by force of the statute in such case made and provided, the said A. B. hath forfeited for the said offence the sum of* * *Wherefore the said C. D.* [*who sueth as aforesaid*] *prayeth the consideration of me the said justice in the premises, and that the said A. B. may be convicted of the offence aforesaid,* [*and that one moiety of the said forfeiture may be adjudged to our said lord the King, and the other moiety thereof to the said C. D. according to the form of the statute in that case made and provided*]; *and that the said A. B. may be summoned to appear before me or some other justice, and answer the premises, and make his defence thereto.* J. P.

(No. 2.)

The like, stating several offences. (*c*)

[Proceed as in the above form to the asterisk, and then state the second or subsequent offence, thus]: *And also that the said A. B, on at, &c.* [stating the offence as directed in the above form to the asterisk, and conclude the information as in the above form,] *wherefore the said C. D. &c.*

(No. 3.)

General form of a summons.

County of } *To the Constable of in the county of*

WHEREAS information and complaint have been made before me J. P. Esquire one of his Majesty's justices of the peace for the said county, that A. O. of in the county aforesaid, [*labourer,*] *on the day of now last past, at in the county aforesaid, did* [here set forth the offence as charged in the information]. *These are therefore to require you forthwith to summon the said A. O. to appear before me at in the said county, on the day of at the hour of in the noon of the same day, to answer to the said information and complaint, and to be further dealt with according to law. And be you then there to certify what you shall have done in the premises. Herein fail you not. Given under my hand and seal this day of in the year of our Lord .* J. P.

(*a*) See the observations as to the form of the information, *ante*, 818 to 826.

(*b*) If the penalty is given wholly to the informer, omit these words between brackets, and the other parts of the information not applicable to such a case.

(*c*) That several offences may be joined, see *R.* v. *Swallow*, 8 *T. R.* 286, *ante*, 844.

FORMS.

(No. 4.)

Summons of a witness.

County of } *To the Constable of*

WHEREAS information hath been made before me J. P. Esquire, one of his Majesty's justices of the peace for the said county, that [here set forth the substance of the complaint]; *and that A. W. of in the said county,* [*yeoman,*] *is a material witness to be examined concerning the same; these are therefore to require you to summon the said A. W. to appear before me at in the said county, on the day of at the hour of in the noon of the same day, to testify his knowledge concerning the premises. Herein fail you not. Given under my hand and seal, the day of in the year of the reign of . J. P.*

(No. 5.)

General form of conviction where the defendant appears and pleads or refuses to make a defence. (*a*)

County [or as the case may be] *of* } *BE it remembered, that on the day of in the year of our Lord at in the* [*county*] *of A. B. of in the county aforesaid* [*labourer,*] *personally came before me, J. P. one* [or *us two,* &c.] *of his Majesty's justices of the peace for the said county, and informed me,* [or *us,*] *that C. D. of in the county of on the day of in the year aforesaid, at in the said did* [here set forth the fact for which the information is laid, *ante,* 818 to 826,] *contrary to the form of the statute in such case made and provided. Whereupon the said C. D. after being duly summoned,* [ante, 827,] *to answer the said charge, appeared before me,* [or *us,*] *on the day of instant, at in the said and having heard the charge contained in the said information,* [*declared he was not guilty of the said offence,* or *did neglect and refuse to make any defence against the said charge.*] *Whereupon I,* [or *us,*] *the said justice,* [or *justices,*] *did proceed to examine into the truth of the charge contained in the said information: and on the day of aforesaid, at aforesaid, one credible witness, to wit, E. F. of in the county of upon his oath deposeth and saith, in the presence of the said C. D. that* [here state the evidence, and as nearly as possible in the words used by the witness, *ante,* 839 to 843; and if more than one witness be examined, state the evidence given by each, thus]: *and one other credible witness, to wit, G. H. of in the county of upon his oath deposeth and saith, in the presence of the said C. D. that* [&c. stating his evidence, as noted on, *ante,* 839 to 843]; *and also a witness, produced and examined on the part of the said C. D. to wit, I. K. of in the county of upon his oath deposeth and saith, that,* [&c. stating his evidence.] *Therefore, it manifestly appearing to me,* [or *us,*] *that he the said C. D. is guilty of the offence charged upon him in the said information, I,* [or *us,*] *do hereby convict him of the offence aforesaid,* [ante, 843,] *and do declare and adjudge that he the said C. D. hath forfeited* [ante, 843,] *the sum of of lawful money of Great Britain, for the offence aforesaid, to be distributed,* [ante, 845,] [or *paid,* as the case may be,] *according to the form of the statute in that case made and provided;* [*and also that the said C. D. shall forthwith pay unto the said A. B. the further sum of for his costs and charges,* [ante, 845,] *by him the said A. B. about the prosecution in this behalf expended.*] *Given under my hand and seal,* [or, *our hands and seals,*] *the day of in the year of our Lord J. P.*

(No. 6.)

The like where imprisonment or hard labour is added.

[Proceed as directed in the above form (No. 5), and state the adjudication thus]: *do declare and adjudge that the said C. D. for his said offence be imprisoned in the* [*there to be kept to hard labour,*] *for the space of calendar months. Given under my hand, &c.*

(No. 7.)

The like where a mitigation of penalty.

[Proceed as directed in the above form (No. 5), and state the adjudication thus]: *do declare and adjudge that the said C. D. hath forfeited for his said offence the sum of of lawful money of Great Britain, the one moiety thereof to the use of and the other moiety to* [the informer, or as the statute directs,] *according to the form of the statute in such case made and provided. And I the said justice, seeing cause to mitigate or lessen the said penalty, do at the request of the said defendant, according to the statute, mitigate and lessen the same to the sum of over and above the reasonable costs and charges of the said informer, by him laid out and expended in and about the said information, &c. to be distributed and go and be applied, one moiety thereof to, &c.* [as before,] *and the other moiety to, &c. and which costs and charges of the said A. B. the said*

(*a*) The 3 Geo. IV. c. 23, s. 1, *ante,* 836, prescribes this general form of conviction.

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informer, I, [or we,] do allow, assess, and adjudge to him, at the sum of of his lawful money, according to the statute in that case made and provided, &c.

(No. 8.)

Conviction where the defendant appears and confesses.

County [as the case may be] *of* } *BE it remembered, that on the day of in the year of our Lord at in the county of A. B. of in the county aforesaid, [labourer,] personally came before me J. P. one of his Majesty's justices of the peace for the said county, and informed me that C. D. of in the county of on the day of in the year aforesaid, at in the said county, did* [here set forth the fact for which the information is laid]; *contrary to the form of the statute in such case made and provided. Whereupon the said C. D. after being duly summoned to answer the said charge, appeared before me on the day of instant, at in the said county; and having heard the charge contained in the said information, acknowledged and voluntarily confessed the same to be true. Therefore, it manifestly appearing, &c.* [as in the first form, from the * to the end.]

(No. 8.)

Conviction where the defendant does not appear.

County [as the case may be] *of* } *BE it remembered, that on the day of in the year of our Lord at in the county of A. B. of in the county of [labourer,] personally came before me J. P. one of his Majesty's justices of the peace for the said county, and informed me that C. D. of in the county aforesaid, on the day of in the year aforesaid, at in the said county, did* [here set forth the fact for which the information is laid]: *contrary to the form of the statute in such case made and provided. Whereupon the said C. D. after being duly summoned to answer the said charge, did not appear before me pursuant to the said summons; nevertheless I, the said justice, did proceed to examine into the truth of the charge contained in the said information, and on the day of aforesaid, at aforesaid, one credible witness, to wit, E. F. of in the county of upon his oath deposeth and saith, that* [here state the evidence, and as nearly as possible in the words used by the witness; and if more than one witness be examined, state the evidence given by each, thus]: *and one other credible witness, to wit, G. H. of in the county of upon his oath deposeth and saith, that* [stating his evidence.] *Therefore, it manifestly appearing, &c.* [as in the first form, from the * to the end.]

Copy of Conviction. *See ante*, p. 848.

Copy of Indictment. *See* **Indictment**, Vol. III. p. 356. 357.

Copy of Writings, &c. *When evidence. See* **Evidence**, Vol. II. p. 25 to 28.

Copyhold. *Forfeiture of, on conviction. See* **Forfeiture**, Vol. II. *Forcible entry into. See* **Forcible Entry**, Vol. II. *In general statutes do not extend to. See* **Statute**, Vol. V. p. 649.

Cordage for Shipping.

I. *Cordage for Shipping*, 852.
[25 Geo. III. c. 56.]

II. *Stores of War.* See *post*, **Stores**, Vol. V.

I. Cordage for Shipping.

By the 25 Geo. III. c. 56, s. 2, no person, after the 25th July, 1785, shall use, in the making of cables, hawsers, or other ropes for the use of shipping, or knowingly sell the same, in the manufacturing whereof there shall be used any hemp, usually known by the names of short chucking, half clean, whale line, or other toppings, cordilla, damaged hemp bought at a public or other sales, or any hemp from which the staple part thereof shall have been taken away by the manufacturer; on pain of forfeiting (if he be the manufacturer thereof) such cable, hawser, or other rope, and treble the value thereof; and the vender thereof, knowingly, (and not being the manufacturer,) shall forfeit treble the value thereof.

25 Geo. 3, c. 56.

Short chucking, &c. not to be used in making cordage for shipping.

By sect. 3 & 4. For better distinguishing the quality of such cables, &c. whenever the same shall be manufactured in whole or in part of any hemp, the use whereof is not prohibited by this act, and the quality whereof shall be inferior to clean Petersburgh hemp, the same shall be deemed *inferior cordage*, and the maker shall distinguish the same by running from end to end of each cable three tarred mark-yarns, spun with turn contrary to that of rope yarn, and also one like tarred yarn in every other rope for the use of shipping; and shall mark or write on a tally to be affixed thereon the word *staple* or *inferior* (as the case shall be), and also his name signed by himself or his attorney, together with the name of the place where manufactured; and in default thereof every such manufacturer shall for every offence forfeit 10*s*. for every hundred weight.

Cordage to be distinguished as *staple* and *inferior*.

And maker's name to be affixed.

Sect. 5. And if any rope-maker shall wilfully and knowingly permit or suffer his name to be put as aforesaid on the tally of any cable, &c. not being of his own proper manufacturing; or if the vender or proprietor of any such cable, &c. or any other person whomsoever wilfully and knowingly mark upon the tally affixed thereon the name of any person, not being the manufacturer thereof, he shall forfeit 20*l*.

Penalty on putting a false name on cordage.

Sect. 6. And if any person shall make any cables of any old or worn stuff, which shall contain above seven inches in compass, he shall forfeit four times the value thereof.

Penalty on making cables of old stuff.

Sect. 8. And when any ship belonging to any of his Majesty's subjects resident in Great Britain or in the British colonies shall come into any port in this kingdom, the master at the time of making his entry at the custom-house shall make entry on oath of all foreign made cordage on board, for which no duties have been paid (standing and running rigging in use excepted); and such master shall, before such ship be cleared inwards, where any discharge shall be made of her lading, pay for such foreign made cordage, as shall be specified or mentioned in the said entry, the like duties as by the laws now in being are charged upon foreign made cordage imported into this kingdom; and if such master shall make default herein, such foreign made cordage on board such ship shall be forfeited, and he shall also forfeit 20*s*. for every hundred weight thereof.

Importing cordage.

Sect. 9 & 10. But the same shall not extend to cordage brought from the East Indies; nor to the materials at present in the use of any ship built abroad before the passing of this act, the property of any British subject.

Sect. 7. All pecuniary penalties or forfeitures by this act imposed exceeding 5*l*. are to be recovered in the courts of Westminster; if not exceeding 5*l*. the same may be levied by distress, by one justice, on the oaths of *two* witnesses; and if sufficient distress cannot be found, such justice shall commit the offender to the common gaol or house of correction for any time not exceeding three calendar months, nor less than seven days, or until such penalty and all costs and charges attending the same shall be paid. And all such penalties and forfeitures, and also all cordage which shall be forfeited, shall be paid and delivered to the person who shall sue, who may sell or otherwise dispose of such cordage (after being cut into lengths not exceeding twelve feet) to his own use.

Penalties how to be recovered and applied.

Sect. 11. Provided, that if any person shall think himself aggrieved by any thing done in pursuance of this act, and for which no particular method of

Appeal.

CORDAGE FOR SHIPPING.

relief is appointed, he may, within four months after such matter done, appeal to the sessions, giving fourteen days' notice, in writing, of his intention to appeal and the matter thereof to the person appealed against, and within four days after giving such notice entering into recognizance before some justice for the county, city, or place, with two sureties, to try such appeal, and abide the order, and pay such costs as shall be awarded at such sessions; and on due proof of such notice, the justices at such sessions shall hear and finally determine such appeal, and award such costs as they shall think proper.

Proceedings not to be quashed, nor distress unlawful for want of form.

Sect. 12. And no order, verdict, judgment, or other proceeding shall be quashed for want of form only, or be removed by *certiorari*, or any other writ or process whatsoever; and where any distress shall be made, it shall not be deemed unlawful, nor the party making the same trespassers *ab initio* for want of form or any irregularity; but the persons aggrieved may recover damages in an action on the case, provided sufficient amends have not been made before action brought.

Stores of war.

As to *stores of war*, see *post*, **Stores**, Vol. V.

Copper. *Stealing of.* *See* **Larceny**, Vol. III. p. 567, 564.

Corn.

I. *The Measure of Corn: Corn Rents*, 854.

II. *Cutting Corn growing, or burning Stacks of Corn*, 854.

III. *Ascertaining the Price of Grain for regulating the Importation and Exportation*, 855 to 870.

IV. *Obstructing the free Passage of Corn*, 870.

I. The Measure of Corn.—Corn Rents.

Buying corn in the sheaf without measuring.

To buy or sell corn in the sheaf, before it is threshed and measured, is against the common law of England; and the reasons thereof seemeth to be for that by such sale the market is in effect forestalled. 3 *Inst.* 197.

Measure of corn. 5 Geo. 4, c. 74.

The 22 Car. II. c. 8, s. 2, 3, and 22 Car. II. c. 12, (*a*) relating to the selling or buying of corn otherwise than by particular measure, are repealed by stat. 5 Geo. IV. c. 74, s. 23. See stat. 5 Geo. IV. c. 74, s. 23, tit. **Weights**, &c., pointing out the law as to measures in general.

Corn rent.

For the mode of ascertaining rents, &c., payable in grain, malt, or other commodity, in England and Ireland, see 5 Geo. IV. c. 74, s. 17, 18, tit. **Weights and Measures**, Vol. V.

II. Cutting Corn growing, or Burning Stacks of Corn.

Cutting corn growing.

By the 43 Eliz. c. 7, s. 1 & 2, it was enacted, that every person who should unlawfully cut or take away any corn or grain growing, being convicted

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(*a*) In *R.* v. *Mayor*, 4 *T. R.* 750, decided before the passing of the 5 Geo. IV. it was held illegal to sell corn by any other measure than the Winchester bushel. In *R.* v. *Arnold*, 5 *T. R.* 353, *Paley*, 83, a conviction for buying a certain quantity of wheat, to wit, fifteen bushels, contrary to 22 & 23 Car. II. c. 12, was held sufficiently certain.

thereof by confession, or oath of one witness before one justice, should for the first offence pay such damages as the justice should appoint; and if the justice should think him not able or sufficient, or if he did not pay such damages, he should commit him to the constable where the offence was committed, or where the party was apprehended, there to be whipped; and for every other offence he should in like manner be whipped. The constable refusing was to be committed by the justice till he conform. But this act was totally repealed by the 7 & 8 Geo. IV. c. 29, and though not re-enacted in express words, it is so in effect by the 24th section of 7 & 8 Geo. IV. c. 30. See *post*, **Malicious Injuries to Property**, Vol. III. p. 741.

If a person feloniously cut it at one time, and then come again at another time and take it away, it may amount to a felony. 1 *Hawk.* c. 33, s. 21. See *post*, **Larceny**, Vol. III. p. 531 to 533.

Setting fire to a stack, &c. of corn, grain, straw, hay, &c.

By the 7 & 8 Geo. IV. c. 30, s. 17, it is enacted, "that if any person shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, straw, hay, or wood, every such offender shall be guilty of felony, and, being convicted thereof, shall suffer death as a felon; and if any person shall unlawfully and maliciously set fire to any crop of corn, grain, or pulse, whether standing or cut down, or to any part of a wood, coppice, or plantation of trees, or to any heath, gorze, furze, or fern, wheresoever the same may be growing, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years; and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment.

See in general **Burning**, *ante*, 540, where this offence has already been treated of, and the general clauses, *post*, **Malicious Injuries to Property**, Vol. III. p. 722 to 727.

As to the liability of the hundred, see *post*, **Hundred**, Vol. III.

III. Ascertaining the Price of Grain for regulating the Importation and Exportation, &c.

9 Geo. 4, c. 60.

The act now in force relative to this subject is the 9 Geo. IV. c. 60, intituled, "An Act to amend the laws relating to the importation of corn." This act being of so much general public importance, and containing many enactments which affect the office of magistrates, it is thought fit to insert the whole of it.

Acts repealed.

The first section, after reciting the 55 Geo. III. c. 26, 3 Geo. IV. c. 60, and 7 & 8 Geo. IV. c. 58, repeals the same, "provided nevertheless, that all acts or parts of acts, which by virtue of the above recited acts or either of them were repealed, shall still be deemed and taken to be and remain repealed: provided also, that all actions, suits, and prosecutions now depending or hereafter to be brought for or by reason of any breach or non-performance of any of the provisions of the said acts, or for the recovery of any duties or sums of money payable under and by virtue of the same, shall and may be proceeded with as fully and effectually to all intents and purposes as if this present act had not been made."

So much of 6 Geo. 4, c. 111, as imposes duties on buck wheat and Indian corn repealed.

Sect. 2. "And whereas an act was passed in the sixth year of his Majesty's reign, intituled, 'An Act for granting duties of customs,' whereby certain duties were imposed on the importation of buck wheat and Indian corn, and it is expedient that the said duties should be repealed, it is enacted, that so much of the said act passed in the sixth year of his Majesty's reign, as imposes duties on the importation of buck wheat and Indian corn, shall be and the same is hereby repealed."

Foreign corn may be imported on payment of the duties specified in the table to this act.

Sect. 3. "And whereas it is expedient that corn, grain, meal, and flour, the growth, produce, and manufacture of any foreign country, or of any British possession out of Europe, should be allowed to be imported into the United Kingdom for consumption, upon the payment of duties to be regulated from time to time according to the average price of British corn made

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9 Geo. 4, c. 60.

up and published in manner hereinafter required; it is enacted, that there shall be levied and paid to his Majesty upon all corn, grain, meal, or flour entered for home consumption in the United Kingdom from parts beyond the seas the several duties specified and set forth in the table annexed to this act; and that the said duties shall be raised, levied, collected, and paid in such and the same manner in all respects as the several duties of customs mentioned and enumerated in the table of duties of customs inwards annexed to the said act passed in the sixth year of the reign of his Majesty, and by virtue and in pursuance of the several powers and provisions in that act contained, and not otherwise."

Regulations to be observed upon shipping corn from any British possession out of Europe.

Sect. 4. "That no corn, grain, meal, or flour shall be shipped from any port in any British possession out of Europe, as being the produce of any such possession, until the owner or proprietor or shipper thereof shall have made and subscribed before the collector or other chief officer of customs at the port of shipment, a declaration in writing specifying the quantity of each sort of such corn, grain, meal or flour, and that the same was the produce of some British possession out of Europe to be named in such declaration, nor until such owner or proprietor or shipper shall have obtained from the collector or other chief officer of the customs at the said port a certificate under his signature of the quantity of corn, grain, meal, or flour so declared to be shipped; and before any corn, grain, meal, or flour shall be entered at any port or place in the United Kingdom, as being the produce of any British possession out of Europe, the master of the ship importing the same shall produce and deliver to the collector or other chief officer of customs of the port or place of importation a copy of such declaration, certified to be a true and accurate copy thereof under the hand of the collector or other chief officer of customs at the port of shipment before whom the same was made, together with the certificate signed by the said collector or other chief officer of customs, of the quantity of corn so declared to be shipped; and such master shall also make and subscribe before the collector or other chief officer of customs at the port or place of importation a declaration in writing that the several quantities of corn, grain, meal or flour on board of such ship, and proposed to be entered under the authority of such declaration, are the same that were mentioned and referred to in the declaration and certificate produced by him, without any admixture or addition; and if any person shall in any such declaration wilfully and corruptly make any false statement respecting the place of which any such corn, grain, meal, or flour was the produce, or respecting the identity of any such corn, grain, meal, or flour, such person shall forfeit and become liable to pay to his Majesty the sum of 100*l.*, and the corn, grain, meal, or flour to such person belonging, on board any such ship, shall also be forfeited, and such forfeitures shall and may be sued for, prosecuted, recovered, and applied in such and the same manner in all respects as any forfeiture incurred under and by virtue of the said act so passed in the sixth year of his Majesty's reign: provided always, that the declarations aforesaid shall not be required in respect of any corn, grain, meal or flour which shall have been shipped within three months next after the passing of this act."

Regulations as to corn entered for importation.



Penalty for importing malt or ground corn, except as allowed.

Sect. 5. "That it shall not be lawful to import from parts beyond the seas into the United Kingdom for consumption there any malt, or to import for consumption into Great Britain any corn ground, except wheat meal, wheat flour, and oatmeal, or to import for consumption any corn ground into Ireland; and that if any such article as aforesaid shall be imported contrary to the provisions aforesaid, the same shall be forfeited."

Account of corn and flour imported, duties paid, and quantity in warehouse, to be published in Gazette monthly.

Sect. 6. "That the commissioners of his Majesty's customs shall once in each calendar month cause to be published in the London *Gazette* an account of the total quantity of each sort of the corn, grain, meal, and flour respectively, which shall have been imported into the United Kingdom; and also an account of the total quantity of each sort of the corn, grain, meal, and flour respectively, upon which the duties of importation shall have been paid in the United Kingdom during the calendar month next preceding; together with an account of the total quantity of each sort of the said corn,

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grain, meal, and flour respectively remaining in warehouse at the end of such next preceding calendar month."

4 Geo. 4, c. 60.

If any foreign state shall subject British vessels, goods, &c. to any higher duties or charges than are levied on the vessels, &c. of other countries, his Majesty may prohibit the importation of corn from such state.

Sect. 7. "That if it shall be made to appear to his Majesty in council that any foreign state or power hath subjected British vessels at any port within the dominions of such state or power to any other higher duties or charges whatever than are levied on national vessels at any such port, or hath subjected at any such port goods of the growth, produce, or manufacture of any of his Majesty's dominions when imported from any of such dominions in British vessels, to any other or higher duties or charges whatever than are levied on such or the like goods of whatever growth, produce, or manufacture when so imported in national vessels, or hath subjected at any port or place within the dominions of such foreign state or power, any article of the growth, produce, or manufacture of his Majesty's dominions when imported from any of such dominions in British or in national vessels to any duties or charges which would not be payable on the like article being of the growth, produce, or manufacture of any other country, and imported from such other country in national vessels; or that any such foreign state or power hath granted any bounties, drawbacks, or allowances upon the exportation from any port or place within the dominions thereof of any articles the growth, produce, or manufacture of the dominions of any other foreign state or power which hath not also been granted upon the exportation from such port or place of such or the like articles, being the growth, produce, or manufacture of his Majesty's dominions; then and in any of the cases aforesaid, it shall and may be lawful for his Majesty by any order or orders to be by him made, with the advice of his privy council, to prohibit the importation of all or of any sort of corn, grain, meal, or flour from the dominions of any such foreign state or power; and it shall also be lawful for his Majesty from time to time, with the advice of his privy council, to revoke and to renew any such orders or order as aforesaid, as there shall be occasion."

Weekly returns of purchases and sales of corn to be made in the places herein mentioned.

Sect. 8. "And whereas it is necessary for regulating the amount of such duties that effectual provision should be made for ascertaining from time to time the average prices of British corn, it is enacted, that weekly returns of the purchases and sales of British corn shall be made in the manner hereinafter directed in the following cities and towns; that is to say, London, Uxbridge, Hertford, Royston, Chelmsford, Colchester, Rumford, Maidstone, Canterbury, Dartford, Chichester, Guildford, Lewes, Rye, Bedford, Windsor, Aylesbury, Ipswich, Woodbridge, Sudbury, Huntingdon, Hadleigh, Stowmarket, Bury Saint Edmund's, Beccles, Bungay, Lowestoft, Cambridge, Ely, Wisbeach, Norwich, Yarmouth, Lynn, Thetford, Watton, Diss, East Dereham, Harleston, Holt, Aylesham, Fakenham, North Walsham, Lincoln, Gainsborough, Glanford Bridge, Lowth, Boston, Sleaford, Stamford, Spalding, Derby, Northampton, Leicester, Nottingham, Worcester, Coventry, Reading, Oxford, Wakefield, Warminster, Birmingham, Leeds, Newark, York, Bridlington, Beverley, Howden, Sheffield, Hull, Whitby, New Malton, Durham, Stockton, Darlington, Sunderland, Barnard Castle, Walsingham, Belford, Hexham, Newcastle-upon-Tyne, Morpeth, Alnwick, Berwick-upon-Tweed, Carlisle, Whitehaven, Cockermouth, Penrith, Egremont, Appleby, Kirkby-in-Kendal, Liverpool, Ulverston, Lancaster, Preston, Wigan, Warrington, Manchester, Bolton, Chester, Nantwich, Middlewich, Four Lane Ends, Denbigh, Wrexham, Carnarvon, Haverford West, Carmarthen, Cardiff, Gloucester, Cirencester, Tetbury, Stow-on-the-Wold, Tewkesbury, Bristol, Taunton, Wells, Bridgewater, Frome, Chard, Monmouth, Abergavenny, Chepstow, Pont-y-Pool, Exeter, Barnstaple, Plymouth, Totness, Tavistock, Kingsbridge, Truro, Bodmin, Launceston, Redruth, Helstone, Saint Austel, Blandford, Bridport, Dorchester, Sherbourne, Shaston, Wareham, Winchester, Andover, Basingstoke, Fareham, Havant, Newport, Ringwood, Southampton, and Portsmouth; and for the purpose of duly collecting and transmitting such weekly returns as aforesaid, there shall be appointed in each of the said cities and towns, in manner hereinafter directed, a fit and proper person to be the inspector of corn returns."

Inspectors to be appointed.

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9 Geo. 4, c. 60.

Appointing comptroller of corn returns.

Sect. 9. "That it shall be lawful for his Majesty to appoint a fit and proper person to be comptroller of corn returns, for the purposes hereinafter mentioned, and to grant to such comptroller of corn returns such salary and allowances as to his Majesty shall seem meet: provided always, that such person shall be appointed to and shall hold such his office during his Majesty's pleasure, and not otherwise; and shall at all times conform to and obey such lawful instructions, touching the execution of the duties of such his office, as shall from time to time be given to him by the lords of the committee of privy council appointed for the consideration of all matters relating to trade and foreign plantations."

Comptroller to take oath on entering office.

Sect. 10. "That the said comptroller of corn returns before he enters on the execution of such his office shall, before some or one of the barons of his Majesty's Court of Exchequer at Westminster, or before one of the masters in ordinary of the High Court of Chancery, take and subscribe an oath in the following words; that is to say,

Oath.

"*I, A. B. do swear, that I will, to the best of my skill and knowledge, execute the office of comptroller of corn returns, according to the provisions of an act passed in the ninth year of the reign of his Majesty King George the Fourth, intituled* [here set forth the title of this act]. *So help me God.*"

Comptroller not to act by deputy, except in certain cases.

Sect. 11. "That the said comptroller of corn returns shall at all times execute the duties of such his office in person, and not by deputy; but that it shall and may be lawful for his Majesty to appoint a fit and proper person who shall act as deputy comptroller of corn returns, in case of the sickness or other incapacity of the said comptroller, or in case he the said comptroller should, with the permission of the lords of the said committee of privy council, be absent from the duties of such his office; and all and every the powers hereby vested in the said comptroller of corn returns, and all and every the acts, matters, and things hereby directed to be done and performed by him, shall be vested in, and shall and may be done and performed by any such deputy as aforesaid, during the continuance of any such sickness, incapacity, or absence as aforesaid, of the said comptroller of corn returns; and such deputy shall hold such his office during his Majesty's pleasure, and not otherwise, and shall receive and be paid such salary and allowances as to his Majesty shall seem meet."

Comptroller may send and receive letters free from postage.

Sect. 12. "That it shall and may be lawful for the said comptroller of corn returns to send by the post to any part of the United Kingdom, and to receive by the post from any place whatever, any letters or packets relating exclusively to the duties of such his office, free from all duties of postage, provided that the words "on his Majesty's service" shall be written or printed on the outside of each of the said letters or packets so sent by the said comptroller of corn returns, and that such words shall be subscribed with the name of the said comptroller of corn returns in his handwriting; and also provided that it shall be lawful for his Majesty's postmaster general, or for his secretary or other officer authorised by him in that behalf, to examine and search all such letters and packets, and to charge against the person or persons sending the same treble postage on any letter or packet which may be so sent to or by the said comptroller of corn returns contrary to the provisions of this act."

Lord mayor, &c. to appoint an inspector of corn returns for the city of London

Sect. 13. "That it shall and may be lawful for the lord mayor and aldermen of the city of London, at a court to be holden for that purpose, and they or the majority of them present at such court are hereby authorised and required to nominate and appoint some fit and proper person to be inspector of corn returns for the city of London; and it shall be lawful for the said lord mayor and aldermen from time to time, as occasion may require, upon any misbehaviour or neglect of duty of any such inspector, to remove him from such his office by any order to be by them made at a court to be specially convened and holden for that purpose; and upon the death, resignation, permanent incapacity, or removal of any such inspector of corn returns for the city of London, it shall and may be lawful for the said lord mayor and aldermen, at a court to be holden for that purpose, and they or a majority of

them present at any such court are hereby authorised and required, to nominate and appoint some fit and proper person to succeed to the said office."

Said inspector not to execute his office by deputy, except in certain cases.

Sect. 14. "That the said inspector of corn returns for the city of London shall at all times execute the duties of such his office in person, and not by deputy; but that in case of the sickness or other temporary incapacity of the said inspector, it shall be lawful for the said lord mayor and aldermen of the city of London to appoint some fit and proper person to act as the deputy of the said inspector, during the continuance of any such sickness or incapacity as aforesaid of that officer, and no longer; and all and every the powers hereby vested in the said inspector of corn returns for the city of London, and all and every the acts, matters, and things hereby directed to be done and performed by him, shall and may be vested in, and be done and performed by any such deputy as aforesaid, during the continuance of such his appointment."

No person dealing in corn, flour, or malt, to be appointed inspector of corn returns in London.

Sect. 15. "That no person shall be eligible or shall be appointed to the office of inspector or deputy inspector of corn returns for the city of London, who, within six months next preceding the time of any such appointment, shall have been engaged in trade or business as a miller, maltster, or corn factor, or who during that period shall, as a merchant, clerk, agent, or otherwise, have bought corn for sale, or for the sale of meal, flour, malt, or bread made or to be made thereof; and if any inspector or deputy inspector of corn returns for the city of London shall, during his continuance in such his office, engage in trade or business as a miller, maltster, or corn factor, or shall, as a merchant, clerk, agent, or otherwise, buy corn for sale, or for the sale of meal, flour, malt, or bread made or to be made thereof, he shall in manner aforesaid be removed from such his office, and from and after the time of such removal shall become incapable of acting as inspector of corn returns under this act."

Inspector of corn returns for city of London to take an oath on his appointment.

Sect. 16. "That every inspector or deputy inspector of corn returns for the city of London shall, within one week after such his nomination and appointment, take and subscribe before the lord mayor, or one of the aldermen of the city of London, an oath, which oath the lord mayor or alderman is hereby authorised and required to administer, in the following words; (that is to say,)"

Oath.

"*I, A. B. do swear, that I will at all times, as Inspector of corn returns for the city of London,* [or, *as deputy inspector of corn returns for the city of London*, as the case may be,] *make due and true returns to the comptroller of corn returns, appointed by virtue of an act passed in the ninth year of the reign of King George the Fourth, intituled* [here set forth the title of this act], *and that I will in all things, to the best of my skill and judgment, conform myself to the directions of the said act. So help me God.*"

Appointment of inspector for city of London to be enrolled.

Sect. 17. "That every nomination and appointment so to be made as aforesaid, of any inspector of corn returns for the city of London, shall be enrolled at the next sessions of the peace to be holden in and for the said city, together with a certificate of the oath aforesaid having been taken, such certificate being signed by the lord mayor or aldermen before whom such oath shall have been so taken; and the said enrolment, or a copy thereof, certified under the hand of the clerk of the peace for the said city to be a true copy, shall for all intents and purposes be, and be deemed and taken to be good and conclusive evidence of any such appointment as aforesaid having been duly made.

Dealers in corn in London to deliver in a declaration to the lord mayor, &c.

Sect. 18. "That every person who shall carry on trade or business in the city of London, or within five miles from the Royal Exchange in the said city, as a corn factor, or as an agent employed in the sale of British corn, and every person who shall sell any British corn within the present corn exchange in Mark Lane in the said city, or within any other building or place which now is or may hereafter be used within the city of London, or within five miles from the Royal Exchange in the said city, for such and the like purposes for which the said corn exchange in Mark Lane hath been and is used, shall, before he or they shall carry on trade or business, or sell

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any corn in manner aforesaid, make and deliver to the lord mayor, or one of the aldermen of the city of London, a declaration in the following words: (that is to say,)

9 Geo. 4, c. 60.

Form of declaration.

"*I, A. B. do declare, that the returns to be by me made, conformably to an act passed in the ninth year of the reign of King George the Fourth, intituled* [here set forth the title of this act], *of the quantities and prices of British corn which hereafter shall be by or for me sold or delivered, shall, to the best of my knowledge and belief, contain the whole quantity, and no more, of the corn* bonâ fide *sold and delivered by or for me within the periods to which such returns respectively are to refer, with the prices of such corn, and the names of the buyers respectively, and of the persons for whom such corn shall have been sold by me respectively; and to the best of my judgment the said return shall in all respects be conformable to the provisions of the said act.*"

Lord mayor, &c. to deliver a certificate thereof to the inspector.

"Which declaration shall be in writing, and shall be subscribed with the hand of the person so making the same; and the lord mayor or such alderman as aforesaid of the city of London, for the time being, shall and he is hereby required to deliver a certificate thereof, under his hand, to the inspector of corn returns for the city of London, to be by him registered in a book to be by him provided and kept for that purpose."

Dealers in corn to make returns to corn inspector.

Sect. 19. "That every such corn factor and other person as aforesaid, who is hereinbefore required to make and who shall have made such declaration as aforesaid, shall and he or she is hereby required to return or cause to be returned, on Wednesday in each and every week, to the inspector of corn returns for the city of London, an account in writing, signed with his or her own name, or the name of his or her agent duly authorised in that behalf, of the quantities of each respective sort of British corn by him or her sold during the week ending on and including the next preceding Tuesday, with the prices thereof, and the amount of every parcel, with the total quantity and value of each sort of corn, and by what measure or weight the same was sold, and the names of the buyers thereof, and of the persons for and on behalf of whom such corn was sold; and it shall and may be lawful for any such inspector of corn returns to deliver to any person making or tendering any such returns, a notice in writing, requiring him or her to declare and set forth therein where and by whom and in what manner any such British corn was delivered to the purchaser or purchasers thereof; and every person to whom any such notice shall be so delivered shall and he or she is hereby required to comply therewith, and to declare and set forth in such his or her return the several particulars aforesaid."

Justices of the peace to appoint corn inspectors in the other places herein-before mentioned.

Sect. 20. "That the justices of the peace for the several and respective counties, ridings, or divisions thereof, in which the several cities and towns herein-before enumerated are situate, other than and except the city of London, shall and they are hereby authorised and required, at some quarter sessions held within or nearest to each of the said several cities and towns, to nominate and appoint some fit and proper person, residing within or near each and every of the said cities and towns respectively, to be the inspector of corn returns for such city or town, and from time to time, as occasion may require, upon the death, resignation, or removal of any such inspector of corn returns, to appoint a fit and proper person to succeed to such his office; and it shall be lawful for the said justices of the peace, by any order or orders to be by them made for that purpose at any such quarter sessions, or at any adjournment thereof, upon any misbehaviour or neglect of duty of any such inspector of corn returns as aforesaid, or for any other good and sufficient cause to them appearing, to remove from such his office any such officer; and in case of the sickness, absence, or temporary incapacity of any such inspector of corn returns, it shall be lawful for any two or more of the said justices, at any petty sessions of the peace to be holden at such city or town, or within the county, riding, or division thereof, in which the same is situate, to nominate and appoint a fit and proper person to act as and be inspector of corn returns for such city or town, until the next general quarter sessions of the peace to be holden as aforesaid, and no longer."

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9 Geo. 4, c. 60.

Sect. 21. "That within each and every of the cities and towns aforesaid, (other than the cities of London and Oxford, and town of Cambridge,) being a county of itself, or having an exempt jurisdiction, and not contributing to the rates of the county, riding, or division in which the same is situate, the mayor or other chief officer, and the justices of the peace assembled at the general quarter sessions of any such city or town, or at any adjournment thereof, shall have, enjoy, and exercise all and every the powers herein-before vested as aforesaid in the justices of the peace for the several and respective counties, and ridings or divisions thereof as aforesaid, assembled at their general quarter sessions; and such mayor or other chief officer shall, within such last mentioned cities and towns, have, enjoy, and exercise the powers herein-before vested as aforesaid in the justices of the peace for the said several and respective counties, ridings, or divisions thereof, assembled at any petty sessions; and that within the city of Oxford and the town of Cambridge, all and every the powers and authorities aforesaid shall be and the same are hereby vested in the chancellors, masters, and scholars, and their successors, of the Universities of Oxford and Cambridge respectively, who shall have and enjoy, and are hereby authorised and required to exercise respectively, all and every such powers and authorities within the said city of Oxford and town of Cambridge respectively."

In towns, being counties of themselves, mayor and justices to exercise powers granted by this act.

In Oxford and Cambridge powers vested in chancellors, &c.

Sect. 22. "That no person shall be eligible or shall be appointed to the office of inspector of corn returns under this act, for any of the cities and towns aforesaid, who within twelve calendar months next preceding the time of any such appointment hath been engaged in trade or business as a miller, maltster, or corn factor, or who during that period hath, as a merchant, clerk, agent, or otherwise, bought corn for sale, or for the sale of meal, flour, malt, or bread made or to be made thereof; and if any person, who shall in manner aforesaid be nominated and appointed to be the inspector of corn returns for any such city or town, shall, during his continuance in such office, engage in trade or business as a miller, maltster, or corn factor, or shall, as a merchant, clerk, agent, or otherwise, buy corn for sale, or for the sale of meal, flour, malt, or bread made or to be made thereof, he shall in manner aforesaid be removed from such his office, and from and after the time of such removal shall become incapable of acting as an inspector of corn returns under this act."

Persons having been engaged in business as corn dealers, within a certain period, not eligible as inspectors.

Sect. 23. "That every person so appointed inspector of corn returns for any city or town, other than the city of London, shall, before he enters on the discharge of the duties of such his office, take and subscribe before some one justice of the peace for the county, riding, division, city, or town within which he shall reside, the oath, or being one of the people called Quakers, the affirmation following, (which oath or affirmation all such justices are hereby authorised and required to administer); that is to say,

Inspectors of corn returns for cities and towns to take an oath on their appointment.

Oath.

"I A. B. do swear, [or *affirm,*] *that I will at all times, as inspector of corn returns for the city* [or *town*] *of make due and true returns to the comptroller of corn returns appointed by virtue of an act passed in the ninth year of the reign of King George the Fourth, intituled* [here set forth the title of this act,] *of the quantities and prices of British corn in the said city,* [or *town,*] *of according to the accounts to be delivered to me in pursuance of the said act; and that I will in all things, to the best of my skill and judgment, conform myself to the directions of the said act."*

Sect. 24. "That every nomination and appointment, so to be made as aforesaid, of any inspector of corn returns for any of the cities and towns aforesaid, other than the city of London, shall be enrolled at some session of the peace to be holden in such cities and towns respectively, or in the respective counties, ridings, or divisions thereof, in which such towns are situate, or at some adjournment of such sessions, together with a certificate of the oath aforesaid having been taken by such inspector of corn returns, such certificate being signed by the justice of the peace before whom such oath shall have been so taken; and the said enrolment, or a copy thereof, certified under the hand of the clerk of the peace for any such city or town, county, riding, or division, shall for all intents and purposes be and be deemed and

Appointments of inspectors for cities and towns to be enrolled.

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taken to be good and conclusive evidence of any such appointment as aforesaid having been duly made."

9 Geo. 4, c. 60.

Dealers in corn in cities and towns to make declaration.

Sect. 25. "That every person who shall deal in British corn at or within any such city or town as aforesaid, or who shall at or within any such city or town engage in or carry on the trade or business of a corn factor, miller, maltster, brewer, or distiller, or who shall be the owner or proprietor, or part owner or proprietor, of any stage coaches, waggons, carts, or other carriages carrying goods or passengers for hire to and from any such city or town, and each and every person who, as a merchant, clerk, agent, or otherwise, shall purchase at any such city or town any British corn for sale, or for the sake of meal, flour, malt, or bread made or to be made thereof, shall, before he or she shall so deal in British corn at any such city or town, or shall engage in or carry on any such trade or business as aforesaid, or shall purchase any British corn for any such purpose as aforesaid, at or within any such city or town, make and deliver, in manner herein-after mentioned, a declaration in the following words; that is to say,

Form of declaration.

"*I A. B. do declare that the returns to be by me made conformably to the act passed in the ninth year of the reign of King George the Fourth, intituled* [here set forth the title of this act,] *of the quantities and prices of British corn which henceforward shall by or for me be bought, shall, to the best of my knowledge and belief, contain the whole quantity, and no more, of the British corn* bonâ fide *bought for or by me within the periods to which such returns respectively shall refer, with the prices of such corn, and the names of the sellers respectively; and to the best of my judgment the said returns shall in all respects be conformable to the provisions of the said act.*"

Declaration to be delivered to the mayor &c. who shall give a certificate thereof to the inspector.

"Which declaration shall be in writing, and shall be subscribed with the hand of the person so making the same, and shall by him or her, or by his or her agent, be delivered to the mayor or chief magistrate, or to some justice of the peace for such city or town, or for the county, riding, or division in which the same is situate, who are hereby required to deliver a certificate thereof to the inspector of corn returns for any such city or town as aforesaid, to be by him registered in a book to be by him provided and kept for that purpose."

Inspectors empowered to require such declaration from corn dealers.

Sect. 26. "That it shall and may be lawful for any inspector of corn returns for the city of London, or for any such other city or town as aforesaid, to serve upon and deliver to any person buying or selling corn in any such city or town, and who is not within the terms and meaning of this present act specially required to make any such declaration as aforesaid, a notice in writing under the hand of such inspector, requiring him to make such declaration as aforesaid; and any person upon whom such notice shall be served as aforesaid shall and he is hereby required to comply with such notice and to make such declaration in such and the same manner in all respects as if he or she had been specially required to make the same by the express provisions of this present act."

Corn dealers to make returns in writing to corn inspectors of the corn bought by them.

Sect. 27. "That all persons who are herein-before required to make, and who shall have made such declaration as aforesaid, shall and they are hereby required, on the first market day which shall be holden in each and every week within each and every such city or town as aforesaid at or within which they shall respectively deal in corn, or engage in or carry on any such trade or business as aforesaid, or purchase any corn for any such purpose as aforesaid, to return or cause to be returned, to the inspector of corn returns for such city or town, an account in writing, signed with their names respectively, of the amount of each and every parcel of each respective sort of British corn so by them respectively bought during the week ending on and including the day next preceding such first market day as aforesaid, with the price thereof, and by what weight or measure the same was so bought by them, with the names of the sellers of each of the said parcels respectively, with the names of the person or persons, if any other than the person making such return, for or on account of whom the same was so bought and sold: and it shall and may be lawful for any such inspector of corn returns to deliver, to any person making or tendering any such return, a notice in

writing, requiring him or her to declare and set forth therein where and by whom and in what manner any such British corn was delivered to him or her; and every person to whom any such notice shall be so delivered shall and he or she is hereby required to comply therewith, and to declare and set forth in such his or her return, or in a separate statement in writing, the several particulars aforesaid."

Inspector not to include returns until he has ascertained that the persons making them have taken the declaration required.

Sect. 28. "That no inspector of corn returns in the city of London, nor in any of the towns aforesaid, shall include, in the return so to be made by them as aforesaid to the comptroller of corn returns, any account of sales or purchases of corn, unless such inspector shall have received satisfactory proof that the person or persons tendering such account hath made the declaration herein-before required, and hath delivered the same to the mayor or chief magistrate, or to some justice of the peace of the city or town for which such inspector shall be so appointed to act, or to some justice of the peace for the county, riding, or division in which such city or town is situate."

Inspectors to enter returns made to him in a book;

and transmit to the comptroller weekly an account of the quantities and prices of corn sold.

Sect. 29. "That every such inspector of corn returns for the city of London, and for the several other cities and towns aforesaid, shall duly and regularly enter, in a book to be by him provided and kept for that purpose, the several accounts of the quantities and prices of corn returned to him by such persons respectively as aforesaid; and every such inspector of corn returns for the city of London, and for the several other cities and towns aforesaid, shall in each and every week return to the comptroller of corn returns an account of the weekly quantities and prices of the several sorts of British corn sold in the city or town for which he is appointed inspector, according to the returns so made to him as aforesaid, and in such form as shall be from time to time prescribed and directed by the said comptroller of corn returns; and the said returns shall be so made to the said comptroller by the inspector of corn returns for the city of London on Friday in each week, and by the inspector of corn returns for the several other cities and, towns as aforesaid within three days next after the first market day holden in each and every week in any such city or town."

Average prices to be made up and published every week.

Sect. 30. "That the average prices of all British corn, by which the rate and amount of the said duties shall be regulated, shall be made up and computed on Thursday in each and every week in manner following; that is to say, the said comptroller of corn returns shall on such Thursday in each week, from the returns received by him during the week next preceding, ending on and including the Saturday in such preceding week, add together the total quantities of each sort of British corn respectively appearing by such returns to have been sold, and the total prices for which the same shall thereby appear to have been sold, and shall divide the amount of such total prices respectively by the amount of such total quantities of each sort of British corn respectively, and the sum produced thereby shall be added to the sums in like manner produced in the five weeks immediately preceding the same, and the amount of such sums so added shall be divided by six, and the sum thereby given shall be deemed and taken to be the aggregate average price of each such sort of British corn respectively, for the purpose of regulating and ascertaining the rate and amount of the said duties; and the said comptroller of corn returns shall cause such aggregate weekly averages to be published in the next succeeding Gazette, and shall on Thursday in each week transmit a certificate of such aggregate average prices of each sort of British corn to the collector or other chief officer of the customs at each of the several ports of the United Kingdom; and the rate and amount of the duties to be paid under the provisions of this act shall from time to time be regulated and governed at each of the ports of the United Kingdom respectively by the aggregate average prices of British corn at the time of the entry for home consumption of any corn, grain, meal, or flour chargeable with any such duty, as such aggregate average prices shall appear and be stated in the last of such certificates as aforesaid which shall have been received as aforesaid by the collector or other chief officer of customs at such port."

Certificate of averages to be transmitted to chief officers of customs.

How quantities of corn are to be computed.

Sect. 31. "That in the returns so to be made as aforesaid to the comptroller of corn returns, and in the publications so to be made from time to

IMPORTATION, &c.

time in the London Gazette, and in the certificate so to be transmitted by the said comptroller of corn returns to such collectors or other chief officers of the customs as aforesaid, the quantities of each sort of British corn respectively shall be computed and set forth by, according, and with reference to the imperial standard gallon, as the same is declared and established by a certain act passed in the fifth year of his Majesty's reign, intituled 'An Act for ascertaining and establishing uniformity of weights and measures,' as the said act is amended by a certain other act passed in the sixth year of his Majesty's reign, intituled 'An Act to prolong the time of the commencement of an act of the last session of parliament, for ascertaining and establishing uniformity of weights and measures, and to amend the said act.'"

9 Geo. 4, c. 60.

5 Geo. 4, c. 74.

6 Geo. 4, c. 12.

Until sufficient number of returns are made, comptroller may use the present averages.

Sect. 32. "That until a sufficient number of weekly returns shall have been received by the said comptroller of corn returns under this act, to afford such aggregate average prices of British corn as aforesaid, the weekly average prices of British corn published by him immediately before the passing of this act shall by him be used and referred to in making such calculations as aforesaid, in such and the same manner as if the same had been made up and taken under and in pursuance of this act."

What shall be deemed British corn.

Sect. 33. "That all corn or grain, the produce of the United Kingdom, shall be deemed and taken to be British corn for the purposes of this act."

Provisions of this act as to making returns may be applied to any town in the United Kingdom.

Sect 34. "That for the purpose of ascertaining the average price of corn and grain sold within the United Kingdom of Great Britain and Ireland, it shall and may be lawful for his Majesty, by any order or orders to be by him made, by and with the advice of his privy council, to direct that the provisions of this act, so far as regards the appointment of inspectors and the making of weekly returns, shall be applicable to any cities or towns within the United Kingdom of Great Britain and Ireland which shall be named in any such order or orders in council: provided always, that the returns so received from such towns shall not be admitted into the averages made up for the purpose of regulating the duties payable upon foreign corn, grain, meal or flour."

The present comptrollers and inspectors of returns to continue in office.

Sect. 35. "That the comptrollers of corn returns, and each and every inspector of corn returns, or other person who at or immediately before the time when this act shall come into operation shall hold any office or appointment under and by virtue of the act so passed as aforesaid in the seventh and eighth year of his Majesty's reign, or who shall be discharging any duties required of him by such lastmentioned act, shall and he is hereby authorised and required forthwith to act in such his office or appointment under and by virtue of this present act, and to discharge the several duties of and belonging to such his former office or appointment, in such and the same manner and as fully and effectually, to all intents and purposes, as if he had been appointed to such his office or appointment as aforesaid under and by virtue of this present act; and that the person appointed to act as inspector of corn returns for the city of London, under the act so passed as aforesaid in the seventh and eighth year of his Majesty's reign, shall, without further appointment, continue to act as such inspector under this act, until he shall die or resign such his office, or be removed therefrom by the lord mayor and aldermen of the city of London in manner aforesaid."

If returns are untrue, comptroller to lay a statement thereof before the committee of privy council.

Sect. 36. "That if the said comptroller of corn returns shall at any time see cause to believe that any return so to be made as aforesaid to any such inspector of corn returns for the city of London, or for any other such city or town as aforesaid, is fraudulent or untrue, the said comptroller shall and he is hereby required, with all convenient expedition, to lay before the lords of the said committee of privy council a statement of the grounds of such his belief; and if, upon consideration of any such statement, the said lords of the said committee shall direct the said comptroller to omit any such return in the computation of such aggregate weekly average price as aforesaid, then and in that case, but not otherwise, the said comptroller of corn returns shall and he is hereby authorised to omit any such return in the computation of such aggregate weekly average price."

9 Geo. 4, c. 60.

Sect. 37. "That any corn factor, dealer, or other person, who at or previously to the time when this present act shall come into operation shall have made the declaration required of him in and by the said act so passed as aforesaid in the seventh and eighth year of his Majesty's reign, shall and he or she is hereby further required to make all such returns to such several inspectors of corn returns as aforesaid, and to perform and do all such acts, matters, and things, and to comply with and observe all such rules and regulations as are hereby required or directed of or in regard to persons who have made any declaration required of them in and by the present act, although he or she may not have actually made such last-mentioned declaration."

Corn dealers having made the declaration previous to the act shall transmit returns and comply with the rules hereby required.

Sect. 38. "That the comptroller of corn returns shall and he is hereby authorised from time to time, in pursuance of any instructions which he shall receive in that behalf from the lords of the said committee of privy council, to issue to the several inspectors of corn returns any general or special directions respecting the inspection by any person or persons of the books so directed as aforesaid to be kept by every such inspector of corn returns; and no such inspector as aforesaid shall permit or suffer any person to inspect any such book, or to peruse or transcribe any entry therein, except in compliance with some such general or special directions from the said comptroller of corn returns as aforesaid."

Comptroller to issue directions respecting inspection of books of inspectors.

Inspector not to permit books to be perused without such directions.

Sect. 39. "That each and every inspector of corn returns shall and he is hereby required on each and every market day to put up or cause to be put up in the market place of the city or town for which he shall be appointed inspector, or if there shall be no market place in such city or town, then in some other conspicuous place therein, a copy of the last return made by him to the comptroller of corn returns, omitting the names of the parties who may have sold and bought the said corn; and every such inspector shall also again put up such account on the market day immediately following that on which it shall first have been put up, in case the same shall from accident or any other cause have been removed, and shall take due care that the same shall remain up for public inspection until a new account for the ensuing week shall have been prepared and set up."

Copy of the last return to be affixed on market place on each market day.

Sect. 40. "That it shall and may be lawful for the commissioners of his Majesty's treasury of the United Kingdom of Great Britain and Ireland, by any warrant or warrants to be for that purpose from time to time made and issued, to settle and allow such reasonable and moderate salaries as shall be paid and payable to the said several inspectors of corn returns for the city of London, and for the several other cities and towns aforesaid, for and in consideration of the duties so to be performed by them; provided that the salary so to be allowed to the inspector of corn returns in and for the city of London shall not in any one year exceed the sum of 300*l.*, in consideration of which salary he shall and is hereby required to keep and maintain a proper and convenient apartment or place of business at or near to the said corn exchange in Mark Lane, for transacting the duties of such his office, and to defray all incidental charges and expenses of and attendant upon such his office: provided also, that the salary to be granted to any inspector of corn returns of any other of the cities and towns aforesaid shall not exceed 50*l.* in any one year for such inspector."

Treasury to fix salaries of comptrollers and inspectors.

Sect. 41. "That the salaries aforesaid shall be paid by the collector or other chief officer of the customs or of the excise in or for the city or town for which each and every of the said inspectors respectively may be so appointed, by four quarterly payments; provided that no such quarterly payments aforesaid shall be made, unless the inspector of corn returns claiming the same shall first produce and deliver to such collector, or other chief officer of the customs or excise, a certificate under the hand of the comptroller of corn returns, certifying that such inspector hath duly made the returns required of him by this present act during the period in respect of which any such payment is to be made, and which certificate such comptroller is hereby required, on the application of any such inspector as aforesaid, to grant, unless any such inspector shall, without good and sufficient cause,

Regulations as to payment of salaries.

IMPORTATION, &c.

9 Geo. 4, c. 60.

have neglected or omitted to make such returns as aforesaid, or some of them: provided also, that if the duties of the said office of inspector of corn returns for the city of London shall, during any such quarter of a year as aforesaid, have been discharged wholly or in part by a deputy, the comptroller of corn returns shall in such certificate as aforesaid specify the length of time during which such deputy hath so acted, and the whole or a proportionate part, as the case may be, of any such quarterly payment, shall in that case be paid to the said deputy; and if the duties of inspector of corn returns for any other of the cities and towns aforesaid shall during any such quarter of a year be performed successively by two or more persons, the comptroller of corn returns shall in like manner specify the length of time during which each such person hath so performed the said duties, and a proportionate part of any such quarterly payment shall in that case be paid to the several persons respectively performing the said duties."

Penalty on corn dealers for not making declarations or returns.

Sect. 42. "That if any person who is hereby required to make and deliver the declaration or declarations herein-before particularly mentioned and set forth, or either of them, shall not make and deliver such declaration or declarations at the time, and in the form and manner, and to the person or persons, herein-before directed and prescribed in that behalf, every person so offending shall forfeit and pay the sum of 20*l.* for each and every calendar month during which he shall neglect or delay to make and deliver any such declaration; and if any person who is herein-before required to make any return to any such inspector of corn returns as aforesaid shall not make such returns to such inspector, at the time and in the form and manner herein-before directed and prescribed, every such offender shall for such his offence forfeit and pay the sum of 20*l.*"

Recovery and application of penalties.

Sect. 43. "That all and every the penalties aforesaid shall and may be prosecuted, sued for and recovered by and to the use of any person who will sue for the same, before any two justices of the peace acting in and for the city, town, county, riding, or division within which the offence shall have been committed; and upon conviction of any such offender before any such justices of the peace, either by the confession of the party offending, or by the oath of any credible witness or witnesses (which oath such justices are hereby authorised to administer), the amount of such penalties and forfeitures shall be levied, together with the costs attending the information and conviction, to be assessed and allowed by such justices, by distress and sale of the goods and chattels of the party or parties offending, by warrant under the hands and seals of such justices (which warrant such justices are hereby empowered and required to grant); and the overplus (if any), after such penalties, forfeitures and fines, and the charges of such distress and sale, are deducted, shall be returned, upon demand, unto the owner or owners of such goods and chattels; and in case such fines, penalties and forfeitures shall not be forthwith paid upon conviction, then it shall be lawful for such justices to order the offender or offenders so convicted to be detained and kept in safe custody until return can be conveniently made to such warrant of distress unless the offender or offenders shall give sufficient security, to the satisfaction of such justices, for his or their appearance before such justices on such day or days as shall be appointed for the return of such warrant of distress, such day or days not being more than seven days from the time of taking any such security, and which security the said justices are hereby empowered to take by way of recognizance or otherwise; but if upon the return of such warrant it shall appear that no sufficient distress can be had thereupon, then it shall be lawful for any such justices of the peace as aforesaid, and they are hereby authorised and required, by warrant or warrants under their hands and seals, to cause such offender or offenders to be committed to the common gaol or house of correction of the city, town, county, riding, or division where the offender shall be or reside, there to remain, without bail or mainprize, for any term not exceeding three calendar months, unless such penalties, forfeitures and fines, and all reasonable charges attending the same, shall be sooner paid and satisfied."

Sect. 44. "That it shall and may be lawful for the lords of the said committee of privy council, by any order to be made by them, and issued under the hands of one of the clerks of his Majesty's most honourable privy council, to stay the proceedings upon any information before any such justices of the peace as aforesaid, for the penalties aforesaid, or any of them; and that it shall also be lawful for any justices of the peace, before whom any person shall be convicted of any offence against this act, if he or they shall think proper, to mitigate or reduce the penalty incurred by such person, so as such reduction or mitigation do not exceed two thirds of the penalty to which such person would be liable under this act."

Committee of privy council may stay proceedings on information.

Justices may mitigate penalties.

Sect. 45. "That if any person who shall be summoned as a witness to give evidence before any justices of the peace, touching any matter of fact contained in any information or complaint for any offence against this act, either on the part of the prosecutor or of the person or persons accused, shall, after a reasonable sum of money for his or her charges and expenses shall have been paid or been tendered to him or her, refuse or neglect to appear at the time and place for that purpose appointed, without a reasonable excuse for his, her or their neglect, or appearing shall refuse to be examined on oath and give evidence before such justices of the peace, then and in either of such cases such person shall forfeit for every such offence any sum not exceeding 10*l.*, to be recovered in the manner herein-before provided for the recovery of the several penalties aforesaid."

Penalty on witnesses not attending when required.

Sect. 46. "That if any person shall make any false and fraudulent statement in any such return as he is herein-before directed and required to make, or shall falsely and wilfully include or procure or cause to be included in any such return any British corn which was not truly and *bonâ fide* sold or bought to, by, or on behalf of the person or persons in any such return mentioned in that behalf, in the quantity and for the price therein stated and set forth, every such offender shall be and be deemed guilty of a misdemeanor."

Punishment for making false returns.

Sect. 47. "That nothing in this act contained shall extend to alter the present practice of measuring corn, or any of the articles aforesaid, to be shipped from or to be landed in the port of London; but that the same shall be measured by the sworn meters appointed for that purpose, by whose certificate the searchers or other proper officers of his Majesty's customs are hereby empowered and required to certify the quantity of corn or other articles as aforesaid so shipped or landed; and that nothing in this act contained shall extend to lessen or take away the rights and privileges of, or the tolls or duties due and payable to, the mayor and commonalty and citizens of the city of London, or to the mayor of the said city for the time being, or to take away the privileges of any persons lawfully deriving title from or under them."

Act not to affect the practice of measuring or privileges of the city of London.

Sect. 48. "That if any action or suit shall be brought or commenced against any person or persons for any thing by him, her, or them done, by virtue or in pursuance of this act, such action or suit shall be commenced within three months next after the matter or thing done, and shall be laid in the proper county; and the defendant or defendants in such action or suit shall and may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon; and if afterwards a verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall discontinue his, her, or their action or actions, or be nonsuited, or judgment shall be given against him, her, or them, upon demurrer or otherwise, then such defendant or defendants shall have treble costs awarded to him, her, or them, against such plaintiff or plaintiffs."

Limitation of actions.

The act then gives the following table of duties:—

IMPORTATION, &c.

9 Geo. 4, c. 60.

TABLE OF DUTIES TO WHICH THIS ACT REFERS.

If imported from any foreign country:

WHEAT:—

According to the average price of wheat, made up and published in manner required by law; *videlicet*,

	£	s.	d.
Whenever such price shall be 62*s.* and under 63*s.* the quarter, the duty shall be for every quarter	1	4	8
Whenever such price shall be 63*s.* and under 64*s.* the quarter, the duty shall be for every quarter	1	3	4
Whenever such price shall be 64*s.* and under 65*s.* the quarter, the duty shall be for every quarter	1	2	0
Whenever such price shall be 65*s.* and under 66*s.* the quarter, the duty shall be for every quarter	1	1	4
Whenever such price shall be 66*s.* and under 67*s.* the quarter, the duty shall be for every quarter	1	0	8
Whenever such price shall be 67*s.* and under 68*s.* the quarter, the duty shall be for every quarter	0	18	4
Whenever such price shall be 68*s.* and under 69*s.* the quarter, the duty shall be for every quarter	0	16	8
Whenever such price shall be 69*s.* and under 70*s.* the quarter, the duty shall be for every quarter	0	15	4
Whenever such price shall be 70*s.* and under 71*s.* the quarter, the duty shall be for every quarter	0	10	8
Whenever such price shall be 71*s.* and under 72*s.* the quarter, the duty shall be for every quarter	0	6	8
Whenever such price shall be 72*s.* and under 73*s.* the quarter, the duty shall be for every quarter	0	2	8
Whenever such price shall be at or above 73*s.*, the duty shall be for every quarter	0	1	
Whenever such price shall be under 62*s.* and not under 61*s.*, the duty shall be for every quarter	1	5	4

And in respect of each integral shilling, or any part of each integral shilling, by which such price shall be under 61*s.*, such duty shall be increased by 1*s.*

BARLEY:—

Whenever the average price of barley, made up and published in manner required by law, shall be 33*s.* and under 34*s.* the quarter, the duty shall be for every quarter	0	12	4

And in respect of every integral shilling by which such price shall be above 33*s.*, such duty shall be decreased by 1*s.* 6*d.*, until such price shall be 41*s.*

Whenever such price shall be at or above 41*s.*, the duty shall be for every quarter	0	1	
Whenever such price shall be under 33*s.* and not under 32*s.*, the duty shall be for every quarter	0	13	4

And in respect of each integral shilling, or any part of each integral shilling, by which such price shall be under 32*s.*, such duty shall be increased by 1*s.* 6*d.*

OATS:—

Whenever the average price of oats, made up and published in manner required by law, shall be 25*s.* and under 26*s.* the quarter, the duty shall be for every quarter	0	9	

And in respect of every integral shilling by which such price shall be above 25*s.*, such duty shall be decreased by 1*s.* 6*d.*, until such price shall be 31*s.*

Whenever such price shall be at or above 31*s.*, the duty shall be for every quarter	0	1	

	£	s.	d.
OATS—*(continued.)*			
Whenever such price shall be under 25*s.* and not under 24*s.*, the duty shall be for every quarter	0	10	9
And in respect of each integral shilling, or any part of each integral shilling, by which such price shall be under 24*s.*, such duty shall be increased by 1*s.* 6*d.*			
RYE, PEASE AND BEANS;—			
Whenever the average price of rye, or of pease, or of beans, made up and published in manner required by law, shall be 36*s.* and under 37*s.* the quarter, the duty shall be for every quarter	0	15	6
And in respect of every integral shilling by which such price shall be above 36*s.*, such duty shall be decreased by 1*s.* 6*d.*, until such price shall be 46*s.*			
Whenever such price shall be at or above 46*s.*, the duty shall be for every quarter	0	1	0
Whenever such price shall be under 36*s.* and not under 35*s.*, the duty shall be for every quarter	0	16	9
And in respect of each integral shilling, or any part of each integral shilling, by which such price shall be under 35*s.*, such duty shall be increased by 1*s.* 6*d.*			
WHEAT MEAL AND FLOUR:—			
For every barrel, being 196 lbs.:—a duty equal in amount to the duty payable on 38½ gallons of wheat.			
OATMEAL:—			
For every quantity of 181½ lbs.:—a duty equal in amount to the duty payable on a quarter of oats.			
MAIZE OR INDIAN CORN, BUCK WHEAT, BEER OR BIGG:—			
For every quarter:—a duty equal in amount to the duty payable on a quarter of barley.			

If the produce of and imported from any British possession in North America, or elsewhere out of Europe:

WHEAT:—			
For every quarter	0	5	0
—Until the price of British wheat, made up and published in manner required by law, shall be 67*s.* per quarter.			
Whenever such price shall be at or above 67*s.*, the duty shall be for every quarter	0	0	6
BARLEY:—			
For every quarter	0	2	6
—Until the price of British barley, made up and published in manner required by law, shall be 34*s.* per quarter.			
Whenever such price shall be at or above 34*s.*, the duty shall be for every quarter	0	0	6
OATS:—			
For every quarter	0	2	0
—Until the price of British oats, made up and published in manner required by law, shall be 25*s.* per quarter.			
Whenever such price shall be at or above 25*s.*, the duty shall be for every quarter	0	0	6
RYE, PEASE AND BEANS:—			
For every quarter	0	3	0
—Until the price of British rye, or of pease, or of beans, made up and published in manner required by law, shall be 41*s.*			
Whenever such price shall be at or above 41*s.*, the duty shall be for every quarter	0	0	6

TABLE OF DUTIES.

WHEAT MEAL AND FLOUR:—
For every barrel, being 196 lbs.:—a duty equal in amount to the duty payable on 38½ gallons of wheat.

OATMEAL:—
For every quantity of 181½ lbs.:—a duty equal in amount to the duty payable on a quarter of oats.

MAIZE OR INDIAN CORN, BUCK WHEAT, BEER OR BIGG:—
For every quarter:—a duty equal in amount to the duty payable on a quarter of barley.

IV. Obstructing the Free Passage of Grain.

Obstructing free passage of grain.

This offence is provided for by the 9 Geo. IV. c. 31, s. 26, and has been treated of, *ante*, 282, 283, title **Assault**, where precedents relating to the offence will be found. As to the liability of the hundred, see *post*, **Riots**, Vol. III.

Coroner.(a)

CORONERS are ancient officers by the common law, so called because they deal principally with the pleas of the crown, and were of old time the principal conservators of the peace. 2 *Hawk.* c. 9, s. 1; see *Jervis's Cor.* 1, 2, 3.

Concerning whom will be shown,

I. *The different kinds of Coroners*, 870.
II. *Who may be a Coroner*, 871.
III. *Election of*, 871.
IV. *Duration of Office and removal of*, 874.
V. *Places where Coroner has Jurisdiction*, 874,
VI. *Power to appoint a Deputy*, 874,
VII. *Power and Duty in taking Inquisitions of Deaths: and herein of the Forms of Inquisitions and other matters relative thereto*, 875.
VIII. *Power and Duty in other matters*, 884.
IX. *His Fees*, 884.
X. *Other Privileges*, 885.
XI. *Punishment, &c. for not doing his Duty*, 885.
XII. *Forms*, 886.

I. Different kinds of Coroners.

Different kinds of.

There are three kinds of coroners—*viz.* 1st, Those *virtute officii*, as the lord chief and puisne judges of the Court of King's Bench; 4 *Rep.* 57 b; 4

(a) See the able and useful work of Mr. John Jervis on this subject. See also Bac. Abr. *Coroner*; Com. Dig. *Officer*, (G); Imp. Off. Cor.; 1 Chit. C. L. 163; 2 Hale's P. C. index, *Coroner*; Umfreville on Coroners.

Inst. 73;—2d, Those *virtute cartæ sive commissionis*, as those within particular liberties and franchises, over which the lords or heads of corporations are empowered by charter to act themselves, or to create their own coroners; *Mad. Exch.* 287; *Jerv.* 3; or coroners of the verge of the King's court, or coroners of the admiralty; *Jerv.* 4, 5;—and 3d, Those *virtute electionis*, which will be treated of under this title. WHO MAY BE CORONER.

II. Who may be a Coroner.

Of ancient time this office was of great estimation; for none could have it under the degree of a knight. 3 Edw. I. c. 10; 4 *Inst.* 271; *Jerv. Cor.* 2, (*a*). Dignity.

And by stat. 14 Edw. III. st. 1, c. 8, no coroner shall be chosen unless he have land in fee sufficient in the same county whereof he may answer to all manner of people. Estate.

It is observable that no precise amount of estate is expressly required by this statute; but the coroner ought to have sufficient property to maintain the dignity of his office, and to answer any fine that may be set upon him for his misbehaviour. But if having an estate in fee within the county it be insufficient to answer his fines, that will not operate as a disqualification, or be a ground for his removal, if he be of sufficient estate to execute his office, for the county upon his default will be liable to the fine, as a punishment for having elected an insufficient officer. 2 *H. P. C.* 50; 2 *Inst.* 175; *Jerv.* 9.

III. Election of.

The coroner (as of ancient time the sheriffs and conservators of the peace) shall be chosen in full county, that is, in the county court, by the commons of the same county. 28 Edw. III. c. 6. To be chosen in the county court.

And this must be in pursuance of the King's writ for that purpose, issuing out of and returnable into the Chancery: and none but freeholders have a voice at such election, for they only are suitors to the county court. 2 *Hawk.* c. 9, s. 5, 10.

The stat. 58 Geo. III. c. 95, after reciting, that "whereas there are no sufficient regulations for the election of coroners for counties," enacts, "that from and after the passing of this act, upon every election to be made of any coroner or coroners of any county in England and Wales, the sheriff of the county where such election shall be made shall hold his county court for the same election at the most usual place or places of election of coroners within the said county, and where the same have most usually been held for forty years last past, and shall there proceed to election at the next county court, unless the same fall out to be held within six days after the receipt of the writ *de coronatore eligendo*, or upon the same day; and then shall adjourn the same court to some convenient day, not exceeding fourteen days, giving ten days' notice of the time and place of election; and in case the said election be not determined upon the view, with the consent of the freeholders there present, but that a poll shall be demanded for determination thereof, then the said sheriff, or in his absence his under sheriff, with such others as shall be deputed by him, shall forthwith there proceed to take the said poll, in some public place, by the same sheriff, or his under sheriff as aforesaid in his absence, or others appointed for the taking thereof as aforesaid; and every such poll shall commence on the day upon which the same shall be demanded, and be duly and regularly proceeded in from day to day (Sunday excepted) until the same be finished; but so as that no poll for such election shall continue more than ten days at most (Sunday excepted), and the said poll shall be kept open seven hours at the least each day, between the hours of nine in the morning and five at night: and for the more due and orderly Mode of proceeding. Sheriff to hold his county court for election of coroner at usual place of election; and if election not determined on view, then to proceed to take a poll. Commencement and duration of poll.

ELECTION OF.

38 Geo. 3, c. 96.

Poll clerks to be appointed and sworn.

proceeding in the said poll, the said sheriff, or in his absence his under sheriff, or such as he shall depute, shall appoint such number of clerks as to him shall seem meet or convenient for the taking thereof; which clerks shall take the said poll in the presence of the said sheriff, or his under sheriff, or such as he shall depute; and before they begin to take the said poll, every clerk so appointed shall by the said sheriff, or his under sheriff, or such as he shall depute as aforesaid, be sworn truly and indifferently to take the same poll, and to set down the names of each freeholder, and the place of his abode and freehold, and the name of the occupier thereof, and for whom he shall poll, and to poll no freeholder who is not sworn, if required to be sworn by the candidates or either of them, and which oaths of the said clerks the said sheriff, or his under sheriff, or such as he shall depute, are hereby empowered to administer; and the sheriff, or in his absence his under sheriff as aforesaid, shall appoint for each candidate such one person as shall be nominated to him by each candidate, to be inspector of every clerk who shall be appointed for taking the poll; and every freeholder, before he is admitted to poll at the same election, shall, if required by the candidates, or any of them, first take the oath hereinafter mentioned, which oath the said sheriff by himself, or his under sheriff, or such sworn clerk by him appointed for taking the said poll as aforesaid, is hereby authorised to administer; *videlicet*,

Inspector of poll clerk to be appointed.

Freeholder, if required, to be sworn before he polls.

The oath of qualification.

"*YOU swear* [or being one of the people called Quakers, *you solemnly affirm*] *that you are a freeholder of the county of and have a freehold estate, consisting of lying at within the said county; and that such freehold estate has not been granted to you fraudulently, on purpose to qualify you to give your vote at this election; and that the place of your abode is at* [and if there be a place consisting of more streets or places than one, specifying what street or place,] *that you are twenty-one years of age, as you believe, and that you have not been before polled at this election.*"

Punishment against perjury, or subornation of perjury.

"And in case any freeholder or other person taking the said oath or affirmation hereby appointed to be taken by him as aforesaid shall thereby commit wilful and corrupt perjury, and be thereof convicted, and if any person shall unlawfully or corruptly procure or suborn any freeholder or other person to take the said oath or affirmation in order to be polled, whereby he shall commit such wilful and corrupt perjury, and shall be thereof convicted, he and they for every such offence shall incur such pains and penalties as are declared in and by two acts of parliament, the one made in the fifth year of

5 Eliz. c. 9.

the late Queen Elizabeth, intituled, 'An Act for punishment of such as shall procure or commit any wilful perjury;' and the other made in the second

2 Geo. 2, c. 25.

year of his late Majesty King George the Second, intituled, 'An Act for the more effectual preventing and further punishment of forgery, perjury, and subornation of perjury, and to make it felony to steal bonds, notes, or other securities for payment of money;' and by any other law or statute now in force for the punishment of perjury or subornation of perjury."

Mortgagor and cestuique trust to vote.

Sect. 2. "That no person or persons shall be allowed to have any vote at such elections for coroner or coroners of any county in England and Wales as aforesaid, for or by reason of any trust estate or mortgage, unless such trustee or mortgagee be in actual possession or receipt of the rents and profits of such estate; but that the mortgagor or cestuique trust in possession shall and may vote for the same estate, notwithstanding such mortgage or trust; and that all conveyances of any messuages, lands, tenements, and hereditaments, in order to multiply voices, or to split or divide the interest in any houses or lands among several persons, to enable them to vote at elections for a coroner of any county as aforesaid, are hereby declared to be void and of none effect."

Expenses of sheriff and poll clerks to be paid by the candidates.

Sect. 3. "That all the reasonable costs, charges, and expenses, the said sheriff, or his under sheriff, or other deputy, shall expend or be liable to, in and about the providing of poll books, booths, and clerks, (such clerks to be paid not exceeding 1*l.* 1*s.* each per diem,) for the purpose of taking the poll at any such election, shall be borne, sustained, and paid by the several candidates at such election, in equal proportions."

Mr. *Jervis*, in page 12 of his work, observes, that the sole and principal object of this act is to regulate the time and mode of electing coroners, and its provisions must be followed strictly. In the case of the *Coroner of Stafford*, in Ch. M. T. 1826, MS. there cited, the writ *de coronatore eligendo* was received by the under-sheriff on the 1st of April, 1826. On the 5th of the same month the under-sheriff informed the candidates for the office that the sheriff had appointed the 27th of April then instant for the election; the next county court after the receipt of the writ being holden on the 13th of April, the sheriff did not proceed to the election, but gave notice that he would proceed to the election on the 27th. On that day the election was commenced, and proceeded in from day to day until it terminated. This was holden to be irregular by the Lord Chancellor, and the chief justices of the King's Bench and Common Pleas, the sheriff being bound by the statute to proceed to the election at the next county court after the receipt of the writ, unless it happened to be holden within six days, or upon the day of the receipt of the writ. When the writ is received within six days of the next county court, or upon the same day, the notice of adjournment is proclaimed at the rising of the court, and is usually affixed on the church doors.

Provisions of 58 Geo. 3, to be closely pursued.

We have already seen, *ante*, 871, that the electors must be freeholders; but as to the amount of their estate it seems, however small its value may be, it will suffice to confer the right of voting, provided it be not obtained fraudulently and colourably for the purpose of qualifying the elector. To confer a right to vote the elector must have a freehold interest in lands within the county. Thus tenants in fee simple, in fee tail, or for life, may vote at the election of coroners, but any thing short of a freehold interest, as a lease for years, will not confer that privilege. *Jervis*, 15. See further sect. 2 of 58 Geo. III. *ante*, 872.

Electors, who may be.

Corporators sole have a freehold in lands which they enjoy in that character, but members of corporations aggregate are not entitled to vote in respect of lands belonging to the corporation. Purchasers of redeemed land tax, (after August, 1802,) after registry of the contract and certificate, are to be taken to be in the actual seisin and possession of a yearly rent or sum as a fee farm rent, equal in amount to the land tax purchased, free from all charges and deductions, to be issuing and payable out of the manors, messuages, lands, tenements, or hereditaments, whereon the land tax so purchased was charged, on the same days as such land tax was payable at the time of the purchase thereof. 42 Geo. 3, c. 116, s. 154.

All natural persons born within the dominions of the crown of England are capable of holding freehold estates, unless they be under some civil disability, and therefore incapable of possessing any real property.

Aliens are incapable of holding freehold estates for their own benefit, but if they be naturalized by act of parliament, or made denizens by the King's letters-patent, they may.

Women, infants, lunatics, and idiots, cannot vote at the election of coroners. *Jervis*, 16, 17.

Swearing in.

After the election the sheriff should in open court administer to the coroner elected the oaths of allegiance, supremacy and abjuration, and also the oath of office. See *post*, Oaths, Vol. III. This being done the coroner is in full possession of his office, and the business of the election is terminated. *Jervis*, 19. The coroner should also within six months after his election make and subscribe the declaration required by statute 9 Geo. IV. c. 17, s. 2, 5, which may be done either in the courts of Chancery or King's Bench, or at the quarter sessions of the county. 9 Geo. IV. c. 17, s. 6. *Jervis*, 19.

Return of sheriff.

The sheriff must make his return into Chancery into the Petty Bag Office of the election; if he refuse so to do, an action on the case lies against him. See 2 *Vent.* 27.

County to answer for him.

Being elected by the county, if he be insufficient, and not able to answer such fines and other duties in respect of his office, as he ought, the county, as his superior, shall answer for him. 2 *Inst.* 175, *ante*, 871.

DURATION OF OFFICE.

IV. Duration of Office, and Removal of.

Duration of office.

Being chosen by the county, his office continues, notwithstanding the demise of the King. 4 *Inst.* 271.

Removal.

The coroner is chosen for life, but he may be removed either by being made sheriff or chosen verderer, which are offices incompatible with the other, or by the King's writ *de coronatore exonerando*, for a cause to be therein assigned,—as that he is engaged in other business, is incapacitated by years or sickness, had not a sufficient estate in the county, or lives in an inconvenient part of it. *Fitz. N. B.* 163, 164; 1 *Bla. Com.* 348.

By 25 Geo. II. c. 29, extortion, neglect, or misbehaviour, are good causes for his removal, *post*, 885.

A coroner was removed where he used corrupt influence over the jury. *R.* v. *Coates*, cited *Dick. J.* 515.

Lying in prison for twelve months has been adjudged a good ground for removing a coroner, even though the duties of his office were during that time discharged by another coroner of the county. *Exparte Parnell*, 1 *J. & W.* 451.

A common merchant who had been elected a coroner was removed upon the ground that he was *communis mercator*. 2 *Inst.* 32.

The practice is where a coroner is and ought to be removed, to issue both the writ *de coronatore exonerando* and that *de coronatore eligendo* at the same time, though the former must be first executed, and no notice of the issuing need be given to the party accused.

The party removed may have a commission to inquire whether the cause assigned for removal be true, but he cannot traverse it. 1 *Jac. & W.* 454.

V. Places where Coroner has Jurisdiction over.

Places wherein coroner has jurisdiction.

The jurisdiction of coroners is limited to the county, liberty, or precinct in and for which they are elected or appointed, and cannot be enlarged by any private act or delegation from the crown. *Finch*, 388. For this reason no coroner, even though he had a special commission from the King for that purpose, could take confession of high or petit treason, with respect to which he had originally no jurisdiction. 2 *Inst.* 629; *Jervis*, 42.

In many cases, as with the coroner of the admiralty, or verge of the King's palace, a coroner has concurrent jurisdiction.

Where stroke and death in different counties.

The doubt which formerly existed as to whether an offender could be proceeded against in either county, when the stroke and death were in different counties, was removed by the statute 2 & 3 Edw. VI. c. 24, s. 2; and now, by 7 Geo. IV. c. 64, which repeals that act, it is enacted, sect. 12, "that where any felony or misdemeanor shall be committed on the boundary or boundaries of two or more counties, or within the distance of five hundred yards of any such boundary or boundaries, or shall be begun in one county and completed in another, every such felony or misdemeanor may be dealt with, inquired of, tried, determined and punished in any of the said counties in the same manner as if it had been actually and wholly committed therein."

If a party has been killed in one county, the coroner, *super visum corporis*, may now, by virtue of the 7 Geo. IV. c. 64, s. 9, inquire, as he formerly might at common law, of all accessaries and procurers before the fact, though the procurements were in another county. See *Jervis*, 52; 1 *Hale, P. C.* 427. The 7 Geo. IV. c. 64, repeals the 2 & 3 Edw. VI. c. 24. See the 9th section, *ante*, 27.

VI. Power to appoint a Deputy.

Power to appoint a deputy.

The *judicial* duties of the coroner, as holding inquests or the like, must be discharged by the coroner himself and cannot be deputed. *Cromp. Just.* [illegible]

227 a; 2 *H. P. C.* 58; 1 *E. P. C.* 383; *R.* v. *Farrant*, 3 *B. & Ald.* 260; 1 *Chit. Rep.* 746, S. C.; *Jervis*, 54, 55. It has been contended that coroners of particular liberties and franchises may by prescription appoint a deputy. But it would seem that the general principles applicable to coroners by election would equally apply to coroners by appointment, and render such a custom bad. *Jervis*, 56. In *R.* v. *Coroner, &c. of London*, *Jervis*, *Adda.* 408, this point was raised, but not settled. The coroner of the Admiralty, by virtue of his patent, may appoint a deputy.

POWER TO APPOINT A DEPUTY.

VII. Power and Duty in taking an Inquisition of Death.

In general it is the most important duty of a coroner to take inquests of unnatural or sudden deaths, and this whether they arise by accident, *felo de se*, or in prison.

Duty in taking inquisition of death.

When it happens that any person comes to an unnatural death, the township shall give notice thereof to the coroner. Otherwise if the body be interred before he come, the township shall be amerced. 4 *MS. Sum.* 333.

Notice.

And by *Holt*, C. J. it is a matter indictable to bury a man that dies a violent death, before the coroner's inquest have sat upon him. *Id.*; 2 *Hawk.* c. 9, s. 23.

Burying without notice.

If the township shall suffer the body to lie till putrefaction, without sending for him, they shall be amerced. *Id.*

Lying unburied.

The Jury]—Power of summoning jury is given to the coroner; he is to issue a precept to the constable of the four, five, or six next townships to return a competent number of good and lawful men of their townships, to appear before him in such a place to make an inquisition touching that matter. 4 Edw. I. st. 2; 2 *Hale*, 59. Or he may send his precept to the constable of the hundred. *Wood's Inst.* b. 4, c. 1.

Precept to summon a jury.

It seems sufficient, and it is the practice, to summon the jury only from the neighbourhood. 1 *Sid.* 204; 1 *Keb.* 723; 2 *Hawk.* c. 9, s. 22.

The 8 Hen. VI. c. 19, enacts, that the inquiry shall be made by persons having lands of the yearly value of 40*s.*, but it is not usual to return a jury having such qualifications.

The jury.

Inquests held by the coroner in virtue of his office without writ, are expressly excepted from the operation of the late jury act, 6 Geo. IV. c. 50, s. 32.

The jury must consist of twelve at the least, and twelve must agree in the verdict. See *Cobat's case*, 1 *H. P. C.* 161, n.; *Lambert* v. *Taylor*, 6 *D. & R.* 196; 4 *B. & Cres.* 138, S. C.

A coroner's inquisition ought to show upon the face of it of what place the party who took it was coroner; and that it was taken by the oath of "honest and lawful men." 2 *Ld. Raym.* 1305. As to who are such men, see *post*, **Jurors**, Vol. III. p. 403.

If the constables make not a return, or the jurors returned appear not, their defaults are to be returned to the coroner; and the constables or jurors in default shall be amerced before the judge of assize. 2 *Hale*, 59.

Coroners have no power to impose any fine or amercement. 2 *Inst.* 136; 2 *H. P. C.* 62; *Jervis*, 225.

If the coroner, after notice, be remiss in summoning the jury, or otherwise, he may be amerced by virtue of the statute *de officio coronatoris*, 1 *Hale, P. C.* 424, 2d ed. 58, and by the provisions of the 3 Hen. VII. c. 1, he may be fined 100*s.* for each default.

By whom Inquest taken]—An inquisition *super visum corporis* may be taken by one, although there be several coroners in the county; 2 *H. P. C.* 56; for wherever coroners are authorised to act as judges, the act of one who first proceeds in the inquiry, and perfects it, is of equal authority as if all had joined, but after the proceeding has been instituted, and concluded by one,

By whom taken where several coroners.

TAKING AN INQUISITION OF DEATH.

the act of any other will be void. 2 *H. P. C.* 59; *Standf. P. C.* 53. The coroner, we have seen, cannot act by deputy, *ante*, 874.

As to the places wherein he has jurisdiction, *ante*, 874.

When to be taken.

When to be taken]—The inquest must be taken within a reasonable time after the death of the party; hence seven months has been held too late. 1 *Stra.* 22; *Salk.* 377.

The proceeding by inquisition being judicial, must not be conducted on a Sunday. See 9 *Co.* 666.

Place of holding.

Place of holding]—It is not absolutely requisite that the inquest should be held at the same place where the body is viewed. 2 *Hawk.* c. 9, s. 25.

Swearing and charge.

Swearing of Jury and viewing Body]—The jury appearing is to be sworn and charged by the coroner to inquire, upon the view of the body, how the party came by his death. 2 *Hale*, 60.

View of the body.

For he can take inquisition of death only upon view of the body, and not otherwise, therefore if the body be interred before he come, he must dig it up. And this he may do lawfully within any convenient time, as in fourteen days. 4 *MS. Sum.* 333, *supra;* 2 *Hawk.* c. 9, s. 23.

And it has been lately held, that a coroner's duty is judicial, and that he can only take an inquest *super visum corporis;* and that an inquest in which the jury were not sworn by the coroner himself, and *super visum corporis*, is absolutely void. The court, therefore, will not, after an adjournment by the coroner of such an inquest, grant any *mandamus* to compel him to proceed in it. *R.* v. *Farrant*, 3 *B. & A.* 260; 1 *Chit. Rep.* 745, S. C.

If the body cannot be viewed, the coroner can do nothing; but the justices of the peace shall inquire thereof. *Id.* 4 *MS. Sum.* 334.

It seems the whole of the body should be inspected. *R.* v. *Bond*, 1 *Stra.* 22.

So essential is the view to the validity of the inquisition, that if the body be not found, or have lain so long before the view that no information can be obtained from the inspection of it, or if there be danger of infection by digging it up, the inquest ought not to be taken by the coroner, unless he have a special commission for that purpose; but as the proceeding before the coroner is one only of several, application should be made, in such cases, to the magistrates or justices authorised to inquire of felonies, &c., who, without viewing the body, shall take the inquest by the testimony of witnesses. 5 *Rep.* 110; 2 *R. Abr.* 96; 2 *Hawk. P. C.* c. 9, s. 23. Indeed it would seem that coroners may be amerced for taking up a body that has been buried so long, that, from its state of decomposition, no information can result from the view; 2 *Lev.* 140; and that in such a case the court into which the inquisition is returned, may, upon affidavit of the circumstances, refuse to receive and file it. 1 *Stra.* 22; 2 *Hawk.* c. 9, s. 24; *Jervis*, 29.

Of what inquest shall be where a person is slain.

Of what the Inquest shall be]—The jury being sworn, and the body upon view, he shall inquire upon the oaths of them, in this manner, by the statute of 4 Edw. I. stat. 2, called the statute *de officio coronatoris, viz.*

If they knew where the person was slain; whether it were in any house, field, bed, tavern, or company;

Who are culpable, either of the act, or of the force; and who were present, either men or women, and of what age soever they be, if they can speak, or have any discretion;

And how many soever be found culpable; they shall be taken and delivered to the sheriff, and shall be committed to the gaol;

And such as be found, and be not culpable, shall be attached until the coming of the judges of assizes.

And by the same statute, if it fortune any such man be slain, which is found in the fields, or in the woods, first it is to be inquired whether he were slain in the same place or not;

And if he were brought and laid there, they should do so much as they

TAKING AN INQUISITION OF DEATH.

can to follow their steps that brought the body thither, whether he were brought upon a horse or in a cart.

It shall also be inquired if the dead person were known, or else a stranger, and where he lay the night before.

Wounds.

Also by the same statute, all wounds ought to be viewed the length, breadth, and deepness; and with what weapons; and in what part of the body the wound or hurt is; and how many be culpable; and how many wounds there be; and who gave the wound.

Defendant's evidence.

And they must hear evidence on all hands, if it be offered to them, and that upon oath, because it is not so much an accusation or an indictment as an inquisition or inquest of office. 2 *Hale*, 157; *infra* and *post*, 878.

To inquire of the murderer's lands and goods.

And by the aforesaid statute if any be found culpable of the murder, the coroner shall immediately go to his house and shall inquire what goods he hath, and what corn he hath in his grange; and if he be a freeman, they shall inquire how much land he hath, and what it is worth yearly over and above the service due to the lord of the fee; and the land shall remain in the King's hands until the lords of the fee have made fine for it.

And when they have thus inquired upon every thing, they shall cause all the land, corn, and goods to be valued, in like manner as if they should be sold immediately; and thereupon they shall be delivered to the whole township, which shall be answerable before the judges for all.

Persons drowned or suddenly dead.

In like manner, by the said statute, it is to be inquired of them that be drowned, or suddenly dead, whether they were so drowned or slain, or strangled by the sign of a cord tied straight about their necks, or about any of their members, or upon any other hurt found upon their bodies. And if they were not slain, then ought the coroner to attach the finders, and all other in the company.

Flight.

He shall also inquire whether the persons found guilty fled; for which flight they forfeit goods and chattels. 2 *Hawk.* c. 9, s. 27, 51.

Township amerced for an escape.

And if any person be slain or murdered in the daytime, and the murderer escape untaken, the township shall be amerced. 3 Hen. VII. c. 1.

Deodands.

Concerning horses, boats, carts, and the like, whereby any are slain, which properly are called deodands, they also shall be valued, and delivered unto the towns as before. 4 Edw. I. st. 2; *post*, tit. **Deodands**, Vol. I.

Accessaries.

By the express words of the 1 & 2 P. & M. c. 13, s. 5, he may inquire of *accessaries before the fact;* but he cannot inquire of accessaries *after* the fact. 2 *Hawk.* c. 9, s. 26, 27.

Persons dying in prison.

He ought also to inquire of the death of all persons who die in prison, that it may be known, whether they died by violence, or any other unreasonable hardships; for if a prisoner, by the duress of the gaoler, come to an untimely death, it is murder in the gaoler, and the law implies malice in respect of the cruelty. 3 *Inst.* 52, 91.

And this inquest upon prisoners ought to consist of a party jury, that is, six of the prisoners (if so many there be), and six of the next vill or parish, not prisoners. *Umfreville's Coron.* 212.

Statute of Edw. I merely directory.

The above statute of 4 Edw. I. st. 2, is merely directory, and in affirmance of the common law; and does not restrain the coroner from any branch of his power, nor excuse him from the execution of any part of his duty not mentioned in the statute, and which was incident to his office at common law. 2 *Hawk.* c. 9, s. 21; 3 *Inst.* 52.

Coroners not to intrude into families or hold unnecessary inquests.

Coroners ought not, in general, where a party dies by the visitation of God, as from apoplexy or the like, nor in any case, unless a very doubtful one, unnecessarily to obtrude themselves into private families for the purpose of instituting inquiry. 11 *East*, 229. They should in general wait until they are sent for by the peace officers of the place where the violent or unnatural death occurred before holding an inquest.

Evidence and witnesses.

Evidence and Witnesses]—The coroner must hear evidence on all hands, if it be offered to him, and that upon oath, because it is not so much an accusation or an indictment, as an inquisition or inquest of office. 2 *Hale*, 157, *supra*.

TAKING AN INQUISITION OF DEATH.

In *R.* v. *Scory*, 1 *Leach*, 43, the Court of K. B. granted a rule against the coroner, to show cause why a criminal information should not be filed against him for refusing, on taking an inquisition *super visum corporis*, to receive evidence on the part of the person accused.

The coroner, as an incident to his office, has authority, and it is his duty, to issue a summons to compel the appearance of witnesses, and to commit them for their contempt should they refuse to appear, or having appeared, to give evidence upon the subject of the inquiry. 1 *Chit. C. L.* 164.

On the appearance of each witness the coroner should take down his name, abode, and occupation, and then administer the oath that he shall speak the truth, &c. *Umf. Cor.* 177. In case an interpreter is necessary, the oath must be administered to him. *Id.* 182. As to witnesses in general, see *post*, **Evidence**, Vol. II. See further, *post*, **Examination**, Vol. II.

The jurors at any time during the investigation may call back before them any witness who has been examined, and ask any question that may suggest itself to their minds as elucidatory of their inquiry.

Taking down examinations in writing, and binding witnesses to appear, &c.

The 7 Geo. IV. c. 64, s. 4, which repeals the 1 & 2 P. & M. c. 13, s. 3, enacts, "that every coroner, upon any inquisition before him taken, whereby any person shall be indicted for manslaughter or murder, or as an accessary to murder before the fact, shall put in writing the evidence given to the jury before him, or as much thereof as shall be material; and shall have authority to bind by recognizance all such persons as know or declare any thing material touching the said manslaughter or murder, or the said offence of being accessary to murder, to appear at the next court of oyer and terminer, or gaol delivery, or superior criminal court of a county palatine, or great sessions, at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such coroner shall certify and subscribe the same evidence, and all such recognizances, and also the inquisition before him taken, and shall deliver the same to the proper officer of the court in which the trial is to be, before or at the opening of the court."

By section 5 of the same act, if they offend in any thing contrary to the intent and meaning of these provisions, the court to whose officer any such examination, information, evidence, bailment, recognizance, or inquisition ought to have been delivered, shall, upon examination and proof of the offence, in a *summary manner* set such fine upon them as the court shall think fit. *Post*, 882.

This provision applies to coroners of all jurisdictions, as well of the county as of exempt franchises and liberties. Sect. 6, *post*, 882.

The examination should be taken down, as near as possible, in the very words of the party examined. See *post*, Vol. II. p. 98.

Certifying examination.

The depositions ought regularly to be returned to the clerk of assize at the opening of the commission, or if possible before, so as to enable the judge who presides to examine the facts of each case, that he may explain to the grand jury in his charge any difficulty that may exist, and state to them the law as applicable to the facts. Coroners have frequently been censured for remissness in this respect. But they are not bound to return the depositions unless there be something depending before the court to make it necessary. 2 *Stra.* 1073.

As to depositions being evidence on other trials, see *post*, **Evidence**, Vol. II. p. 54.

Who may be present at inquest.

Who may of right be present]—Much doubt and discussion have arisen as to the power of the coroner to exclude individuals from the inquest. It may now, however, be fairly inferred from the late case of *Garnett* v. *Ferrand*, 6 *B. & Cres.* 611, that the coroner has the power of excluding not only particular individuals, attorneys and counsel, &c. but the public generally. It was held in that case, that no action would lie against a coroner for excluding a party from an inquest. The coroner should exercise his own discretion fairly and not arbitrarily. See *Daubney* v. *Cooper*, 10 *B. & Cres.* 237, *ante*, 529.

Adjourning inquest.

Adjourning Inquest]—If the place where the body is be an inconvenient one for the purpose of holding the inquest, or if any of the witnesses be ab-

sent, or affected by undue influence, or unwilling to attend, or there be any other good cause why the inquest cannot be properly completed, the coroner may adjourn it to another time or place, informing the jury when and where they are again to meet, and first taking the jurors' recognizance for their appearance at the adjournment time or place. See *Umfr. Cor.* 179; 2 *Hawk.* c. 9, s. 25.

The verdict.

The Verdict]—It is peculiarly the province of the jury to investigate and determine the facts of the case, they are neither to expect nor should they be bound by any specific or direct opinion of the coroner upon the whole of the case, except so far as regards the verdict, which, in point of law, they ought to find as dependent and contingent upon their conclusions in point of fact. But in questions of law, juries ought to ask and show the most respectful deference to the advice and recommendation of the coroner; *ad quæstionem factis non respondent judices, ad quæstionem legis non respondent juratores. Vaugh. Rep.* 160. The verdict should be compounded of the facts as detailed to the jury by the witnesses, and of the law as stated to them by the court. See *Jervis*, 225, 226.

Formerly the jury might from their own cognizance of the fact have returned a verdict without any evidence being adduced before them. 1 *Vent.* 67. But this is not so now, and if a juryman can give evidence, he should be sworn, and give it in the ordinary way as other witnesses. 1 *Salk.* 405.

If twelve of the jury cannot agree in their verdict, the jury are to be kept without meat, drink, or fire, until they return their verdict. Even this may sometimes be ineffectual, and in such cases they should be adjourned to the next assizes, when they may have the benefit of the opinion and direction of the judge who presides. *Comb.* 386; *Jerv.* 229.

Form of inquisition.

Form of the Inquisition]—Immediately after the jury have pronounced their verdict, the same should, together with all the material proceedings at the inquest, be put into writing, and engrossed on parchment indented.

Attestation.

The coroner with his name and style of office, and all of the jurymen to the number of twelve or more, who found the verdict, should sign the inquisition. The signatures should be in full, stating both the Christian and surnames of each juror. The mere initials would not suffice, unless perhaps in the case of the Christian name appearing in full in the caption. See 1 *Nol.* 141; *R.* v. *Evett*, 6 *B. & Cres.* 247; 7 Geo. IV. c. 64, s. 4, *ante*, 878. It seems unnecessary to seal the inquisition, though usual so to do. See *Jerv.* 271.

Sealing.

Time of making it.

It does not appear when this formal inquisition should be drawn up, but it is usual and best it should be so before the jury are dispersed.

General requisites.

The *general requisites* of this inquisition are the same as those of an indictment. See *post*, Indictment, Vol III. p. 324.

The statement of the facts therein must be with legal certainty and precision, with no repugnancy or inconsistency, and be direct and positive. Mere superfluous statements may be rejected.

Formal parts.

The formal parts of an inquisition in general consist in the statement of the *venue*, the *place* where the death took place and inquisition was held, so as to show the coroner has jurisdiction, the *time* of the death and holding the inquisition, the *coroner's name* and title of office, the *view* of the body, the *name* of the *deceased* if known, the taking of the *oath* by all the jurors, the *jurors* being good and lawful men, their *verdict* or finding, and lastly, the *attestation*.

Venue and place.

The *venue* and *place* at which the inquisition is holden must appear on the face of the inquisition. 2 *H. P. C.* 166. If the inquisition do not state any place at all at which the inquisition is holden; (*Dyer*, 69;) or do not show with sufficient certainty that the place stated is within the jurisdiction of the coroner; (*Cro. Jac.* 276, 277;) as if it state that the inquisition was holden at B. without showing in what county B. is, otherwise than by putting the county in the margin, it is insufficient, and the inquisition may be quashed. 2 *Hawk. P. C.* c. 25, s. 128. But it is not necessary again to name the county in the margin, if it be referred to by the words "county aforesaid,"

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and it has been adjudged that the caption of an inquisition as taken at B before J. S. coroner of the King's liberty of B. aforesaid, is good, without expressly showing that B. is within the liberty of B. for that cannot but be intended. 5 *Rep.* 120, 121; *Jerv.* 248; *post*, **Indictment**, Vol. III. p. 33.

Form of inquisition. Time of holding.

The inquisition must state the *time* when it was holden, in order to show that the inquiry is recent. 2 *Saund.* 291. It suffices to state the day of holding without specifying the hour. If it be stated to have been taken upon an impossible day; (1 *T. R.* 316;) or to have been holden on such a day, in such a year of the King, without ascertaining what King; (2 *Hale P. C.* c. 25, s. 127;) the inquisition is bad, and may be quashed. A conviction stating the time in the præter perfect, and not in the present tense, insufficient; (*id.*); though this is not so in the case of a conviction. 1 *T. R.* 320, *ante*, 835. We have seen when the inquisition should be holden, as that it should not be on a Sunday, *ante*, 876; as to the mode of stating time in general, see *ante*, **Conviction**, p. 819; *post*, **Indictment**, Vol. III. p. 34.

Name and style of coroner.

The *name and style of office of the coroner* must be stated in order that it may appear that the inquisition was taken before a court of competent jurisdiction. 22 Edw. IV. c. 13; *Sum.* 207; *Staundf. P. C.* 96.

Although the style of office be added, yet the inquisition will be insufficient unless it appear that he was coroner for the district in which the inquisition is taken. *Cro. Eliz.* 193; 2 *Roll.* 82; 22 Edw. IV. c. 16. But an inquisition before J. S. coroner *in* the county, has been adjudged to be sufficient, without showing that he was coroner *for* the county, for that cannot but be intended. 2 *Hawk. P. C.* c. 25, s. 119; *Plowd.* 76, 77; 4 *Rep.* 41; *Jerv.* 250.

View.

It must be stated that the inquisition was taken on *view* of the body, which we have seen, *ante*, 876, is requisite to give the coroner jurisdiction, if not so stated the inquisition is bad, and may be quashed.

Name of deceased.

The *name of the deceased* should be described accurately, or a variance will be fatal. If his name be unknown he may be described as a person to the jurors unknown; but such a description would it seems be bad if his name known. See 3 *Camp.* 264; *Holt, C. N. P.* 595; 2 *H. P. C.* 281; *post*, **Indictment**, Vol. III. p. 340.

Names, &c. of jurors.

The inquisition should show that all the jurors took the oath, also who such *jurors* are, by name, and therefore it is insufficient to allege that it was taken by the oaths of the several persons underwritten; (6 *B. & C.* 247;) or of A. B., C. D., and others; (2 *H. P. C.* 168;) so although it is not necessary that the jury should come from the next adjoining townships, *ante*, 875, it must expressly appear that they are from the county or jurisdiction within which the inquiry is holden, that they are at least twelve in number, *ante*, 875; but see *Lambert* v. *Taylor*, 6 *D. & R.* 188; 4 *B. & C.* 138; and also that they present the inquisition upon their oaths. 2 *Hawk. P. C.* c. 25, s. 126. Lord *Hale* (2 *H. P. C.* 167,) was of opinion that the inquisition should appear to have been taken by the oaths of honest and lawful men, as well in the case of coroners' inquests, as in that of other indictments and presentments; but this is said to be unnecessary, and has been so held in the case of indictments in the superior courts, because, until the contrary be proved, all men shall be intended to be *probi et legales*. 2 *Hawk. P. C.* c. 25, s. 17, 126. Care should also be taken to insert the names of the jurors accurately, for if there be a variance between the names of the jurors in the caption and those in the attestation, it will be fatal. 3 *C. & P.* 414; *Jerv.* 252, 253.

The party charged.

If the inquisition contain matter of *accusation* against a party, such party should be described as accurately as a party should in an indictment against him; and see title **Indictment**, Vol. III. p. 335, 336, for further information on this head.

Time and place.

The time and place when and where the party is charged with having committed the offence, should be also specified as accurately and properly as in an indictment. In *R.* v. *Evett*, 6 *B. & Cres.* 247, an inquisition was quashed because it did not state where the party died. The day and year when the alleged crime took place should be stated. 2 *Hawk.* c. 25, s. 77.

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2 *H. P. C.* 177. The hour need not be stated. 3 *Burr.* 1434. See further as to the statement of time and place, *ante*, **Conviction**, p. 819, 820; *post*, **Indictment**, Vol. III. p. 344, 345, 330.

Act causing death.

The *act causing the death* must be stated accurately as in an indictment, see **Indictment**, Vol. III. otherwise the inquisition may be quashed. See *Jerv.* 263. With a view to the deodand, the inquisition should distinctly show what caused the death, and its value; and in case of death caused by the falling of a building, it should state what part of the materials caused such death, and their value. *R.* v. *Coroner, &c. of London, Exp. Assignees of Caruthers, a bankrupt*, cited *Jerv. Add.* 408.

Where the jury found that they *believed* a post to be the only cause of the death, the inquisition was quashed. 12 *Mod.* 112. So an inquisition has been quashed for not setting forth the wound, and that it was mortal. 1 *Salk.* 377; 7 *Mod.* 16. An inquisition may be good in part, and bad for the residue, if such residue can be separated from the other part. See *R.* v. *Coroner of London, Jerv. Add.* 408.

Enrolling proceedings.

Enrolling Proceedings]—All which things must be enrolled in the rolls of the coroner. 4 Edw. I. st. 2.

And the sheriff shall have counter rolls with the coroner of things belonging to their office. 3 Edw. I. c. 10.

Binding witnesses to prosecute and issuing warrant against offenders.

Binding Witnesses to Prosecute, &c. and issuing Warrant against Offender] If the verdict be of that description that future proceedings will be necessary, the coroner must bind by recognizance all such persons as know anything material touching the offence to appear at the court into which the inquisition is to be returned, then and there to prosecute and give evidence against the party charged. 7 Geo. IV. c. 64, s. 4. *infra, Umfr.* 188.

The coroner must, where the verdict charges a person with having murdered the deceased, or manslaughtered him, issue his warrant to apprehend the offender, and commit him to prison; (1 *Chit. C. L.* 164;) or if he be already in prison, the coroner should issue a detainer to the gaoler.

Burial of deceased.

Burial of Deceased]—After the proceedings are closed, or before, if it be necessary, the coroner should issue his warrant for the burial of the body or bodies upon which the inquest has been taken, and the burial must take place accordingly. 4 Edw. I. st. 2.

As to the burial of a *felo de se*, see 4 Geo. IV. c. 52, *post*, **Homicide**, Vol. III. p. 258.

Publishing proceedings.

Publishing Proceedings]—It is illegal to publish a statement of the evidence given before the coroner's jury, even though it be correct, and the party publishing it be not actuated by any malicious motives. 1 *B. & A.* 379; and see 2 *Camp.* 563; 3 *B. & Cres.* 556; 5 *D. & R.* 447, S. C.; 4 *B. & A.* 218.

Return of inquisitions, &c.

Return of Inquisition, Evidence, and Recognizance, &c.]—The stat. 7 Geo. IV. c. 64, s. 4, which repeals the stat. 1 & 2 Phil. & Mary, c. 13, as we have already seen, *ante*, p. 878, enacts, "that the coroner, upon any inquisition before him taken, whereby any person shall be indicted for manslaughter or murder, or as an accessary to murder before the fact, shall put in writing the evidence given to the jury before him, or as much thereof as shall be material, and shall have authority to bind by recognizance all such persons as know or declare any thing material touching the said manslaughter or murder, or the said offence of being accessary to murder, to appear at the next court of oyer and terminer, or gaol delivery, or superior criminal court of a county palatine, or great sessions, at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such coroner shall certify and subscribe the same evidence, and all such recognizances, and also the inquisition before him taken, and shall deliver the

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same to the proper officer of the court in which the trial is to be, before or at the opening of the court."

Fining for default.

By the same statute, sect. 5, it is enacted, "that if any justice or coroner shall offend in any thing contrary to the true intent and meaning of these provisions, the court, to whose officer any such examination, information, evidence, bailment, recognizance, or inquisition, ought to have been delivered, shall upon examination and proof of the offence in a summary manner, set such fine upon every such justice or coroner as the court shall think meet."

And by sect. 6, it is enacted, "that all these provisions relating to justices and coroners shall apply to the justices and coroners, not only of counties at large, but also of all other jurisdictions."

Attending court, return, &c. of inquisitions of *felo de se*.

Coroners ought also to attend personally upon the court, and to deliver to the proper officer all inquisitions of *felo de se*, and those in which any deodands are found, in order that they may be transmitted to the coroner and attorney of his Majesty's Court of King's Bench, from which court process is issued to bring in the deodand. *Jervis*, 41.

It is the duty of a coroner to be present at the assizes or the gaol delivery at the Old Bailey when any case is tried on an inquisition taken before him; and if he be not present, the court might fine him. *In re Unwin*, O. B. 1827, *Carr. C. L.* 17.

Defects in inquisitions how taken advantage of.

Defects in Inquisition how taken advantage of]—If the inquisition be defective in any of the particulars before pointed out as requisite thereto, a party be accused by the inquisition and appear in the Court of King's Bench, on the return of such inquisition into such court, he may demur to it, or move in arrest of judgment, or, what is more usual, may apply to the Court of King's Bench to get it quashed. And the latter course is not unusually adopted where a party interested in the deodand (if any) is desirous of getting rid of such deodand, the record of the inquisition being removed into the court by *certiorari*.

Where the inquisition is so defective that no judgment can be given upon it, the court will in general quash it, and where it contains the subject-matter of accusation, this is done by the court before which the party is arraigned, and the application, if made upon the part of the defendant, ought regularly to be made before the plea pleaded; (*Fost. C. L.* 231; *Holt*, 684; 4 *St. T.* 677;) although, if the defect be manifest, the court will in general entertain the application at any time before the verdict is delivered. *Jervis*, 285.

The inquisition may be good in part and bad for the residue, and quashed accordingly as to the bad part; (*R. v. Coroner, &c. of London*, cited *Jer. Add.* 408;) as where it is bad so far as relates to the deodand, or where there are two substantial findings, and one of them bad.

In addition to the objections arising upon the face of the inquisition, it may be quashed for the misconduct of either the coroner or the jury: *Mod.* 80; *Jerv.* 287;) as where the coroner fraudulently directed the jury to find a verdict of *felo de se*, telling them that it was in effect the same as a finding of lunacy, the court quashed the inquisition; (1 *Stra.* 69; and see 12 *Mod.* 493;) so the court will quash an inquisition taken without a view of the body, for the view ascertains the cause of the death, and is an essential part of the evidence, *ante*, p. 876; and, in like manner, where, from the decomposition of the body, no information can be derived from the view, the inquisition may be quashed upon an affidavit of the circumstances. 1 *Str.* 22; 2 *Hawk. P. C.* c. 9, s. 24; *Jerv.* 287.

Defects not aided by statute.

Defects in Inquisition not aided by Statute]—It should be observed that the statute of jeofails, and the late act 7 Geo. IV. c. 64, s. 20, which cures many trifling defects in indictments, do not extend to coroner's inquisitions.

Amending inquisitions.

Amending Inquisitions]—The Court of King's Bench have a discretionary power to amend coroner's inquisitions in furtherance of justice. This power is exercised according to the circumstances of each particular case. *Dyer*,

in *substance* cannot, it seems, be amended, but *formal* defects can. See 6 *B. & Cres.* 251; 2 *Hawk.* c. 25, s. 97; 1 *Sid.* 225, 259; 3 *Mod.* 101; 1 *Saund.* 356. Where a coroner's inquisition omitted to state the place where the death happened and where the body was found, and in the body of the inquisition the names of the jurors were not inserted, and the jurors had only signed with initials, so that the exact names of the jurors nowhere appeared: it was held, that these were all defects of substance, and not amendable in the Court of King's Bench. *R.* v. *Evett*, 6 *B. & Cres.* 247.

Amending inquisition.

It should be observed also, that the 20th section of the statute 7 Geo. IV. c. 64, does not apply to coroner's inquisitions. See this section, *post*, Indictment, Vol. III. p. 352.

Before the amendment can be made the inquisition must be in court, for which purpose a *certiorari* must be issued to the coroner to return the inquisition to the Crown Office, where it is filed. After this a *venire facias* is issued to bring the coroner into court to make the amendment, in obedience to which he attends personally at the Crown Office, where the amendment is made. *Comb.* 58. As to the mode of obtaining this *venire facias*, Mr. *Jervis* says, (p. 281,) the best course is to apply in term to the Court of King's Bench for a rule, or in vacation to a judge at chambers, for a summons to show cause why the amendment should not be made, and why the *venire facias* should not issue to bring the coroner into court, and the rule or summons should be served on the coroner or parties interested, upon the discussion of which the propriety of the amendment may be entertained, and if allowed, the *venire facias* will be issued.

Proceedings where Inquisition quashed.

Proceedings where Inquisition quashed]—Where an inquisition is quashed a new inquiry may by leave of the court (1 *Stra.* 167,) be instituted by the coroner, (3 *Mod.* 80,) the body being disinterred by order of the Court of King's Bench, which will exercise a discretion in making or refusing the order, according to the circumstances of the case and the length of time the body has been buried; (*Salk.* 377; 1 *Stra.* 22, 533, *ante*, p. 876); but where there is any imputation upon the coroner he shall not again interfere in the inquiry, but a *melius inquirendum* may be awarded to take a new inquisition by special commissioners, who shall proceed by the testimony of witnesses, without viewing the body. 1 *Salk.* 190; *ante*, p. 876; *Jerv.* 287.

Effect of inquisition. When traversable.

Effect of Inquisition]—It appears by the best authorities, that the inquests of the coroner are in no case conclusive, and that one affected by them, either collaterally or otherwise, may deny their authority and put them in issue. 3 *Keb.* 489; see 6 *B. & Cres.* 615, 627, 247. Doubts have been entertained whether inquisitions of flight and *felo de se* are traversable, but it seems they are. See *Jerv.* 282 to 284; see 1 *Saund.* 362, n.

Inquisition equivalent to finding of a grand jury.

Where the inquisition contains the subject-matter of accusation of any person, it is equivalent to the finding of a grand jury, and such person may be tried and convicted on it. 2 *Hale*, 61. And if an indictment be found for the same offence, and the defendant be acquitted on the one, he must be arraigned on the other, to which he may, however, effectually plead his former acquittal. 2 *Hale*, 61; 1 *Salk.* 382.

The finding of a grand jury is regarded as of more weight than an inquisition taken before the coroner; as the court will, in their discretion, bail after the latter, but always refuse after the former; the reason of which may be, that in one case they can look into the depositions, to see if the evidence supports the charge of murder, whereas in the other, the investigation is secret, and does not admit of a summary revision. 2 *Stra.* 911, 1242.

It is the practice to prefer an indictment to the grand jury, and to try the party accused, upon both proceedings at the same time, by which means the form of a second trial is rendered unnecessary. 1 *Salk.* 382.

When a coroner's jury have found that a party has murdered the deceased, the coroner may issue his warrant to apprehend him, and may commit him to prison; he has also power to summon witnesses, and bind over persons to prosecute and give evidence. 1 *Chit. C. L.* 163, 164.

HIS FEES.

VIII. His Power and Duty in other Matters.

Treasure trove. By stat. 4 Edw. I. st. 2, he ought to inquire of treasure that is found, who were the finders, and likewise who is suspected thereof; and that may well be perceived, where one liveth riotously, haunting taverns, and hath done so of long time: hereupon he may be attached for this suspicion by four or six or more pledges, if they may be found. See 2 *Hawk.* c. 9, s. 5.

Wrecks. Coroners may inquire of wrecks, and royal fishes, as sturgeons, whales, and the like. *Standf.* 51; *Bract.* 120; *Britt.* s. 42; *Jerv.* 34.

Executing process. Besides his judicial place, he hath also an authority ministerial as sheriff, namely, when there is just exception taken to the sheriff, judicial process shall be awarded to the coroner, for the execution of the King's writs; and in some special cases, the King's original writ shall be immediately directed to him. 4 *Inst.* 271; see *Tidd*, 9th ed.

Outlawry. He is bound to be present in the county court, to pronounce judgment of outlawry upon the exigent, after *quinto exactus*, at the fifth court, if the defendant doth not appear. *Wood's Inst.* b. 4, c. 1; *Watson's Sheriff*, c. 5.

Returning inquisitions, &c. As to his duty in returning inquisitions and being present at trials, see *ante*, p. 881, 882.

As conservator of the peace. As to his power and duty as conservator of the peace, to arrest, and suppress affrays, &c. see *ante*, **Arrest**, p. 261.

Deputy. We have already seen that the coroner cannot in general proceed by deputy, *ante*, p. 874, 875.

IX. His Fees.

Anciently the coroner had no fees. 1 *Com.* 347.

Fee of 13s. 4d. By the statute of 3 Hen. VII. c. 1, the coroner shall have for his fee, upon every inquisition taken upon the view of the body slain, 13*s.* 4*d.* of the goods and chattels of him that is the slayer or murderer, if he have any goods; and if not, he shall have for his said fee of such amerciaments as shall fortune any township to be amerced for escape of such murderers. So also stat. 25 Geo. II. c. 29, s. 3, 4.

Fee of 20s. and also 9d. a mile. Moreover, by stat. 25 Geo. II. c. 29, s. 1, for every inquisition (not taken upon view of a body dying in gaol) which shall be duly taken in any township or place contributing to the rates directed by stat. 12 Geo. II. c. 29, (the County Rate Act,) he shall have 20*s.* and also 9*d.* for every mile he shall be *compelled* to travel *from* his usual place of abode to take such inquisition; to be paid by order of the justices in sessions out of the *county* rate, for which order no fee shall be paid. See *post*, **County Rate**, 919.

Sect. 2. And for every inquisition taken on view of a body dying in prison, he shall be paid so much, not exceeding 20*s.*, as the justices in sessions shall allow, to be paid in like manner.

Sect. 5. But no coroner of the King's household, and of the verge of the King's palaces, nor any coroner of the admiralty, nor of the county palatine of Durham, nor of the city of London and borough of Southwark, or of any franchises belonging to the said city, nor of any city, town, or franchise not contributory to the county rates, or within which such rates have not been usually assessed, shall be entitled to any benefit by this act; but they shall have such fees and salaries as they were allowed before this act, or as shall be allowed by the persons by whom they have been appointed. See *R.* v. *Js. of W. R. of Yorkshire*, 7 *T. R.* 52.

A coroner under this statute is not entitled to any compensation for the miles travelled by him in returning to his usual place of abode from taking an inquisition. *R.* v. *Js. of Oxfordshire*, 2 *B. & A.* 203. *W. E. Taunton* had obtained a rule *nisi* for a *mandamus* to the defendants to make an order for paying one *Cecil*, a coroner for that county, a certain sum of money out of the county rates, being a compensation, at the rate of 9*d.* per mile for the several miles travelled by him as coroner *in returning to his usual place of abode*, from taking several inquisitions set forth in his affidavits.

After argument of the case, *per Curiam*, The words are, that the coroner shall be allowed 9*d.* per mile *for every mile he is compelled to travel from the place of his abode to take the inquisition.* The two *termini* are therefore clearly pointed out, and the coroner can only charge for the miles between them. Now the miles he travels in returning are obviously not from his usual place of abode, and therefore there is no pretence for this charge. Besides, at the time of the passing of the act (which is the proper period to be considered) this was an ample compensation. Rule discharged with costs.

In *R.* v. *Js. of Kent*, 11 *East*, 229, it was held discretionary in the justices whether they will allow the fee under stat. 25 Geo. II. c. 29, s. 1; they are judges whether the inquisition was duly taken; and the coroner has not necessarily a right to inquire of all such deaths as are not natural.

A coroner cannot have a fee for taking an inquest on a dead body manifestly drowned on the high seas and cast on shore. 7 *T. R.* 52.

The coroner is allowed only for every mile which he is *compelled* to travel from the usual place of his abode to take the inquisition. Therefore, where there are several inquisitions taken at the same place, and upon one journey, he cannot claim mileage for his travelling expenses for more than one inquisition. *R.* v. *Js. of Warwick*, 8 *D. & R.* 147; 5 *B. & Cres.* 430, S. C.

On an inquest taken on a dead body, under 25 Geo. II. c. 29, the inquisition must, in order to entitle the coroner to his fee, be signed by all the jurors. *R.* v. *Js. of Norfolk*, 1 *Nolan*, 14.

Coroners of such places and franchises as do not contribute to the county rates cannot claim fees under the 25 Geo. II. 7 *T. R.* 52.

Should the justices improperly refuse to allow fees to a coroner, his only mode of compelling them to make the allowance, or of trying his right to such as may be questionable, is to apply to the Court of King's Bench for a *mandamus*. In which case the writ must allege all the circumstances of the case, must show that he is entitled to the relief prayed, and that he had a right to call upon the magistrates to do that, for the non-performance of which the writ was sued out. 7 *T. R.* 52. If there be any thing criminal in the refusal, the magistrate might be indicted, or have a criminal information filed against him.

X. Other Privileges.

Exempt from offices.

Coroners are exempted from serving offices which are inconsistent with the duties of coroner, and are privileged from being summoned on juries. 2 *Rol. Abr.* 632, s. 4; *F. N. B.* 167; *Jerv.* 63.

Arrest.

They are privileged from arrest while in the execution of their judicial duties, and consequently whilst going to, being at, and returning from an inquest. See *Jerv.* 63.

XI. His Punishment for not doing his Duty.

Concealing felonies, neglecting duty, &c.

Coroners concealing felonies, or not doing their duty through favour of the misdoers, shall be *imprisoned* a year, and *fined* at the King's pleasure. 3 Edw. I. c. 9.

And by stat. 3 Hen. VII. c. 1, if any coroner be remiss, and make not inquisitions upon view of the body dead, and certify the same to the gaol delivery, he shall *forfeit* to the King 100*s.*

25 Geo. 2, c. 29.

And by stat. 25 Geo. II. c. 29, s. 6, if any coroner, not appointed by an annual election or nomination, or whose office is not annexed to any other office, shall be convicted of extortion or wilful neglect of his duty, or misdemeanor in his office, the court before whom he shall be so convicted may adjudge him to be *removed* from his office; and thereupon, if he shall have been elected by the freeholders, a writ shall issue for amoving him, and electing another in his stead; and if he hath been appointed by the lord of any

PUNISHMENT FOR NOT DOING HIS DUTY.

liberty or franchise, or in any other manner than by the freeholders, the person entitled to nomination shall, on notice of such judgment of amoval, nominate another person in his stead.

If a coroner do not return the depositions and recognizances pursuant to stat. 7 Geo. IV. c. 64, s. 4, 5, (*ante*, 881, 882,) the court may, in a summary way, set such fine upon him as they shall think proper.

In one case a coroner was discharged from his office, and fined 100*l.* for not returning an inquisition to the next gaol delivery, but suppressing it. *Lord Buckhurst's case*, 1 *Keb.* 280.

In *R.* v. *Coates*, cited *Dick*, Just., 515, a coroner was discharged from his office for using corrupt influence over the jury. And see further when he may be removed, *ante*, 874.

At common law, if a coroner be guilty of misconduct, an attachment (2 *Bla. Rep.* 911, 1218), or an information or indictment (*R.* v. *Scory*, 1 *Leach*, 43), lies against him: as where he told the jury that a verdict of *felo de se* and lunacy were the same. *R.* v. *Wakefield*, 1 *Stra.* 68. So where he excluded some of the jurors, in order to find the deceased non compos. *R.* v. *Stukeley*, 12 *Mod.* 493. In *R.* v. *Scory*, (1 *Leach*, C. L. 4th ed. 43,) the coroner charged the jury to find the prisoner guilty of murder: they, however, returned a verdict of accidental death, which the coroner recorded, but committed the prisoner to gaol for murder: upon which the Court of King's Bench granted a rule *nisi* for a criminal information against the coroner.

Where a coroner inserted in the verdict that the jury had found them guilty of murder, instead of one only, he was holden to have committed forgery. *R.* v. *Marsh*, 3 *Salk.* 172.

If a coroner take an inquisition without viewing the body, he is criminally to blame; for the view ascertains the cause of the death, and an inquisition can be taken *super visum corporis* only.

In 3 *Inst.* 149, it is stated that a coroner was committed to prison, and fined 40*s.*, because he refused to view a body, unless he was paid, for himself 6*s.* 8*d.*, and for his clerk 2*s.* But if the body has been so long buried that no information can be obtained from the view, the coroner will not be justified in causing it to be disinterred; and if he do so, it would seem that he may be fined. 2 *Lev.* 140; *Jerv.* 65.

One coroner is answerable, civilly, for the acts of his co-coroner. 1 *Mod.* 198; 2 *Mod.* 23. But no criminal responsibility can attach upon one who is constructively only a participator in the abuse; and therefore where one coroner gave to another a general authority to act in his name, it was held that he was not responsible, criminally, for an abuse of that authority, committed without his concurrence or participation. 8 *Mod.* 193. See *Ld. Raym.* 1574; *Standf.* 53 a.; 2 *Hale*, 59.

No action lies against a coroner for any act done by him when acting judicially and within the scope of his jurisdiction. 6 *B. & C.* 611; 12 *Rep.* 24; *Lutw.* 935, 1560; 1 *Ld. Raym.* 454; 1 *Mod.* 184; 2 *Mod.* 218.

XII. Forms. (*a*)

CORONER'S Precept to Summon a Jury, (No. 1.)
JUROR'S Oath on the Coroner's Inquest, (No. 2.)
WITNESS'S Oath, (No. 3.)
SUMMONS for Witness, (No. 4.)
WARRANT against a Witness for Contempt of Summons, (No. 5.)
COMMITMENT of a Witness for refusing to give Evidence, (No. 6.)
INQUISITION of Murder, (No. 7.)
The like against Accessaries, (No. 8.)
INQUISITION where one Hangs himself, (No. 9.)

(*a*) See a great variety of useful and valuable Forms collected in Mr. Jervis's late work on Coroners, 295 to 405.

FORMS.

INQUISITION where one Drowns himself, (No. 10.)
INQUISITION on one Drowned by Accident, (No. 11.)
INQUISITION where one Dies a natural Death, (No. 12.)
INQUISITION on one who Dies in Gaol, (No. 13.)
INQUISITION on one not *Compos mentis*, (No. 14.)
INQUISITION on one for Cutting his Throat, (No. 15.)
INQUISITION for Killing another in his own Defence, (No. 16.)
INQUISITION when the Murderer is unknown, (No. 17.)
RECOGNIZANCE of Jurors upon an Adjournment, (No. 18.)
PROCLAMATION of Adjournment, (No. 19.)
PROCLAMATION at Adjourned Meeting, (No. 20.)
OATH of Officer to keep the Jury until they are agreed in their verdict, (No. 21.)
RECOGNIZANCE to Prosecute, (No. 22.)
RECOGNIZANCE to give Evidence, (No. 23.)
WARRANT to Bury after a View, (No. 24.)
WARRANT to Bury a *Felo de se*, (No. 25.)
WARRANT to Take Up a Body Interred, (No. 26.)
WARRANT of Apprehension of a Person accused by a Coroner's Inquisition, (No. 27.)
COMMITMENT thereon, (No. 28.)
CERTIORARI to return Inquisition, (No. 29.)
RETURN thereto, (No. 30.)
VENIRE FACIAS to amend Inquisition, (No. 31.)
INQUISITION of Treasure Trove, (No. 32.)

(No. 1.)

Coroner's precept to summon a jury.

County of } *To the Constable of in the said county.*

BY virtue of my office, these are in his Majesty's name to require and command you, immediately upon sight hereof, to summon and warn twenty-four good and lawful men of the four next townships to in the said county, to be and appear before me A. C., gentleman, one of the coroners of the county aforesaid, at aforesaid, in the said county, on the day of , at of the clock in the noon, then and there to inquire of, do and execute all such things as on his Majesty's behalf shall be lawfully given them in charge, touching the death of A. D. And be you then there to certify what you shall have done in the premises, and further to do and execute what in behalf of our said Lord the King shall be then and there enjoined you. Given under my hand and seal the day of .

(No. 2.)

Juror's oath on the coroner's inquest.

YOU shall diligently enquire and true presentment make on the behalf of our sovereign Lord the King how and in what manner A. D. [or, *a person unknown*, as the case is,] *here lying dead, came to his death; and of such other matters relating to the same as shall be lawfully required of you, according to your evidence. So help you God.*

After the foreman is sworn, the rest may be sworn, three or four together, as follows:

Such oath as A. F. the foreman of this inquest hath for his part taken, you and every of you shall well and truly observe and keep on your parts respectively. So help you God.

(No. 3.)

Witness's oath.

THE evidence which you shall give to this inquest, on the behalf of our sovereign Lord the King, touching the death of A. D., shall be the truth, the whole truth, and nothing but the truth. So help you God.

(No. 4.)

Summons for witness.

} *WHEREAS I am credibly informed that you can give evidence on behalf*
to wit. } *of our sovereign Lord the King, touching the death of R. F., now lying dead in the parish of , in the said county of ; these are, therefore,*

FORMS.

by virtue of my office, in his Majesty's name, to charge and command you personally to be and appear before me, at the dwellinghouse of , known by the sign of the , in the said parish of , at of the clock in the on the day of instant, then and there to give evidence and be examined on his Majesty's behalf, before me and my inquest, touching the premises. Hereof fail not, as you will answer the contrary at your peril. Given under my hand and seal this day of , &c.

To A. B., C. D. &c. *A. C. Coroner.* (L. S.)

(No. 5.)

Warrant against a witness for contempt of summons.

WHEREAS I have received credible information that A. B., of to wit. parish of , in the said county of , surgeon, can give evidence on behalf of our sovereign Lord the King, touching the death of R. F. now lying dead in the said parish of , in the county aforesaid; and whereas the said A. B. (having been duly summoned to appear and to give evidence before me and my inquest touching the premises, at the time and place in the said summons specified, of which oath hath been duly made before me), hath refused and neglected so to do, to the great hindrance and delay of justice: these are therefore, by virtue of my office, in his Majesty's name, to charge and command you, or one of you, without delay, to apprehend and bring before me, one of his Majesty's coroners for the said county, now sitting at the parish aforesaid, by virtue of my said office, the body of the said A. B., that he may be dealt with according to law; and for your so doing this is your warrant. Given under my hand and seal this day of , &c. *A. C. Coroner.* (L. S.)

To all constables, headboroughs, and other his Majesty's officers of the peace in and for the county of , and also to E. F. my special officer.

(No. 6.)

Commitment of a witness for refusing to give evidence.

WHEREAS I heretofore issued my summons under my hand, directed to wit. A. B., requiring his personal appearance before me, then and now one of his Majesty's coroners for the said county of , at the time and place therein mentioned, to give evidence and be examined on his Majesty's behalf touching the death of R. F. then and there lying dead; of the personal service of which said summons oath hath been duly made before me; and whereas the said A. B. having neglected and refused to appear, pursuant to the contents of the said summons, thereupon afterwards issued my warrant, under my hand and seal, in order that the said A. B. by virtue thereof might be apprehended and brought before me, to examine the premises: and whereas the said A. B., in pursuance thereof, hath been apprehended and brought before me, now duly sitting by virtue of my office, and hath been duly required to give evidence and be examined before me and my inquest, on his Majesty's behalf, touching the death of the said R. F.; yet the said A. B. notwithstanding hath wilfully and absolutely refused, and still doth wilfully and absolutely refuse, to give evidence and be examined touching the premises, or to give sufficient reason for his refusal, in wilful and open violation and delay of justice: these are therefore, by virtue of my office, in his Majesty's name, to charge and command you, or one of you, the said constables, headboroughs, and others his Majesty's officers of the peace, in and for the said county of , forthwith to convey the body of the said A. B. to the gaol of , in the said county, and safely to deliver the same to the keeper of the said prison there; and these are likewise, by virtue of my said office, in his Majesty's name, to will and require you, the said keeper, to receive the body of the said A. B. into your custody, and him safely to keep in the prison until he shall consent to give his evidence, and be examined before me and my inquest, on his Majesty's behalf, touching the death of the said R. F., or until he shall be from thence discharged by due course of law. And for your so doing this is your warrant. Given under my hand and seal this day of , &c.

A. C. Coroner. (L. S.)

To the constables, headboroughs, and others his Majesty's officers of the peace in and for the said county of , and also to the keeper of the prison at , in the said county.

(No. 7.)

Inquisition of murder.

County of } AN inquisition indented, taken at , in the county of } aforesaid, the day of , in the year of the reign of , before me, A. C., gentleman, one of the coroners of our Lord the King for the county aforesaid, upon the view of the body of A. D., then and there lying dead, upon the oaths of A. B., C. D., E. F., &c., good and lawful men of aforesaid, and of three other of the next towns, to wit, K., L. and M., in the said county, who being sworn and charged to enquire on the part of our said Lord the King when, where, how, and after what manner, the said A. D. came to his death, do say, upon their oath, that one A. M., late of aforesaid, gentleman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the day of , in the year of aforesaid, at the first hour in the night of the same day, with force and arms, at in the county aforesaid, in and upon the aforesaid A. D., then and there being in the peace of God and of the said Lord the King, feloniously, voluntarily, and of his malice aforethought, made an assault; and that the aforesaid A. M. then and there with a certain sword made of iron and steel, of the value of 5s., which he the said A. M. then and there held in his right hand, the aforesaid A. D. in and upon the left part of the belly of the said A. D., a little above the navel of the said A. D., then and there violently, feloniously, voluntarily, and of his malice aforethought, struck and pierced, and gave to the said A. D. then and there with the sword aforesaid, in and upon the aforesaid left part of the belly of the said A. D., a little above the navel of the said A. D. one mortal wound of the breadth of half an inch and of the depth of three inches, of which said mortal wound the aforesaid A. D. then and there instantly died; and so the said A. M. then and there feloniously killed and murdered the said A. D. against the peace of our said Lord the King his crown and dignity. And moreover, &c.* [conclude from these words in the next form, *mutatis mutandis.*]

(No. 8.)

The like against accessaries.

[Proceed as in the above form to the conclusion of the words *crown and dignity*, and then thus]: *and the said jurors further say upon their oath aforesaid, that A. A. of* [*yeoman,*] *and B. A. of* [*yeoman,*] *were feloniously present with drawn swords at the time of the felony and murder aforesaid, in form aforesaid committed, that is to say, on the said day of in the year aforesaid, at aforesaid, in the county aforesaid, at the* [*first*] *hour in the night of the same day, then and there comforting, abetting, and aiding the said A. M. to do and commit the felony and murder aforesaid in manner aforesaid, against the peace of our said Lord the King his crown and dignity.*

And moreover the jurors aforesaid upon their oath aforesaid do say, that the said A. M., [*A. A., and B. A.*] *had not* [*nor any of them had,*] *nor as yet* [*have or*] *hath any goods or chattels, lands or tenements within the county aforesaid or elsewhere, to the knowledge of the said jurors;* [or, *and the jurors aforesaid upon their oath aforesaid do say, that the said A. B. at the time of the doing and committing of the felony and murder aforesaid, had goods and chattels contained in the inventory to this inquisition annexed, which remain in the custody of B. C.*]

In witness whereof, as well the aforesaid coroner as the jurors aforesaid, have to this inquisition put their seals on the day and year, and at the place first above-mentioned.

A. B.
A. C. Coroner. *C. D.*
E. F. &c. jurors.

(No. 9.)

Inquisition where one hangs himself.

[As in the form (No. 7) to the asterisk, and then thus]: *not having God before his eyes, but being seduced and moved by the instigation of the devil, at aforesaid, in a certain* [*wood*] *at aforesaid, standing and being, the said A. D. being then and there alone with a certain hempen cord of the value of* [3*d.*] *which he then and there had and held in his hands, and one end thereof then and there put about his neck, and the other end thereof tied about a* [*bough*] *of a certain* [*oak tree,*] *himself then and there with the* [*cord*] *aforesaid voluntarily and feloniously and of his malice aforethought hanged and suffocated: and so the jurors aforesaid upon their oath aforesaid say, that the said A. D. then and there in manner and form aforesaid as a felon, of himself feloniously, voluntarily, and of his malice aforethought himself killed, strangled, and murdered; against the peace of our said Lord the King his crown and dignity.*

In witness, &c. [conclude as in (No. 8) from these words.]

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(No. 10.)

Inquisition where one drowns himself.

AT aforesaid in the county aforesaid, then and there being alone, in a common [river] there called himself voluntarily and feloniously drowned: and so the jurors aforesaid upon their oath aforesaid say, that the aforesaid A. D. in manner and form aforesaid, then and there himself voluntarily and feloniously as a felon of himself killed and murdered; against the peace of our said Lord the King his crown and dignity. In witness, &c. [as in form (No. 8)].

(No. 11.)

Inquisition on one drowned by accident.

THAT the said A. D. on the day of in the year aforesaid, at the parish and in the county aforesaid, going into the river there to bathe himself, it so happened that accidentally, casually, and by misfortune he the said A. D. was in the water of the said river then and there suffocated and drowned, of which said suffocation and drowning he the said A. D. then and there instantly died: and so the jurors aforesaid do say, that the said A. D. in manner and by the means aforesaid accidentally, casually, and by misfortune came to his death, and not otherwise. In witness, &c. [as in form (No. 8)].

(No. 12.)

Inquisition where one dies a natural death.

THAT the said A. D. on the day of in the year aforesaid, at the parish and in the county aforesaid, to wit, in a certain place called was found dead: that he had no marks of violence appearing on his body, and died by the visitation of God in a natural way and not otherwise. In witness, &c. [as in form (No. 8)].

(No. 13.)

Inquisition upon one who dies in a gaol.

WHO say upon their oath that the aforesaid A. D. on the day of the taking of this inquisition, being a prisoner in the gaol at in the county aforesaid, then and there died of the visitation of God, and then and there in manner and form aforesaid came to his death, and not otherwise. In witness, &c. [as in form (No. 8)].

(No. 14.)

Inquisition on one not compos mentis.

WHO say upon their oath, that the aforesaid A. D. on the day and year aforesaid, and at the time of his death, to wit, from the day of to the time of his death, and at the time of his death aforesaid, was a lunatic and a person of unsound mind; and that the said A. D. being a lunatic and a person of insane mind as aforesaid, did on the day of come alone to a certain [river,] called in the said county, and did then and there cast himself into the said [river,] and drowned himself in the water of the said [river]: and so the jurors aforesaid upon their oath aforesaid say, that the aforesaid A. D. from the cause aforesaid in manner and form aforesaid came to his death, and not otherwise. In witness, &c. [as in form (No. 8)].

(No. 15.)

Inquisition on one for cutting his throat.

BY the instigation of the devil, at aforesaid in the county aforesaid, and upon himself then and there being in the peace of God and of the said Lord the King, feloniously, voluntarily, and of his malice aforethought made an assault: and that the aforesaid A. D. then and there with a certain [knife] of the value of [one penny] which he the said A. D. then and there held in his [right] hand, himself upon his throat then and there feloniously, voluntarily, and of his malice aforethought did strike and give to himself then and there with the [knife] aforesaid upon his throat aforesaid, one mortal wound of the breadth of [four inches,] and the depth of [one inch,] of which said mortal wound the said A. D. at aforesaid in the county aforesaid, languished and languishing lived from the said day of in the year aforesaid, to the day of and that the said A. D. on the day of aforesaid, in the year aforesaid, at aforesaid, in the county aforesaid, of that mortal wound died: and so the jurors aforesaid, &c. [as in form (No. 9)].

(No. 16.)

For killing another in his own defence.

UPON their oaths say, that A. K. late of [gentleman,] at aforesaid in the said county, on the day of in the year of in the year

of God and of our said Lord the King then being, A. M. late of in the county of at the hour of in the [afternoon] of the same day, did come and upon him the said A. K. then and there of his malice aforethought did make an assault, and him the said A. K. did then and there endeavour to beat and kill by continuing the assault aforesaid, from the house of one W. H. in aforesaid, to a certain place called in the county aforesaid, and the said A. K. seeing that the said A. M. was so maliciously disposed, to a certain wall in the said place called did flee, and from thence for fear of death could not escape, and so the said A. K. himself in preservation of his life against the said A. M. continued to defend, and in his own defence him the said A. K. upon the [right] part of the [breast] of him the said A. M. with a certain [sword] of the price of [one shilling,] which the said A. K. then and there held in his [right] hand did strike, and then and there giving to the said A. M. one mortal wound of the breadth of [one] inch and of the depth of [three] inches, of which said mortal wound the said A. M. at aforesaid in the county aforesaid, languished, and languishing lived from the said day of to the day of from thence next ensuing, and that the said A. M. on the said day of in the year aforesaid, at aforesaid in the said county, of that mortal wound died; and so the said A. K. did then and there kill him the said A. M. in his own defence.

(No. 17.)

The same as before, only say, *that a certain person unknown*, &c. and add, *and the said jurors upon their oath aforesaid further say, that the said person unknown, after he had committed the said felony and murder in manner aforesaid, did flee away; against the peace of our said Lord the King his crown and dignity. In witness*, &c. [as in form (No. 8)].

Inquisition where the murderer is unknown.

(No. 18.)

YOU acknowledge yourselves severally to owe to our sovereign Lord the King the sum of ten pounds, to be levied upon your goods and chattels, lands and tenements, for his Majesty's use, upon condition that if you, and each of you, do personally appear here again [or at an adjourned place] *on next, being the day of instant, at ten of the clock in the forenoon precisely, then and there to make further inquiry on behalf of our said sovereign Lord the King, touching the death of the said R. F. of whose body you have had the view; then this recognizance to be void, or else to remain in full force. Are you content?*

Recognizance of jurors upon an adjournment.

(No. 19.)

ALL manner of persons who have any thing more to do at this court before the King's coroner for this county, may depart home at this time, and give their attendance here again [or at the adjourned place] *on next, being the day of instant, at ten of the clock in the forenoon precisely. God save the King.*

Proclamation of adjournment.

(No. 20.)

ALL manner of persons who have any thing more to do at this court before the King's coroner for this county, on this inquest now to be taken, and adjourned over to this time and place, draw near and give your attendance; and you gentlemen of the jury who have been impannelled and sworn upon this inquest to inquire touching the death of R. F. severally answer to your names and save your recognizances.

Proclamation at adjourned meeting.

(No. 21.)

YOU shall well and truly keep the jury upon this inquiry, without meat, drink, or fire; you shall not suffer any person to speak to them, nor you yourself, unless it be to ask them if they have agreed on their verdict, until they shall be agreed. So help you God.

Oath of officer to keep the jury until they are agreed in their verdict.

(No. 22.)

BE it remembered, that on the day of in the year of the reign of our Sovereign Lord William the Fourth, of the United Kingdom of Great Britain and Ireland King, defender of the faith, A. B. of the parish of C. in the county of [baker,] C. G. of the same place, [victualler,] E. F. of the

Recognizance to prosecute, &c.

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same place, [labourer,] [and so insert the names of all bound over,] do severally acknowledge to owe to our sovereign Lord the King the sum of forty pounds of lawful money of Great Britain, to be levied on their several goods and chattels, lands and tenements, by way of recognizance to his Majesty's use, in case default shall be made in the conditions following :—

The condition of this recognizance is such, that if the above bounden severally personally appear at the to be holden at in and for the county of and the said A. B. shall then and there prefer or cause to be preferred to the grand jury a bill of indictment against G. H. late of the parish of in the county of [labourer,] and now in custody for the wilful murder of R. F. late the wife of the said E. F. and that the said A. B., C. G., and E. F. do then and there severally personally appear to give evidence on such bill of indictment to the said grand jury; and in case the said bill of indictment shall be returned by the grand jury a true bill, that then they the said A. B., C. G., and E. F. do severally personally appear at the next to be holden for the said county of and the said A. B. shall then and there prosecute, or cause to be prosecuted, the said G. H. on such indictment; and the said A. B., C. G., and E. F. do then and there severally give evidence to the jury, that shall pass on the trial of the said G. H. touching the premises, and in case the said bill of indictment shall be returned by the grand jury not found, that then they do severally personally appear at the next to be then and there holden for the said county, and then and there prosecute and give evidence to the jury that shall pass on the trial of the said G. H. upon an inquisition taken before me, one of his Majesty's coroners for the said county of on the view of the body of the said R. F. late the wife of the said E. F. and not depart the court without leave; then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged this day of, &c. before me,

A. C. Coroner.

(No. 23.)

Recognizance to give evidence.

BE it remembered, [as in the form (No. 22,)] J. P. of the parish of to wit. in the county of [blacksmith,] T. P. of the same place, [victualler,] J. R. of the same place, [whitesmith,] the husband of S. R.; J. B. of the same place, [haberdasher,] the mainpernor of J. J. his apprentice, an infant; J. S. of the same place, [sword-cutler,] the mainpernor of G. S. his son, an infant; do severally acknowledge to owe to our sovereign Lord the King the sum of forty pounds of lawful money of Great Britain, to be levied on their several goods and chattels, lands and tenements, by way of recognizance, to his Majesty's use, in case default shall be made in the condition following; and Susan, the wife of J. P. of the same place, [labourer,] on pain of imprisonment, in case she shall make default in such condition :—

The condition of this recognizance is such, that if the above bounden J. P., T. P., S. R. the wife of the said J. R., J. J., G. S., and S. P. do severally personally appear at the next to be holden at in and for the county of and then and there give evidence on a bill of indictment to be preferred to the grand jury, against C. D. now at large, for the wilful murder of Sarah his wife; and in case the said bill of indictment shall be returned by the grand jury a true bill, then that they do severally personally appear at the session of gaol delivery, to be holden for the said county of next after the apprehending or surrender of the said C. D. and then and there severally give evidence to the jury that shall pass on the trial of the said C. D. touching the premises; and in case the said bill of indictment shall be returned by the grand jury not found, that then they do severally personally appear at such sessions of gaol delivery to be then and there holden for the said county, and then and there give evidence to the jury that shall pass on the trial of the said C. D. upon an inquisition taken before me, one of his Majesty's coroners for the said county of on view of the body of the said S. D. and not depart the court without leave, then this recognizance to be void, otherwise to be and remain in full force.

Taken and acknowledged this day of, &c. before me,

A. C. Coroner.

(No. 24.)

Warrant to bury after a view.

WHEREAS an inquisition hath this day been held upon view of the body to wit. of R. F. who (not being of sound mind, memory, and understanding, but lunatic and distracted, shot himself, and) now lies dead in your parish, these are,

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therefore, to certify that you may lawfully permit the body of the said R. F. to be buried; and for your so doing this is your warrant. Given under my hand and seal this day of, &c.

A. C. Coroner. (L. S.)

To the minister and churchwardens of the parish of in the said city of and to all others whom it may concern.

(No. 25.)

To bury a felo de se.

WHEREAS by an inquisition taken before me one of his Majesty's coroners for the said county of this day of in the year of the reign of his present Majesty King William the Fourth, at the parish of in the said county of on view of the body of R. F. then and there lying dead, the jurors in the said inquisition named have found that the said R. F. feloniously, wilfully, and of his malice aforethought, did kill and murder himself: these are therefore, by virtue of my office, to will and require you forthwith to cause the body of the said R. F. to be buried privately in the churchyard or other burial ground of your parish, between the hours of nine and twelve at night, within after the receipt of this warrant; and for your so doing this is your warrant. Given under my hand and seal this day of, &c.

A. C. Coroner. (L. S.)

To the churchwardens and constables of the parish of in the county of .

(No. 26.)

To take up a body interred.

WHEREAS complaint hath been made to me, one of his Majesty's coroners for the said county of that on the day of this instant the body of one R. F. was privately and secretly buried in your parish, in the said county, and that the said R. F. died not of a natural but violent death, and whereas no notice of the violent death of the said R. F. hath been given to either of his Majesty's coroners for the said county, whereby, on his Majesty's behalf, an inquisition might have been taken on view of the body of the said R. F. before his interment, as by law is required, these are, therefore, by virtue of my office, in his Majesty's name, to charge and command you that you forthwith cause the body of the said R. F. to be taken up and safely conveyed to in the said parish, that I with my inquest may have a view thereof, and proceed therein according to law. Hereof fail not, as you will answer the contrary at your peril. Given under my hand and seal the day of, &c.

A. C. Coroner. (L. S.)

To the minister, churchwardens, and overseers of the parish of in the said county of .

(No. 27.)

Warrant of apprehension of a person accused by a coroner's inquisition.

To all Constables and Headboroughs of the parish of in the county of and to all others his Majesty's officers of the peace within the said county.

WHEREAS by an inquisition taken before me, one of his Majesty's coroners for the said county of this day of , at the parish of in the said county of on view of the body of R. F. then and there lying dead, one late of the parish of in the said county, stands charged with the wilful murder of the said R. F. These are therefore by virtue of my office, in his Majesty's name, to charge and command you and every of you, that you or some one of you, without delay, do apprehend and bring before me the said coroner, or one of his Majesty's justices of the peace of the said county, the body of the said of whom you shall have notice, that he may be dealt with according to law, and for your so doing this is your warrant. Given under my hand and seal this day of, &c.

A. C. Coroner. (L. S.)

(No. 28.)

Commitment thereon.

To the Constables, Headboroughs, and other his Majesty's officers of the peace for the county of and also to the keeper of his Majesty's gaol of .

WHEREAS by an inquisition taken before me, one of his Majesty's coroners for the said county of the day and year hereunder men-

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tioned, on view of the body of R. F. lying dead at the parish of in the county of late of the parish of in the said county, [labourer,] charged with the wilful murder of the said R. F. These are therefore by virtue of my office, in his Majesty's name, to charge and command you, or any of you, forthwith safely to convey the body of the said to his Majesty's gaol of and there to deliver the same to the keeper of the said gaol; and these are likewise, by virtue of my said office, in his Majesty's name, to will and require you the said keeper to receive the body of the said into your custody, and him safely to keep in the said gaol, until he shall be thence discharged by due course of law, and for your so doing this shall be your warrant. Given under my hand and seal the day of, &c.

A. C. Coroner. (L.S.

(No. 29.)

Certiorari to return inquisition.

WILLIAM the Fourth, &c. to A. coroner for our county of greeting. We being willing, for certain reasons, that all and singular the inquisition, examinations, informations and depositions taken by or before you, touching the coming of to the custody of the keeper of our gaol at in and for our county for murder, [or manslaughter,] as is said, be sent by you before our trusty and well beloved Charles Lord Tenterden, our Chief Justice, assigned to pleas before us, do command you that you send under your seal, before our said Justice, in our court before us at Westminster, immediately after the receipt of our writ, all and singular the said inquisition, examinations, informations, and depositions, with all things touching the same, as fully and perfectly as they have been taken by or before you, and now remain in your custody or power, together with this our writ, that we may cause further to be done thereon what of right and according to the law and custom of England we shall see fit to be done. Witness, &c.

By the Court.

(No. 30.)

Return thereto.

THE execution of this writ appears by the schedule hereunto annexed. The answer of A. C. one of the coroners of our Lord the King for the county of within named, with the seal affixed.

(No. 31.)

Venire facias to amend inquisition.

WILLIAM the Fourth, &c. to the sheriff of greeting. We command you that you do not forbear by reason of any liberty in your bailiwick, but that you cause to come before us on wheresoever, &c. A. C. gentleman, one of the coroners of your county, to answer to us touching several defects in a certain inquisition lately taken before him, upon view of the body of one R. F. then there dead. Witness, &c.

(No. 32.)

Inquisition of treasure trove.

Town of Cambridge, } to wit. } AN inquisition indented, taken at the house commonly called or known by the name of the Inn, situate in the town of Cambridge, in the county of Cambridge, the fourth day of January, in the year of the reign of our Sovereign Lord William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland King, defender of the faith, and in the year of our Lord, 1830, before me, A. C. gentleman, one of the coroners of our Lord the King, for the town aforesaid, upon the oaths of A. B., C. D., E. F. &c. [naming the jurors], good and lawful men of the town of Cambridge aforesaid, who, being sworn and charged to inquire on the part of our said Lord the King and concerning certain treasure, lately said to be found within the said town, upon their oath say, that, on the third day of June last, one hundred and ninety-five pieces of gold coin, in all weighing thirty-four ounces five penny-weights, and of the value of one hundred and thirty pounds and three shillings, of lawful money of Great Britain; and three thousand five hundred and ten pieces of silver coin, in all weighing two hundred and eighty-nine ounces and fifteen pennyweights, and of the value of seventy pounds and five-pence halfpenny, of like lawful money, were found by W. S. and S. W. being labourers then in the employ of J. H. of the said town, bricklayer, hidden in the ground under the site of an ancient house or building situate in street in the said town; and which said pieces of gold and silver coin were of ancient time hidden as aforesaid, and the owner whereof cannot now

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known: and the jurors aforesaid, upon their oath aforesaid, do further say, that the said pieces of gold and silver coin were deposited, and now remain in the custody of T. M. of the said town, banker; which said pieces of gold and silver coin, I the said coroner have taken and seized into his Majesty's hands: in witness whereof, as well the aforesaid coroner as the said jurors have to this inquisition put their hands and seals on the day and year, at the place first above written

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Corporation, *Property belonging to, how described in Indictment, see post,* **Indictment,** Vol. III. p. 341; *Evidence by Books of, and Entries in, &c. see post,* **Evidence,** Vol. II. p. 39; **Inspection of Books of,** Vol. III. p. 394.

Correction, House of. *See post,* **Gaol,** Vol. II.

As to how far a correction is justified in battery, *ante,* 270.

Corruption of Blood, *see ante,* **Attainder.**

Costs.(a)

I. *Of Prosecutor and Witnesses,* 895 to 901.
[13 Geo. III. c. 78, s. 64; 32 Geo. III. c. 57, s. 11; 58 Geo. III. c. 3, s. 7; 60 Geo. III. c. 14, s. 3; 1 & 2 Geo. IV. c. 41; 7 Geo. IV. c. 64, s. 22, 23, 24, 25, 26, 27.]
II. *Of Defendant,* 901.
[14 Geo. III. c. 20; 55 Geo. III. c. 50, s. 4.]
III. *Of Carrying a Prisoner to Gaol,* 902.
[3 Jac. I. c. 10; 27 Geo. II. c. 3.]
IV. *On Convictions and Summary Proceedings before Justices,* 903.
[18 Geo. III. c. 19.]
V. *Of Constables,* 904.
VI. *Forms,* 904.

I. Of Prosecutor and Witnesses.

Prosecutor's costs at common law.

AT common law, as it is a general principle that the King neither pays nor receives costs, and as an indictment, though carried on by an individual, is always considered as his suit, no costs are payable, whatever may be the event of the prosecution; *Hullock,* 557; and therefore even in cases where the costs are afterwards allowed, throughout the whole of the proceedings the prosecutor must defray his own expenses, and the

(a) As to costs in general, in criminal cases, see 1 *Chit. C. L.* 2d ed. 835; *Hullock on Costs,* 601 to 607.

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court will not allow him to proceed in *formâ pauperis*, unless some special ground be laid for the application; 3 *Burr.* 1308; *Com. Dig. Forma Pauperis*; but by the 7 Geo. IV. c. 64, s. 22 & 23, &c. as will be presently seen, this encouragement to the prosecution of offenders is materially removed.

Of witnesses.

It seems that in *civil* proceedings a witness is not obliged to attend unless his expenses are tendered to him, pursuant to stat. 5 Eliz. c. 9; and if after such tender he neglect to appear, he may be fined according to the directions of that statute, or punished by attachment for a contempt of the court, as the circumstances of the case shall appear to be. 2 *Hawk.* c. 46, s. 173; 1 *Raym.* 1529; 2 *Stra.* 1054, 1150; *Tidd*, 9 ed.

But in *criminal* proceedings the demands of public justice supersede every consideration of private inconvenience, and witnesses are bound unconditionally to attend the trial upon which they may be summoned, and be bound over to give their evidence; 2 *Hawk.* c. 46, s. 173; *R.* v. *Cooke*, 1 C. & P. 321. To persons of opulence and public spirit this obligation cannot either be hard or injurious, but indigent witnesses grew weary of expensive attendance, and frequently bore their own charges to their great hindrance and loss; and Lord *Hale* complains of the want of power in judges to allow witnesses their charges as a great defect in this part of judicial administration. 2 *Hale*, 282. See **Evidence**, Vol. II. p. 83.

By statute.

But now, by the stat. 7 Geo. IV. c. 64, costs are allowed in criminal cases.

In Felonies.

Courts may order payment of the expenses of prosecutions for.

In Felonies]—With regard to the payment of the expenses of prosecutions for *felony*, by the 7 Geo. IV. c. 64, s. 22, it is enacted, "that the court before which any person shall be prosecuted or tried for any felony is hereby authorised and empowered, at the request of the prosecutor or of any other person who shall appear on recognizance or subpœna to prosecute or give evidence against any person accused of any felony, to order payment unto the prosecutor of the costs and expenses which such prosecutor shall incur in preferring the indictment, and also payment to the prosecutor and witnesses for the prosecution, of such sums of money as to the court shall seem reasonable and sufficient to reimburse such prosecutor and witnesses for the expenses they shall have severally incurred in attending before the examining magistrate or magistrates and the grand jury, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein: and, although no bill of indictment be preferred, it shall still be lawful for the court, where any person shall, in the opinion of the court, *bonâ fide* have attended the court in obedience to any such recognizance or subpœna, to order payment unto such person of such sum of money as to the court shall seem reasonable and sufficient to reimburse such person for the expenses which he or she shall have *bonâ fide* incurred by reason of attending before the examining magistrate or magistrates, and by reason of such recognizance or subpœna, and also to compensate such person for trouble and loss of time; and the amount of expenses of attending before the examining magistrate or magistrates, and the compensation for trouble and loss of time therein shall be ascertained by the certificate of such magistrate or magistrates, granted before the trial or attendance in court, if such magistrate or magistrates shall think fit to grant the same; and the amount of all the other expenses and compensation shall be ascertained by the proper officer of the court, subject nevertheless to the regulations to be established in the manner hereinafter mentioned." See these regulations, *post*, 899, 900.

Allowance to persons attending on recognizance, where no bill is preferred.

Repeal of acts.

This act repeals the stat. 25 Geo. II. c. 36, s. 11, the stat. 27 Geo. II. c. 3, s. 3, and the stat. 18 Geo. III. c. 19, s. 7, 8, and also the stat. 58 Geo. III. c. 70, with the exception of the 7th section, which is still in force, this section relating only to the mode of prosecuting disorderly houses, *post*, **Disorderly House**, Vol. I.

It will be observed that this section does not allow the expenses of *apprehending* the prisoner, as was the case under the 58 Geo. III. but only the expenses, loss of time, &c. "in attending before the examining magistrate or magistrates, and the grand jury, and *in otherwise carrying on such prosecu-*

tion." The 28th section of the 7 Geo. IV. c. 64, in some respects supplies this omission by allowing superior courts to grant rewards to parties active in apprehending offenders. See this, *post*, Rewards, Vol. V.

One of the provisions in the above 22d section, *viz.* "that the compensation for trouble and loss of time in attending before the magistrate, and also the expenses before him, are to be ascertained *by his certificate, granted before the time of the trial*, if he shall think fit to grant such certificate," is new.

It should seem that this section does not apply where the indictment has been removed into King's Bench by *certiorari*. *R.* v. *Richards*, 8 *B. & Cres.* 420; 1 *B. & Cres.* 143; *R.* v. *Johnson*, *infra*.

If the trial be postponed at the instance of the prosecutor, in an indictment for felony, on account of the illness of a witness, the *prisoner* is never required to pay the costs of the prosecutor; *R.* v. *Hunter*, 3 *C. & P.* 591; and see *R.* v. *Crowe*, 4 *C. & P.* 251, *post*, 901; *aliter* in misdemeanors.

Where the trial of such an indictment is postponed, the court will not make any order for the expenses until after the trial has actually taken place. *Id.*

In Misdemeanors.

Court may order payment of the expenses of prosecutions for, in certain cases.

In Misdemeanors]—By the 7 Geo. IV. c. 64, s. 23, after reciting that "for want of power in the court to order payment of the expenses of any prosecution for a *misdemeanor*, many individuals are deterred, by the expense, from prosecuting persons guilty of misdemeanors, who thereby escape the punishment due to their offences; it is enacted, that where any prosecutor or other person shall appear before any court on recognizance or subpœna, to prosecute or give evidence against any person indicted of any *assault with intent to commit felony*, of *any attempt to commit felony*, of any *riot*, of any misdemeanor for *receiving any stolen property*, knowing the same to have been stolen, of any *assault upon a peace officer* in the execution of his duty, or *upon any person* acting in aid of such officer, of any *neglect or breach of duty as a peace officer*, of any *assault committed in pursuance of any conspiracy to raise the rate of wages*, of knowingly and designedly *obtaining any property by false pretences*, of wilful and indecent *exposure of the person*, of wilful and corrupt *perjury*, or of *subornation of perjury*, every such court is hereby authorised and empowered to order payment of the costs and expenses of the prosecutor and witnesses for the prosecution, together with a compensation for their trouble and loss of time, in the same manner as courts are hereinbefore authorised and empowered to order the same in cases of felony; and although no bill of indictment be preferred, it shall still be lawful for the court where any person shall have *bonâ fide* attended the court, in obedience to any such recognizance, to order payment of the expenses of such person, together with a compensation for his or her trouble and loss of time, in the same manner as in cases of felony: provided, that in cases of misdemeanor, the power of ordering the payment of expenses and compensation shall not extend to the attendance before the examining magistrate."

This provision is wholly new. It will be observed it is not unlike the enactment, *ante*, 896, relating to costs, &c. in felonies, except that there is no power of allowing expenses or compensation for the attendance before the magistrate.

An indictment for a riot was preferred at the quarter sessions, and removed by *certiorari* at the instance of the prosecutor, and the case was tried at nisi prius. The prosecutor was under no recognizance, and he caused himself and his witnesses to be subpœnaed, and defrayed all their and his own expenses: held, that neither the Court of Nisi Prius nor the Court of King's Bench alone could award costs under the stat. 7 Geo. IV. c. 64. *R.* v. *Johnson*, 1827, *Carr. C. L.* 110; *R. & M. C. C.* 173, S. C.; *R.* v. *Richards*, 8 *B. & C.* 420, S. P.

But if an indictment for a misdemeanor be postponed on the motion of the defendant, he must pay the costs; but the prosecutor, unless a witness, will not be entitled to any remuneration for his loss of time or attendance. *R.* v. *Doyle*, 1 *Esp. Rep.* 125.

In misdemeanors, not included in the 23d section of the 7 Geo. IV. c. 64,

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if the defendant submits to a verdict upon a general understanding that the [illegible] not to be brought up for judgment, the prosecutor will not be entitled to [illegible] without an express agreement respecting them. *R.* v. *Ramsay*, 2 *B.* & *P.* 592; 4 *D.* & *R.* 124. S. C.

Nuisances by steam engines.

NUISANCES]—Costs in the prosecution of nuisances arising "from the improper construction, as well as from the negligent use of furnaces employed in the working of engines by steam," are provided for by the 1 & 2 Geo. IV. c. 41. by which act, after reciting that the expense of prosecution deterred parties from seeking the remedy given by law, it is enacted "that it shall and may be lawful for the court by which judgment ought to be pronounced in case of conviction on any such indictment, to award such costs as shall be deemed proper and reasonable to the prosecutor or prosecutors to be paid by the party or parties so convicted as aforesaid, such award to be made either before or at the time of pronouncing final judgment, as to the said court may seem fit."

But by the 3d section it is provided, that this provision "shall not extend or be construed to extend to the owners, or proprietors, or occupiers of the furnaces of steam engines, erected solely for the purpose of working mines of different descriptions, or employed solely in the smelting of ores and minerals, or in the manufacturing of the produce of such ores or minerals, on or immediately adjoining the premises where they are raised."

Non-repair of highways.

NON-REPAIR OF HIGHWAYS]—The 13 Geo. III. c. 78, s. 64, enacts "that the court before which any cause of this description shall be tried, shall have power to award costs to the prosecutor, to be paid by the defendant, if they regard the defence set up as frivolous, and to be paid by the former to the latter, if the indictment appear to be vexatious. Under this act, no precise form of words is necessary in the judge's *certificate*, nor is any actual award of costs requisite: *R.* v. *Clifton*, 6 *T. R.* 344. The grant or refusal of the certificate under this act, is wholly in the discretion of the court or judge before whom the indictment or presentment was tried, and on a removal by *certiorari*, the court above cannot interfere to supply what has been omitted: *R.* v. *Catterton*, 5 *T. R.* 272. And where an individual, indicted for non-repairing, when bound to do so *ratione tenuræ*, applies to the court to submit to a small fine on a certificate that the road is put in good repair, which is refused, and afterwards, on the trial, it appears that the repair has actually been effected between the former request and the trial, the court will refuse to set a nominal fine, unless the costs of the prosecutor are paid subsequent to the former application. 1 *Black. Rep.* 602.

As to who is a party grieved under the 5 & 6 W. & M. c. 11, s. 3, in respect to indictments for non-repairs of highways, removed into King's Bench by *certiorari*, see *ante*, **Certiorari**, p. 586.

Disorderly houses proved etc. by officers. Notice by the 25 Geo. 2. c. 36, to constables in certain cases.

DISORDERLY HOUSES]—By the 58 Geo. III. c. 3, s. 7, which section remains unrepealed, after reciting that by 25 Geo. II. c. 36, "it is amongst other things enacted, that if any two inhabitants of any parish or place, being scot and bearing lot therein, give notice in writing to any constable or other peace officer of the like nature where there is no constable of such parish or place, of any person keeping a bawdy house, gaming house or any other disorderly house in such parish or place, the constable or such officer as aforesaid so receiving such notice shall forthwith go with such inhabitants to one of his Majesty's justices of the peace of the county, city, riding, division or liberty in which such parish or place does lie, and shall, upon such inhabitants making oath before such justice that they do believe the contents of such notice to be true, and entering into a recognizance in the penal sum of twenty pounds each to give or produce material evidence against such person for such offence, enter into a recognizance in the penal sum of thirty pounds to prosecute with effect such person for such offence at the next general or quarter sessions of the peace, or at the next assizes to be holden for the county in which such parish or place does lie, as to the said justice shall seem meet: and whereas it is expedient, that when any two inhabitants of any

parish or place, paying scot and bearing lot therein, shall give notice in writing to any constable of such parish or place of any person keeping a bawdy house, gaming house or any other disorderly house, in such parish or place, that the overseers of the poor of such parish or place shall have notice thereof:' " it is enacted, " that a copy of the notice which shall be given to such constable shall also be served on or left at the places of abode of the overseers of the poor of such parish or place, or one of them, and such overseers or overseer of the poor shall be summoned or have reasonable notice to attend before such justice of the peace before whom such constable shall have notice to attend; and if such overseers or overseer of the poor shall then and there enter into such recognizance to prosecute such offender as the constable is in and by the said act required to enter into, then it shall not be necessary for, nor shall such constable be required to enter into such recognizance; but if such overseers or overseer of the poor shall neglect to attend such justice on having such notice, or shall attend, and shall decline or refuse to enter into such recognizance to prosecute, then such constable shall enter into the same, and shall prosecute, and shall be entitled to his expenses, to be allowed as in and by the said act is directed."

Vagrants.

VAGRANTS]—As to costs in the prosecution of vagrants, see **Vagrants**, *post*, Vol. V.

Apprentices.

APPRENTICES]—By 32 Geo. III. c. 57, s. 11, one moiety of the expenses of prosecuting a master for ill treating his parish apprentice may be paid out of the county rates. *Vide ante*, tit. **Apprentices**, p. 214.

Certiorari.

ON CERTIORARI]—As to the costs of a party grieved, and officers, &c. on prosecutions removed into K. B. by *certiorari*, see *ante*, **Certiorari**, p. 586.

Mode of procuring the order for costs.

MODE OF PROCURING ORDER FOR COSTS UNDER THE 7 GEO. IV. c. 64.—*Payment by Treasurer, &c. of County*]—By the 7 Geo. IV. c. 64, s. 24, it is enacted, " that every order for payment to any prosecutor or other person as aforesaid (*ante*, 896, 897,) shall be forthwith made out and delivered by the proper officer of the court unto such prosecutor or other person, upon being paid for the same the sum of one shilling for the prosecutor, and sixpence for each other person, and no more; and, except in the cases hereinafter provided for, shall be made upon the treasurer of the county, riding, or division in which the offence shall have been committed, or shall be supposed to have been committed, who is hereby authorised and required, upon sight of every such order, forthwith to pay to the person named therein, or to any one duly authorised to receive the same on his or her behalf, the money in such order mentioned, and shall be allowed the same in his accounts."

Order of payment to be made out by clerk of assize, &c. and paid by county treasurer.

This provision is a re-enactment of the 58 Geo. III. c. 70, s. 6, which, together with the 18 Geo. III. c. 19, s. 8, are repealed by the 7 Geo. IV.

Treasurer refusing payment.

If the treasurer refuse to obey the order, an attachment or indictment may be preferred against him, but a *mandamus* will not lie. *R.* v. *Treasurer of Surrey*, 1 *Chit. Rep.* 650. A motion was made for a rule to show cause why a *mandamus* should not issue to the defendant to command him to pay the sum of 5*s.* to one Kinsey, pursuant to an order of the borough sessions, as an allowance for his expenses as a witness in attending a prosecution for felony carried on in that court. The application was founded on the 58 Geo. III. c. 70. But the court said that they could not interfere by *mandamus*. The proper remedy was either by attachment against the treasurer in the borough court, or by indictment at common law for disobeying the order. This latter remedy was the most proper, and they referred to *R.* v. *Johnson*, 4 *M. & S.* 515, as a case in point. Rule refused.

In places not contributing to county rate.

In Places not contributing to County Rate]—By the 7 Geo. IV. c. 64, s. 25, after reciting that " 'whereas felonies and such misdemeanors as are hereinbefore (*ante*, 897) enumerated may be committed in liberties, franchises, cities, towns, and places which do not contribute to the payment of

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any county rate, some of which raise a rate in the nature of a county rate and others have neither any such rate, nor any fund applicable to similar purposes; and it is just that such liberties, franchises, cities, towns, and places should be charged with all costs, expenses, and compensations ordered by virtue of this act, in respect of felonies and such misdemeanors committed therein respectively;' " it is enacted, " that all sums directed to be paid by virtue of this act, in respect of felonies and of such misdemeanors as aforesaid, (*ante*, 897,) committed or supposed to have been committed in such liberties, franchises, cities, towns, and places, shall be paid out of the rate in the nature of a county rate, or out of any fund applicable to similar purposes where there is such a rate or fund, by the treasurer or other officer having the collection or disbursement of such rate or fund; and where there is no such rate or fund in such liberties, franchises, cities, towns, or places, shall be paid out of the rate or fund for the relief of the poor of the parish, township, district, or precinct therein, where the offence was committed, or supposed to have been committed, by the overseers or other officers having the collection or disbursement of such last-mentioned rate or fund; and the order of court shall in every such case be directed to such treasurer, overseers, or other officers respectively, instead of the treasurer of the county, riding, or division, as the case may require."

This provision is nearly the same as those of the 9th and 10th sections of the 58 Geo. III. c. 70, now repealed. It should seem that this provision virtually repeals the 60 Geo. III. c. 14, s. 3. (*a*)

In *R.* v. *Johnson*, 4 *M. & S.* 515, it was held that the costs of a prosecution, in the borough court of Liverpool, for a felony committed within the borough, may be ordered by the court to be paid by the treasurer of the county of Lancaster, the borough of Liverpool not having exclusive jurisdiction, nor any treasurer like a county treasurer, nor any rate in the nature of a county rate, but contributing as a part of the county to the county rate.

Regulation of rates of allowance.

Regulation of Rate of Allowance]—By the 7 Geo. IV. c. 64, s. 26, "for the better regulation of costs and expenses in the cases aforesaid, and for preventing abuses in respect thereof," it is enacted, " that it shall be lawful for the justices of the peace of any county, riding, or division, or of any liberty, franchise, city, town, or place chargeable with costs and expenses under the provision aforesaid, in quarter sessions assembled, to establish, and from time to time to alter, such regulations as to the rate of any costs and expenses thereafter to be allowed by virtue of this act, as to them shall seem just and reasonable; which regulations having received the approbation and signature of one justice of gaol delivery or of great sessions for the county wherein any such regulations shall have been established, shall be binding on all persons whatsoever."

Regulations to be signed by a judge.

This provision is new. It has been observed by Mr. *Carrington* that this enactment, if followed up by the justices at the sessions, fixing a

(*a*) By the stat. 60 Geo. III. c. 14, s. 3, it is provided, " That in all cases of any commitment to the county gaol, under the authority of this act, all the expenses to which the county may be put by reason of such commitment, together with all such expenses of the prosecution and witnesses as the judge shall be pleased to allow by virtue of any law now in force, shall be borne and paid by the said town, liberty, soke or place within which such offence shall have been committed, in like manner, and to be raised by the same means whereby such expenses would have been raised and paid if the offender had been prosecuted and tried within the limits of such exclusive jurisdiction; and that the judge or court of oyer and terminer and general gaol delivery, shall have full power and authority to make such order touching such costs and expenses as such judge or court shall deem proper; and also to direct by whom and in what manner such expenses shall in the first instance be paid and borne, and in what manner the same shall be repaid and raised within the limits of such exclusive jurisdiction in case there be no treasurer or other officer within the same, who by the custom and usage of such place ought to pay the same in the first instance."

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scale of allowances, as proposed, might produce inconvenience, and this on two grounds:—1st, because the justices at sessions can know very little about what a criminal prosecution ought to cost, and the allowance in no two counties would be similar: and, 2d, because nothing can vary more than the expenses of different cases; and therefore each must stand on its own peculiar circumstances. What scale of allowances could meet at all equally a case of stealing a pocket handkerchief and an important case of burglary against several prisoners, founded on circumstantial evidence, to be deposed to by forty or fifty witnesses, and explained to the counsel in a brief of twenty sheets? Any scale of allowances fairly applicable to the one, would be absurb if applied to the other; and therefore there ought, from the nature of things, to be a discretion, vested somewhere, in allowing the expenses in each particular case; and it may be said, (no doubt very unjustly,) that as the justices are all payers of the county rate, they will fix the most niggardly scale of allowances; and therefore, in all cases of real importance to the justice of the country, in all cases where a great crime has been committed, and the guilt of the parties is difficult to be traced, the prosecutor, after receiving an order for his expenses, and the thanks of the court for having done his duty to the country, will find that he has not only been robbed to a large amount, but that the allowances of expenses is so small as to leave him 30*l.* or 40*l.* out of pocket for his public spirit. *Carr. C. L.* 114.

Admiralty prosecutions.

ADMIRALTY PROSECUTIONS]—By the 7 Geo. IV. c. 64, s. 27, "for enabling the High Court of Admiralty to order the payment of the costs and expenses of prosecutors and witnesses, and compensation for their trouble and loss of time, in cases in which other courts have a like power under this act," it is enacted, "that it shall be lawful for the judge of the said Court of Admiralty, in every case of felony, and in every case of misdemeanor of the denominations hereinbefore enumerated, committed upon the high seas, to order the assistant to the counsel for the affairs of the Admiralty and navy to pay such costs, expenses, and compensation to prosecutors and witnesses, in like manner as other courts may order the treasurer of the county to pay the same; and such assistant is hereby authorised and required, upon sight of every such order, forthwith to pay to the person named therein, or to any one duly authorised to receive the same on his or her behalf, the money in such order mentioned, and shall be allowed the same in his accounts." See *ante*, **Admiralty.**

II. Of Defendant.

Defendant's costs.

A defendant, although acquitted, must in general bear his own expenses, and costs are in no cases paid to prisoners charged with felony. (*a*) This certainly appears a defect in the law in many cases. Besides this, as we shall see *post*, 902, by 3 Jac. I. c. 10, s. 1, a defendant committed by a justice to the county gaol to take his trial for any felony, or inferior offence, is to bear the reasonable costs of his own conveyance, and if he refuse to pay them they are to be levied by warrant of distress on his personal estate, or by a rate if he have no property.

As to the provisions of the highway act, giving defendants costs in some cases where the prosecution for the non-repair is certified by the judge to be vexatious, see *ante*, 898; *post*, **Highways**, Vol. III. p. 83.

Prisoners charged with crimes in England for want of prosecution to be set at large.

By stat. 14 Geo. III. c. 20, it is enacted, "that every prisoner who now is, or hereafter shall be, charged with any felony or other crime, or as an accessary thereto, before any court holding criminal jurisdiction, within that part of Great Britain called England and Wales, against whom no bill of indict-

(*a*) In a late case it was considered that if the trial of a prisoner indicted for felony be postponed, on the ground of the absence of the prosecutor, who is a material witness for the prosecution, the prisoner will not be allowed his costs, but the judge will discharge him on his own recognizance. *R.* v. *Crowe*, 4 *C.* & *P.* 251.

OF DEFENDANT.

14 Geo. 3, c. 20.

ment shall be found by the grand jury, or who, on his or her trial, shall be acquitted, or who shall be discharged by proclamation, for want of prosecution, shall be immediately set at large in open court, without the payment of any fee or sum of money to the sheriff, gaoler, or keeper of the gaol or prison from whence he or she shall be so discharged, and set at liberty, for or in respect of such discharge."

Fees abolished.

Sect. 2. "That all such fees as have been usually paid, or payable, to the several sheriffs, gaolers, and keepers of prisons in England and Wales, in any of the cases aforesaid, shall absolutely cease, and the same are hereby abolished and determined; and from and after the passing of this act, no gaoler or keeper of any gaol or prison, shall ask, demand, take, or receive, any sum or sums of money from any of the said prisoners, as fees, for, upon, or in respect of his or her discharge."

Treasurers of counties, &c. as are not assessed at large, &c. shall pay to such gaolers not exceeding 13s. 4d.

Sect. 3. "That, in lieu of such fees so abolished as aforesaid, the treasurers, or other proper officers of the several counties, or of such districts, hundreds, ridings, or division of a county, as are not usually assessed to the county at large, and of such cities, towns corporate, cinque ports, liberties, franchises, and places, as do not pay to the rates of the several counties in which they are respectively situated, shall, on receiving a certificate, signed by one or more judge or justice, before whom such prisoner shall have been discharged as aforesaid (which certificate the judge or justice is hereby required to give), pay out of the rates of such county, or of such district, hundred, riding, or division, or out of the public stock of such city, town corporate, cinque port, liberty, franchise, or place, such sum as has been usually paid upon that occasion, not exceeding thirteen shillings and four pence for every prisoner so discharged as aforesaid, to the sheriff, gaoler, or keeper of the prison, whence the said prisoner shall have been discharged as aforesaid; which several sums, so paid in pursuance of this act, shall be respectively allowed to the said treasurer and officers by the justices before whom their accounts shall be passed." See also the 55 Geo. III. c. 50, s. 4, *post*, Gaols, Vol. II.

It will be seen that this enactment extends only to *prisoners* in custody at time of acquittal or discharge.

III. Of Carrying a Prisoner to Gaol.

Costs of carrying a prisoner to gaol.

By the 3 Jac. I. c. 10, it is enacted, "that all and every person and persons whatsoever, that from and after the end of this present session of parliament shall be committed to the common or usual gaol within any county or liberty within this realm, by any justice or justices of the peace, for any offence or misdemeanor, to any such gaol, that the said person or persons so to be committed as aforesaid, having means or ability thereunto, shall bear their own reasonable charges for so conveying or sending them to the said gaol, and the charges also of such as shall be appointed to guard them to such gaol, and shall so guard them thither; and if any such person or persons so to be committed as aforesaid, shall refuse, at the time of their commitment and sending to the said gaol, to defray the said charges, or shall not then pay or bear the same, that then such justice or justices of the peace shall and may, by writing under his or their hand and seal, or hands and seals, give warrant to the constable or constables of the hundred, or constable or tithing man of the tithing or township, where such person or persons shall be dwelling and inhabit, or from whence he or they shall be committed as aforesaid, or where he or they shall have any goods within the county or liberty, to sell such and so much of the goods and chattels of the said persons so to be committed as by the discretion of the said justice or justices of the peace shall satisfy and pay the charges of such his or their conveying and sending to the said gaol, the appraisement to be made by four of the honest inhabitants of the parish or tithing where such goods or chattels shall remain and be, and the overplus of the money which shall be made thereof to be delivered to the party to whom the said goods may belong."

How the charges shall be levied if the prisoner refuse to pay them.

By this act, if the offender had no goods, the parishioners were liable to

the costs. But this regulation was abolished by the following statute of 27 Geo. II. which repeals the act of James in this respect.

TAKING PRISONER TO GAOL.

By the 27 Geo. II. c. 3, after repealing the 3 Jac. I. c. 10, it is enacted, "that from and after the 24th day of June, 1754, when any person, not having goods or money within the county where he is taken sufficient to bear the charges of himself, and of those who convey him, is committed to gaol or the house of correction by warrant from any justice or justices of the peace, then, on application, by any constable or other officer who conveyed him, to any justice of the peace for the same county or place, he shall upon oath examine into and ascertain the reasonable expenses to be allowed such constable or other officer, and shall forthwith, without fee or reward, by warrant under his hand and seal, order the treasurer of the county or place to pay the same, which the said treasurer is hereby required to do as soon as he receives such warrant; and any sum so paid shall be allowed in his accounts."

Offenders not having sufficient to defray the expenses of them to gaol, &c. justices to grant a warrant on the treasurer of the county for payment of the charges.

Sect. 4. "That nothing in this act contained shall extend to empower such court, or any justice or justices of the peace, to make warrants or orders on the treasurer of the county of Middlesex for the payment of the expenses of the constable or other officer in conveying any person to gaol, [*the words here omitted are repealed,*] but that within the said county of Middlesex the expenses of the constable or other officer, occasioned by his conveying of any person to gaol by virtue of a warrant from any justice or justices of the peace, shall (after such expenses have been examined into upon oath, and allowed by such justice or justices, and for which no fee or reward shall be taken,) be paid by the overseer or overseers of the poor of the parish or place where the said person was apprehended, who is and are hereby authorised and required to pay the same; and the sum or sums so paid shall be allowed in his or their accounts."

In Middlesex, the overseers of the poor of the parish where the offender was taken, to pay all such charges.

IV. On Convictions and Summary Proceedings before Justices.

By stat. 18 Geo. III. c. 19, s. 1, "Whereas by the laws now in being, his Majesty's justices of the peace are not sufficiently authorised, on complaints that come before them out of sessions, to award costs against either the person or persons complaining, or the person or persons against whom any complaint is made, as to justice may appertain, it is therefore enacted, that where any complaint shall be made before any of his Majesty's justices of the peace for any county, riding, division, city, town corporate, franchise, or liberty, and any warrant or summons shall issue in consequence of such complaint, that then it shall and may be lawful to and for any justice or justices of the peace, who shall have heard and determined the matter of the said complaint, to award (*a*) such costs to be paid by either of the parties, and in manner and form as to him or them shall seem fit, to the party injured; and in case any person, so ordered by the said justice or justices of the peace to pay such sums of money as aforesaid, shall not forthwith pay down or give security for the same to the satisfaction of the justice or justices, it shall and may be lawful for the said justice or justices, by warrant under his hand and seal, or their hands and seals, to levy the said sum or sums by distress (*b*) and sale of the goods and chattels of such person so refusing or neglecting; and where goods and chattels of such person cannot be found, (*c*) to commit (*d*) such person to the house of correction for the county, riding, division, city, town corporate, franchise, or liberty, wherein such person shall reside, there to be kept to hard labour for any time not exceeding one month, nor less than ten days, or until such sum or sums of money, together with the expenses attending the commitment of such person to such house of correction, be first paid."

Justices may award costs.

(*a*) See form, (No. 2), *post.*
(*b*) See form, (No. 3), *post.*
(*c*) See form, (No. 4), *post.*
(*d*) See form, (No. 5), *post.*

ON CONVICTIONS, &c.

18 Geo. 3, c. 19. Except where the penalty amounts to 5*l.* or upwards.

Sect. 2. "That upon the conviction of any person or persons upon any penal statute or statutes, where the penalty or penalties shall amount to or exceed the sum of five pounds, the said costs shall be deducted by the said justice or justices, according to his or their discretion, out of the said penalty or penalties, so that the said deduction shall not exceed one-fifth part of the said penalty or penalties; and the remainder of the said penalty or penalties shall be paid to, or divided among, the person or persons who would have been entitled to the whole of the penalty or penalties in case this act had not been made."

But in several instances, even where the penalty exceeds 5*l.* the act of parliament creating the penalty also gives costs.

Sessions to make regulations.

Sect. 9. "That it shall and may be lawful for his Majesty's justices of the peace, in and for any county, riding, division, city, town corporate, franchise or liberty, in quarter sessions assembled, to lay down or alter, from time to time, such rules and regulations, as to any costs or charges thereafter to be allowed to any person whatsoever by virtue of any part of this act, for the better carrying the intent of any part of this act into execution, and for the preventing any unnecessary expense, as to them shall seem most just and reasonable; which rules and regulations, having received the approbation and signature of one or more of his Majesty's judges of oyer and terminer, or general gaol delivery, at the assizes for the county wherein such rules and regulations shall have been made, shall be binding, and not otherwise, on all persons whatsoever; and no person whatsoever shall be allowed any greater sum of money, by virtue of this act, than according to the said rules and regulations so approved of as aforesaid, any thing herein contained to the contrary thereof in anywise notwithstanding."

As to the meaning of the words *heard and determined*, see *ante*, Appeal, p. 140, and *R.* v. *Cawston*, 4 *D. & R.* 134.

As to the mode of deciding on and fixing those costs on a conviction, see *ante*, **Conviction**, p. 845, 846.

Costs of distresses.

As to the costs of distresses for penalties, &c. see *post*, **Distress**, Vol. I. Of distress for rent, rates, &c. *id.* and *ante*, **Church Rates**, p. 630.

V. Of Constables, &c. in Other Cases.

Costs in other cases.

As to the costs and expenses of constables, see *ante*, **Constables**, p. 807; on prosecutions for third breach of alehouse licenses, *ante*, **Alehouse**, p. 84.

As to costs on *certiorari*, *ante*, **Certiorari**, p. 586; on appeals, *ante*, **Appeals**, p. 151; on appeals against poor rates, title **Poor Rates**, Vol. IV.; on appeals against orders of removal, title **Poor**, Vol. IV.; on appeals against overseers' accounts, title **Poor**, Vol. IV.; in distresses, *post*, **Distress**, Vol. I.

As to rewards, title **Rewards**, Vol. V.

Forms.

(No. 1.)

Order of justice of peace to treasurer of county to pay expenses of carrying party committed to common gaol, on 27 Geo. 2, c. 3, s. 1.

To the Treasurer of the county of or his deputy.

(to wit.) } *WHEREAS by my warrant of commitment dated this day, I have committed one G. S. for [felony and horse stealing] at in the said county, to be prosecuted at the ensuing assizes at and have duly bound over the prosecutor and witnesses for that purpose, and the said G. S. not having sufficient goods or money to defray the charges of himself or the officer who is appointed to convey him to aforesaid, from [the public office, Bow Street,] and I having examined into and ascertained the necessary and reasonable charges and expenses to be allowed on such occasions, and appointed and fixed the sum at the sum of do hereby, in pursuance of the act of parliament in such case made and provided, order and require you the said treasurer of the county of to pay to S. L. the officer appointed to convey the said prisoner as aforesaid, the said sum of and for so doing this shall*

be your sufficient warrant. Given under my hand and seal at [the public office, Bow Street,] the day of in the year of our Lord J. P. (L. S.)

(No. 2.)

Form of awarding costs on 18 Geo. 3, c. 19. (a)

County or Borough, &c. (to wit.) } *I A. J. one of his Majesty's justices of the peace in and for the aforesaid, in pursuance of an act made in the eighteenth year of his late Majesty King George the Third, intituled "An Act for the payment of costs to parties, on complaints determined before justices of the peace out of sessions, for the payment of the charges of constables in certain cases, and for the more effectual payment of charges to witnesses and prosecutors of any larceny or other felony;" on the complaint of* [here state the names of the parties, and the offence generally, and the date,] *against for which said complaint was heard and determined by me, on the day of do award the following costs to be paid by viz.* [here state the costs.] *Given under my hand and seal this day of in the year of our Lord*

(No. 3.)

Form of warrant of distress and sale for same. (a)

(to wit.) } *To the Constable of and to all other his Majesty's Constables in and for in aforesaid.*

WHEREAS I, J. P. Esquire, one of his Majesty's justices of the peace in and for the aforesaid, in pursuance of an act made in the eighteenth year of his late Majesty King George the Third, intituled "An Act for the payment of costs to parties, on complaints determined before justices of the peace out of sessions, for the payment of the charges of constables in certain cases, and for the more effectual payment of charges to witnesses and prosecutors of any larceny or other felony," have awarded on the day of now last past, on the complaint of against for the following costs to be paid by viz. [here state the sum]: *and whereas the said being ordered by me the said justice to pay such sum as aforesaid, hath not paid down or given security for the same to the satisfaction of me the said justice; these are therefore to command you, and each and every of you, to levy the said sum of by distress and sale of the goods and chattels of the said and I do hereby order and direct the goods and chattels so to be distrained to be sold and disposed of within days, unless the said sum of for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid; and you are hereby also commanded to certify unto me what you shall have done by virtue of this my warrant. Given under my hand and seal at the day of in the year of our Lord*

(No. 4.)

Constable's return thereon, for want of distress. (a)

(to wit.) } *I constable of do hereby certify to justice of the peace of that I have made diligent search for, but do not know, nor can find any goods and chattels of by distress and sale whereof I may levy the sum [of] pursuant to his warrant for that purpose, dated the day of Given under my hand, this day of in*

(No. 5.)

Commitment thereupon to the house of correction. (a)

(to wit.) } *To the Constable of and also to the Keeper of the House of Correction at*

WHEREAS, in pursuance of an act made in the eighteenth year of his late Majesty King George the Third, intituled "An Act for the payment of costs to parties, on complaints determined before justices of the peace out of sessions, for the payment of the charges of constables in certain cases, and for the more effectual payment of charges to witnesses and prosecutors of any larceny or other felony," of his Majesty's justices of the peace in and for the said did issue warrants of distress and sale, directed to of constable of the said of ordering the said constable to levy the said sum of of the goods and chattels of the said in manner and form as therein is mentioned; and whereas it appears to by the return of constable of dated the day of that he hath made diligent search, but doth not know of, nor can find any goods and chattels of the said

(a) The 18 Geo. III. c. 19, gives this form.

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by distress and sale whereof the said sum of may be levied pursuant to the said warrant; these are therefore to command you, the said constable of to apprehend the said and convey the said to the said house of correction, and to deliver the said there to the said keeper of the said house of correction: and these are also to command you, the said keeper of the said house of correction, to receive the said into the said house of correction, and there to cause to be kept to hard labour for the space of from the date hereof, or until such sum of together with the expenses attending the commitment of the said to the said house of correction, be first paid, or until the said be discharged by due course of law. Given under hand and seal, [or hands and seals,] at the day of.

Cottages.

COTTAGE (Sax. *Cote.*) is a small house for habitation, without any land belonging to it. By stat. 31 Eliz. c. 7, cottages were prohibited to be erected without laying at least four acres of land to the same, and divers other restrictions were thereby enjoined; but the same was repealed by stat. 15 Geo. III. c. 32, setting forth that the said statute of 31 Eliz. had laid the industrious poor under great difficulties to procure habitations, and had very much to lessen population, and in divers other respects was inconvenient to the labouring part of the nation in general.

Cotton and Woollen Mills.

[42 Geo. III. c. 73; 59 Geo. III. c. 66; 60 Geo. III. c. 5; 6 Geo. IV. c. 63; 7 & 8 Geo. IV. c. 30; 10 Geo. IV. c. 51, 63.]

42 Geo. 3. c. 73.

THE stat. 42 Geo. III. c. 73, (*a*) intituled "An Act for the preservation of the health and morals of apprentices and others employed in cotton and other mills, and cotton and other factories," enacts, s. 1, that from 2d of December 1802, all cotton and woollen mills, and cotton and woollen factories, where three or more apprentices or twenty or more other persons shall at any time be employed, shall be subject to the several rules and regulations contained in this act; and the master or mistress of every such mill or factory is strictly enjoined to act in strict conformity to the said rules and regulations.

Mills and factories employing a certain number of persons, subjected to the regulations of this act.

White washing and airing the rooms.

Every room and apartment belonging to such mill or factory shall, once at least in every year, be sufficiently washed with quick lime and water over every part of the walls and ceiling thereof, and due care shall be paid by the master or mistress of such mills or factories to provide a sufficient number of windows and openings in such rooms or apartments, to insure a proper supply of fresh air in and through the same. Sect. 2. And see the 6 Geo. IV. c. 63, s. 6, *post*, 910.

Apartments and beds of male and female apprentices.

The room or apartment in which any male apprentice shall sleep shall be entirely separate and distinct from that in which any female apprentice shall sleep; and not more than two apprentices shall in any case sleep in the same bed. Sect. 7.

Clothing of apprentices.

Every master or mistress shall constantly supply every apprentice during

(*a*) This act and the 59 Geo. III. c. 66, are improved on by the 6 Geo. IV. c. 63, *post*, 910, but from want of a consolidating act the provisions and law become rather confused.

the apprenticeship with two complete suits of clothing, with suitable linen, stockings, hats, and shoes; one new complete suit being delivered to such apprentice once at least in every year. Sect. 3.

42 Geo. 3, c. 73.

Time of working.

No apprentice to any such master or mistress shall be employed or compelled to work for more than twelve hours in any one day (reckoning from six of the clock in the morning to nine of the clock at night), exclusive of the time that may be occupied by such apprentice in eating the necessary meals; provided that from the 1st of June, 1803, no apprentice shall be employed or compelled to work upon any occasion whatever between nine at night and six in the morning. Sect. 4. And see 6 Geo. IV. c. 63, s. 3, *post*, 918; and as to working on Saturday, 6 Geo. IV. c. 63, s. 2, *post*, 910.

Night work.

Apprentices to be instructed in reading, writing, and arithmetic.

Every such apprentice shall be instructed in some part of every working day, for the first four years at least of his or her apprenticeship, in the usual hours of work, in reading, writing, and arithmetic, or either of them, according to the age and abilities of such apprentice, in some room or place in such mill or factory to be set apart for that purpose; and the time so allotted shall be deemed part of the respective periods limited by this act during which any such apprentice shall be employed or compelled to work. Sect. 6.

Instruction and conduct of apprentices on Sundays.

Every apprentice (or in case the apprentices shall attend in classes, every such class,) shall, for one hour at least every Sunday, be instructed and examined in the principles of the Christian religion by some proper person, to be provided and paid by the master or mistress of such apprentice; and if the parents of such apprentice shall be members of the church of England, then such apprentice shall once a year at least be examined by the rector, vicar, or curate of the parish in which such mill or factory is situate; and shall also, after such apprentice is fourteen years old and before his eighteenth year, be prepared for confirmation, and be brought or sent to the bishop to be confirmed, in case any confirmation shall during such period take place in or for such parish, and such master or mistress shall send their apprentices under proper care once in a month at least to attend divine service in the church of the parish or place in which the mill or factory shall be situated, or in some convenient church or chapel according to the established church, or in some licensed place of public worship; and in case the apprentices cannot conveniently attend service every Sunday, the master or mistress shall cause divine service to be performed in some convenient room or place in or adjoining to the mill or factory, once at least every such Sunday. Sect. 8.

Justices at their Mid-summer sessions yearly to appoint two visitors of such mills or factories, who shall visit and report the condition thereof to the quarter sessions.

The justices for every county, riding, division, or place in which any such mill or factory shall be situated, shall at the Midsummer sessions appoint two persons not connected with such mills or factories to be visitors thereof, one of whom shall be a justice of the peace for such county, &c. and the other a clergyman of the established church; and if such appointment be found inconvenient, such justices shall appoint two such justices or two such clergymen; and the said visitors or either of them may from time to time throughout the year enter and inspect any such mill or factory during daytime or the hours of employment; and shall report from time to time, in writing, to the sessions the state and condition of such mills and factories, and the apprentices therein, such report to be entered by the clerk of the peace among the records of the sessions in a book kept for that purpose: provided, that if six or more mills or factories be within any one such county, &c. then such justices may divide such county, &c. into two or more districts or parts, and appoint two such visitors as aforesaid for each of such districts or parts. Sect. 9.

Visitors may be appointed for districts.

In case of infectious disorders, visitors may require the master, &c. to call in medical assistance, &c.

And if the said visitors or either of them shall find that any infectious disorder prevails in any mill or factory as aforesaid, they or he may require the master or mistress of such mill or factory to call in some physician or other competent medical person to ascertain the nature, &c. of such disorder, and apply such remedies and recommend such regulations as he shall think proper on the occasion; and such medical person shall report to the visitors or either of them, as often as required, his opinion in writing of the nature, progress, and present state of the disorder, together with its probable effects

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and any expenses incurred in consequence thereof shall be discharged by the master or mistress of such mill or factory. Sect. 10.

If any one shall oppose or molest any of the said visitors in the execution of the powers of this act, every such person shall for every offence forfeit not more than 10*l.* nor less than 5*l.* Sect. 10.

42 Geo. 3, c. 73. Penalty for obstructing visitors.

Penalty on masters, &c. offending.

And every master or mistress of such mill or factory who shall offend against any of the provisions of this act shall for such offence (except where otherwise directed) forfeit not more than 5*l.* nor less than 40*s.* at the discretion of the justices before whom such offender shall be convicted, as hereinafter mentioned; one half to the informer, and the other to the poor: such information to be laid within one calendar month after the offence is committed. Sect. 13.

Limitation one month.

Penalties recoverable before two justices, &c.

All offences for which any penalty is hereby imposed shall be heard before two justices acting in and for the place where the offence shall be committed, and all penalties, and costs, and charges attending the conviction may be levied by distress by warrant of two justices acting for the county, &c. rendering the overplus (if any) to the party offending; which warrant they are required to grant on conviction, either upon confession or upon the oath of one witness, and in case no distress can be found, or such penalties, &c. be not paid, such justices shall by warrant commit the offender to the common gaol or house of correction of the county, &c. where the offence shall be committed, for any time not exceeding two calendar months, unless the penalty, &c. be sooner paid; provided that no warrant of distress shall be issued for such penalty, &c. until six days after conviction, and an order made on the offender for payment thereof; and no such conviction shall be removable by *certiorari* into any court. Sect. 15.

No certiorari.

Two copies hereof to be affixed in the mill.

The master or mistress of every such mill or factory shall cause printed or written copies of this act to be hung up and affixed in two or more conspicuous places in such mill or factory; the same to be constantly kept, and renewed so as to be at all times legible and accessible to all persons employed therein. Sect. 12. And see 6 Geo. IV. c. 63, s. 7, *post*, 910.

Every such master or mistress shall, at the Epiphany sessions yearly, make or cause to be made an entry in a book, to be kept for that purpose by the clerk of the peace of every county, &c. in which such mill or factory shall be situate, of every such mill or factory occupied by him or her, wherein three or more apprentices, or twenty or more other persons, shall be employed; and the said clerk shall receive for every such entry 2*s.* and no more. Sect. 14.

Conviction.

Every such conviction before such justices may be made in the following form; (to wit,)

County of } *BE it remembered, that on the day of in the year*
to wit. } *A. B. was, upon the complaint of C. D. convicted before us the justices of the peace for the said county of* [*or, for of or in the said county of* as the case shall happen to be,] *in pursuance of an act passed in the forty-second year of the reign of his Majesty King George the Third, for* [or as the case may be]. *Given under our hands and seals, the day and year above written.*

Which conviction shall be certified to the next general quarter sessions, there to be filed amongst the records of the county, riding, or division. Sect. 16.

And the act is a public act. Sect. 17.

59 Geo. 3, c. 66.

The 59 Geo. III. c. 66, reciting stat. 42 Geo. III. c. 72, and that it is expedient that some further provision should be made for the regulation of mills, manufactories, and buildings employed in the preparation and spinning of cotton wool; enacts, "that from and after the 1st of January, 1820, no child shall be employed in any description of work, for the spinning of cotton wool into yarn, or in any previous preparation of such wool, until he or she shall have attained the full age of nine years."

No child to be employed in cotton mills under nine years of age.

No person under 16 years of age to be employed in any cotton mill, &c. for more than 12 hours.

Sect. 2. "That no person, being under the age of sixteen years, shall be employed in any description of work whatsoever, in spinning cotton wool into yarn, or in the previous preparation of such wool, or in the cleaning or repairing of any mill, manufactory or building, or any millwork or machinery

therein, for more than twelve hours in any one day, exclusive of the necessary time for meals; such twelve hours to be between the hours of five o'clock in the morning and nine o'clock in the evening." See further the 6 Geo. IV. c. 63, s. 1, *post*, 910.

59 Geo. 3, c. 66. Hours of meal time appointed.

Sect. 3. "That there shall be allowed to every such person, in the course of every day, not less than half an hour to breakfast, and not less than one full hour for dinner; such hour for dinner to be between the hours of eleven o'clock in the forenoon and two o'clock in the afternoon." And see further 6 Geo. IV. c. 63, s. 3, *post*, 910.

Time to be made up by accidental intermission after the rate of an additional hour per day.

Sect. 4. "That if at any time, in any such mill, manufactory or buildings as are situated upon streams of water, time shall be lost in consequence of the want of a due supply, or of an excess of water, then and in every such case, and so often as the same shall happen, it shall be lawful for the proprietors of any such mill, manufactory or building, to extend the before mentioned time of daily labour, after the rate of one additional hour per day, until such lost time shall have been made good, but no longer." And see 6 Geo. IV. c. 63, s. 4, *post*, 910.

Ceilings and walls to be cleansed twice a year.

Sect. 5. "That the ceilings and interior walls of every such mill, manufactory or building shall be washed with quick lime and water twice in every year." And see 6 Geo. IV. c. 63, s. 6, *post*, 910.

Publication of this act in every cotton mill, &c.

Sect. 6. "That in a conspicuous part of every such mill, manufactory or building, a copy of this act, or a full and true abstract of the regulations provided thereby, shall be hung up and affixed, and signed by the proprietors, manager or overseer of such mill, manufactory or building; and that such copy or abstract shall be kept and renewed, so that the same shall be at all times legible." And see 6 Geo. IV. c. 63, s. 7, *post*, 910.

Penalty on acting contrary to the provisions of this act.

Sect. 7. "That every master or mistress of any such cotton mill, manufactory or building, who shall wilfully act contrary to or offend against any of the provisions of this act, or any of the provisions of the above recited act, shall for every such offence forfeit and pay any sum not exceeding 20*l.* nor less than 10*l.* at the discretion of the justices before whom such offender shall be convicted; one-half whereof shall be paid to the informer, and the other half to the overseers of the poor in England, to the churchwardens in Ireland, and to the ministers and elders in Scotland, of the parish or place where such offence shall be committed; to be by them applied in aid of the poor rate in England, and for the benefit of the poor in Ireland and Scotland, of such parish or place: provided always, that all informations for offences against the said recited act or this act, shall be laid within three calendar months subsequently to the offence being committed, and not after the expiration of such three calendar months: provided also, that all penalties inflicted by this act shall be levied, recovered and applied in manner directed by the said recited act."

Application of penalties.

Limitation of actions.

Public act.

Sect. 8. "That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices and others, without specially pleading the same."

60 Geo. 3, c. 5.

The stat. 60 Geo. III. c. 5, reciting stat. 59 Geo. III. c. 66, "and whereas it is expedient to provide for accidents by fire or otherwise, which may arise in the working of such mills or factories, by which many persons may be suddenly deprived of employment, and to alter the said act:" enacts, "that on the event of one or more mills being suddenly destroyed by fire or other accident, the proprietors thereof, possessing other mills which are kept at work during the day, shall, for eighteen months from the day on which any such fire or other accident shall happen, be allowed to employ the persons who were previously at work on the mill or mills so destroyed, and employ them in the night time in any other mill or mills, for any period not exceeding ten hours in any one night." See the 6 Geo. IV. c. 63, s. 4, *post*, 910.

In case of mills being destroyed, persons belonging to them may be employed by night in other mills.

Hour for dinner to be between eleven and four.

Sect. 2. "And whereas it is by the said act enacted, that there shall be allowed to every person, in the course of every day, not less than half an hour to breakfast, and not less than one full hour for every dinner; such hour for dinner to be between eleven of the clock in the forenoon and two of

COTTON AND WOOLLEN MILLS.

60 Geo. 3, c. 5.

Public act.

6 Geo. 4, c. 63.

42 Geo. 3, c. 73.

59 Geo. 3, c. 66.

Age and hours of young persons working in cotton mills and factories.

Hours of work on Saturday.

Hour and time for breakfast and dinner.

No labour during such times.

Proviso for unavoidable loss of time in case of accidents happening to engines, &c.

and of a want of water.

Ceilings and walls to be washed.

Copy of act hung up in every manufactory, &c.

Occupier or foreman offending.

Penalty.

How applied.

the clock in the afternoon: and whereas it is expedient that the period thereby specified for the hour of dinner should be altered; be it therefore enacted, that such hour for dinner shall be between the hours of eleven of the clock in the forenoon and four of the clock in the afternoon; any thing in the said act to the contrary notwithstanding."

Sect. 3 declares it a public act.

By the 6 Geo. IV. c. 63, intituled An Act to make further provision for the regulation of cotton mills and factories, and for the better preservation of the health of young persons employed therein, after reciting the 42 Geo. III. c. 73, and 59 Geo. III. c. 66, it is enacted, "that from and after the first day of August, 1825, no person being under the age of sixteen years shall be employed in any description of works whatsoever, in spinning cotton wool into yarn, or in the previous preparation of such wool, or in cleaning of any mill, manufactory or building, or any millwork or machinery therein, for more than twelve hours in any one day, exclusive of the necessary time for meals, such twelve hours to be between the hours of five of the clock in the morning and eight of the clock in the evening."

Sect. 2. "That no person under the age abovementioned shall be worked in any cotton mill or factory more than nine hours on a Saturday; such nine hours to be completed between the hours of five of the clock in the morning and half past four of the clock in the afternoon.

Sect. 3. "That there shall be allowed to every such person, in the course of every day, not less than half an hour to breakfast, and not less than one hour for dinner; such half hour for breakfast to be between the hours of half past six of the clock and ten of the clock in the morning, and such hour for dinner to be between the hours of eleven of the clock in the forenoon and three of the clock in the afternoon; and during such before-mentioned half hour for breakfast, and such one hour for dinner, no such person shall be required to perform any labour or work of the nature or description above-mentioned in any such mill, manufactory, or building."

Sect. 4. "That if at any time, in any such mill, manufactory or building, time shall be lost in consequence of any accident happening to the steam-engine, water-wheels, or mill-gearing, then and in every such case, and so often as the same shall happen, it shall be lawful for the occupier of any such mill, manufactory or building, to extend the before-mentioned time of daily labour after the rate of one additional hour in any one day, until such lost time shall have been worked up during the six following days (Saturday excepted), but no longer."

Sect 5. "That if at any time in any such mill, manufactory or building, as are situated upon streams of water, time shall be lost in consequence of the want of a due supply or of an excess of water, then and in every such case, and so often as the same shall happen, it shall be lawful for the occupier of any such mill, manufactory or building, to extend the before-mentioned time of daily labour after the rate of half an hour per day, until such lost time shall have been made good, but no longer."

Sect. 6. "That the ceilings and interior walls of every such mill, manufactory or building, shall be washed with quick lime and water once in every year."

Sect. 7. "That in a conspicuous part of every such mill, manufactory, or building, a copy of this act, or a full and true abstract of the regulations provided hereby, shall be hung up and affixed and signed by the proprietors, manager or overseer of such mill, manufactory, or building; and such copy or abstract shall be kept and renewed, so that the same shall be at all times legible."

Sect. 8. "That every occupier or foreman of any such cotton mill, manufactory or building, who shall knowingly act contrary to or offend against any of the provisions of this act, or any of the provisions of the above-recited acts, shall for every such offence forfeit and pay any sum not exceeding 20*l.* nor less than 10*l.*, at the discretion of the justices before whom such offender shall be convicted; one half whereof shall be paid to the informer, and the

other half to the overseers of the poor in England, to the churchwardens in Ireland, and to the ministers and elders in Scotland, of the parish or place where such offence shall be committed, to be by them applied in aid of the poor rate in England, and for the benefit of the poor in Ireland and Scotland of such parish or place: provided always, that no sum exceeding 100*l.* in the whole shall be levied for any number of offences under this act committed in the same day in any one mill or establishment; and that all informations for offences against the said recited acts or this act shall be laid within two calendar months subsequently to the offence being committed, and not afterwards: provided also, that no person shall be prosecuted for more than one offence committed on the same day in any one mill or establishment, without the sanction and authority of the justices at quarter sessions assembled; and that all penalties inflicted by this act shall be levied and recovered in manner directed by the said first-recited act."

6 Geo. 4, c. 63.

Limitation of informations.

No double prosecution but by order of quarter sessions.

Sect. 9. "That every proprietor or occupier of any mill, manufactory or building hereinbefore described, wherein children under the age above-mentioned, that is to say, sixteen years of age, are or shall be employed in spinning cotton wool into yarn, or in the previous preparation thereof, shall provide or cause to be provided a book or books, to be kept by himself or herself, or by some person appointed by him or her, for the entry of the name of every child previous to his or her being employed in any such mill, manufactory or building, for the purpose aforesaid, whom any such proprietor or occupier may consider under the age of nine years, together with the names of the parents or guardians of any such child; and that the signature of such parents or guardians, or one of them, when so entered in the said book or books, specifying the date of such entry, and that the said child or children is or are of or above the age of nine years, shall in all such cases exempt such proprietor or occupier of such mill, manufactory or building, from any prosecution under the provisions of this act, in so far as relates to the penalties imposed on persons employing children under the aforesaid age of nine years for any of the purposes aforesaid."

Book kept for registering entry of child in the mill, &c.

Such book to be a sufficient voucher of age of children employed.

Sect. 10. "That no justice of the peace, being also a proprietor or master of any cotton mill or factory, or the father or son of any such proprietor or master, shall act as such justice under this act."

Justices interested not to act.

Sect. 11. "That it shall be lawful for any one or more justices of the peace, before whom any such complaint and information shall be made as aforesaid, and he and they are hereby authorised and required, at the request in writing of any of the parties, to issue his or their summons to any witness or witnesses to appear and give evidence before any two justices at the time and place appointed for hearing and determining such complaint, and which time and place shall be specified in such summons†; or offer some reasonable excuse for the default, or appearing according to such summons, shall not submit to be examined as a witness, and give his or her evidence before such justices touching the matter of such complaint, then and in every such case it shall be lawful for such justices, and they are hereby authorised (proof on oath, which oath either of such justices are hereby empowered to administer, in the case of any person not appearing according to such summons, having been first made before such justices of the due service of such summons on every such person, by delivering the same to him or her, or by leaving the same forty-eight hours before the time appointed for such person to appear before such justices, at the usual place of abode of such person) by warrant under the hands of such justices, in the form and to the effect of the form in the schedule to this act annexed, to commit such person so making default in appearing, or appearing and refusing to give evidence, to some prison within the jurisdiction of such justices, there to remain without bail or mainprize, for any time not exceeding two calendar months, or until such person shall submit himself or herself to be examined, and give his or her evidence before such justices as aforesaid: provided always, that in case such complaint shall be heard and determined before such offender shall submit to be examined and give evidence as aforesaid, then and in every

Justices empowered to summon witnesses;

† *Sic.*

and to punish witnesses refusing to give evidence.

Proceedings thereon.

Proviso.

such case he, she, or they shall be imprisoned the full term of such commitment."

1 Geo. 4, c. 48.

Form of conviction and commitment as in schedule.

Sect. 12. "That the justices before whom any person shall be convicted of any offence against this act, or by whom any person shall be committed for not appearing as a witness or not submitting to be examined, shall cause all such convictions, and the warrants or orders for such commitments to be drawn up in the form or to the effect set forth in the schedule to this act annexed.

No appeal.

Sect. 13. "That no appeal shall be allowed against any conviction under this act."

In actions for executing act.

General issue.

Sect. 14. "That if any action shall be brought against any person for any matter or thing whatsoever done or committed under or by virtue or in the execution of this act, such person may plead the general issue, and give this act and the special matter in evidence; and if the plaintiff shall become nonsuited or suffer discontinuance, or forbear further prosecution, or if judgment shall be given for the defendant, such defendant shall recover his full costs for which he shall have like remedy as in cases where costs by law are given to defendants."

Repeal of former acts.

Exceptions.

Sect. 15. "That all and every the powers, provisions, exemptions, penalties, forfeitures, payments, remedies, matters, and things, respectively contained in the said hereinbefore recited acts (save and except such parts thereof as are expressly varied, altered, or otherwise provided for by this act) shall respectively be as good, valid, and effectual for carrying this act into execution, as if the same had respectively been repeated and re-enacted in the body of this act."

SCHEDULE to which this Act refers.

Form of a Commitment of a Person summoned as a Witness.

WHEREAS C. D. hath been *duly summoned to appear and give evidence before us* [naming the justices who issued the summons], *two of his Majesty's justices of the peace for the county, [or riding, division, city, liberty, town, or place,] of* on the day of at being the time and place appointed for hearing and determining the complaint made on the oath of [the informer's name] before us against A. B. of having [stating the offence as laid in the information, contrary to the statute made in the sixth year of the reign of his present Majesty, intituled, &c. (here insert the title of this act)]: and whereas the said C. D. hath not appeared before us, at the time and place aforesaid specified for that purpose, to give evidence touching the matter of the said complaint, nor hath any reasonable excuse for his default [or, and whereas the said C. D. hath appeared before us, at the time and place aforesaid specified for that purpose, but hath refused to be examined as a witness and give his evidence before us, touching the matter of the said complaint, but hath refused so to do], therefore we, the said justices, or any of us, in pursuance of the statute, commit the said C. D. to the [describing the prison], there to remain without bail or mainprize for his contempt aforesaid, until he shall submit himself to be examined and give his evidence before us touching the matter of the said complaint, or shall otherwise be discharged by due course of law; and we command the constable [or other peace officer or officers to whom the warrant is directed] or hereby authorized and required to take into your custody the body of the said C. D. and him safely to convey to the said prison, and him there to deliver to the gaoler or keeper thereof, who is hereby authorized and required to receive into his custody the body of the said C. D. and him safely to detain and keep, pursuant to this commitment. Given under our hands, this day of in the year of our Lord

This commitment to be directed to the proper peace officer, and the gaoler or keeper of the prison.

10 Geo. 4, c. 51.

In informations under recited act the names of all the partners not required to be inserted.

By the 10 Geo. IV. c. 51, after reciting the 6 Geo. IV. c. 63, and that the provisions of the said act have been defeated and set aside for want of form, it is enacted, "that it shall not be deemed necessary in any information, summons, or warrant, issued in pursuance of the said recited act, to set forth the name or other designation of each and every the partners in any cotton mill or factory, but that it shall be lawful to insert in such information, summons, or warrant, the name of the ostensible proprietor or title of the firm by which the proprietor or proprietors of any such mill or factory are usually designated and known."

Sect. 2. "That the service of such summons or warrant on any principal manager, conductor, or clerk of any cotton mill or factory, during the usual hours of working such cotton mill or factory, shall be good and lawful service."

Service of summons.

Sect. 3. "That no information filed, nor any summons or warrant served, as directed by the said recited act, or by this act, shall be quashed for informality or want of form."

Not to be quashed for informality.

The 10 Geo. IV. c. 63, confirms this act of 10 Geo. IV. c. 51.

As to disputes between masters and workmen in cotton factories, see *post*, **Servants**, Vol. V. p. 376, 382.

Disputes of workmen.

By the 7 & 8 Geo. IV. c. 30, s. 3, wilfully destroying or injuring manufactured cotton goods in the loom, &c. or machinery, or forcibly entering buildings for that purpose, subjects the offender to transportation for life, or imprisonment and whipping, &c. See generally, *post*, **Malicious Injuries to Property**, Vol. III. p. 727.

Destroying cottons, and works, &c.

Counsel.

As to his right of attendance on summary proceedings, see *ante*, **Conviction**, p. 829, **Justices**, Vol. III. p. 471; as to his rights and duties at sessions, see *post*, **Sessions**, Vol. V. p. 463, 464; counsel not allowed to prisoner in treason or felony, Vol. V. p. 462; as to what confidential communications made to counsel are privileged in evidence, see **Evidence**, Vol. II. p. 87, 88.

County.

[9 Geo. IV. c. 43.]

AS to the meaning of the term county, see *post*, 917.

As to what is a county, see *post*, 917.

See as to the *venue* in indictments, *post*, **Indictment**, Vol. III. p. 330 to 335; as to the *venue* in convictions, see *ante*, 818, 820.

By the 9 Geo. IV. c. 43, intituled, "An Act for the better regulation of divisions in the several counties in England and Wales," after reciting, that "whereas by divers acts now in force it is enacted, that certain matters and things, in the same respectively mentioned, shall be transacted and determined within the divisions or limits within which the same shall arise, or the parties therein concerned inhabit or exercise their trade or calling, and by or before one, two, or more justices of the peace dwelling within or near to, or usually acting within, such divisions or limits respectively: and whereas the boundaries of such divisions or limits are in some instances uncertain, and in many have become inconvenient to the inhabitants within the same, from the change or increase of trade or population, or from other causes: and whereas doubts have arisen as to the authority by which such divisions or limits may from time to time be constituted, defined, or altered; and it is expedient that such doubts should he removed, and due provision made for the constituting, defining, and regulating from time to time such divisions or limits, as the convenience of the inhabitants within the same may require;" it is enacted, "that at any time or times after the Michaelmas quarter sessions next following the passing of this act, it shall be lawful for any two or more justices of the peace for any county, riding, or division in England or Wales, having a separate commission of the peace, to transmit to the clerk of the

Division of counties. 9 Geo. 4, c 43.

Justices to forward to the clerk of the peace a statemen of the townships places, &c. that

DIVISION OF COUNTIES.

9 Geo. 4, c. 43.

peace a statement in writing, signed by such justices, of the parishes, townships, and places within the same, which, in the opinion of such justices would form together a convenient and a proper division within and for which special sessions should thenceforward be held; or of any parishes, townships, or places, which, in the opinion of such justices, ought to be disannexed, for the same purposes, to any other division in the said county, to those or that of which at the time of making such statement they form part; and that every such statement shall, among other things, set forth what existing divisions or division, limits or limit, the several parishes, tithings, townships, and places enumerated in the same, are situate and deemed to be; and also whether one or more and what existing division or limits will be altered by such proposed new divisions, or by the change of any place or places from one division to another; and also the names of such justices of the peace as at the date of such statement are usually resident and acting as such within the boundaries of such proposed new division."

would form a proper division for which special sessions should be held.

Statement to be laid before the justices at the next quarter sessions, who are to adopt or reject the same.

Sect. 2. "That at the quarter sessions next following the receipt of any such statement, setting forth such particulars as are above enumerated, or not otherwise, the clerk of the peace shall and he is hereby required to lay the same before such justices of the peace in such sessions assembled, and the justices of the peace for such county, riding, or division, having a separate commission of the peace, shall and they are hereby required (except in the cases hereinafter provided for) to proceed, at the quarter sessions next following the laying of such statement before them as aforesaid, to the consideration thereof, and at their discretion to adopt the same wholly or in part, or to reject the same altogether, or to adjourn their determination thereupon to the next or any succeeding quarter sessions."

Clerk of the peace to advertise statement and other particulars in the newspapers.

Sect. 3. "That immediately after the quarter sessions at which such statement shall have been first laid before the justices of the peace, the clerk of the peace shall cause to be published a copy of such statement in three successive numbers of one or more weekly newspapers usually published and circulated within the same county, riding, or division, and in which the advertisements of county business are usually inserted; and at the foot of such copy shall also cause notice to be given that such statement has been laid before such justices in pursuance of the directions of this act, and that the same will be taken into consideration by the court at the then next ensuing quarter sessions."

If justices approve, an order to be made for constituting a new division, and the clerk of the peace to publish the same.

Sect. 4. "That when and so often as the justices of the peace of any such county, riding, or division, having a separate commission of the peace, shall adopt wholly or in part any such statement so laid before them, and shall determine to change any parish, tithing, township, or place, from one division to another, or to constitute any new division, within which special sessions shall thenceforward be holden, the said justices of the peace shall thereupon make an order for such alteration, or for the constituting and defining such new division, and in such last-mentioned order shall particularly enumerate the several parishes, tithings, townships, and places to be comprised within such new division, and shall also specify the division or divisions within which respectively any parishes, tithings, townships, or places, disannexed by such order from any former division, and not forming part of such new division, shall thenceforward be taken to be, and also shall affix to such new division the name of some principal and convenient parish, township, or place within the same, and also shall, in either of such orders as the case may be, particularly set down the day from which such order shall take effect; and the clerk of the peace for such county, riding, or division, shall forthwith publish a copy of such order in three successive numbers of one or more such weekly newspapers as aforesaid, and shall transmit a copy of such order to every high constable within the limits of such new or altered division or divisions."

No new division to be constituted unless five justices at least shall be proved to be resident therein.

Sect. 5. "That nothing in this act shall be taken to authorise, and that it shall not be lawful for any justices in any court of quarter sessions to make any order constituting such new division, unless upon due proof before them made in open court upon oath, that for two years next before the making of

such proof there have been, and at the time of making ths same, there are, at the least, five justices of the peace residing in or usually acting within the boundary line proposed to be the limits of any such new division."

9 Geo. 4, c. 43.

New divisions to be deemed lawful divisions for holding special or petty sessions, or other meetings of justices.

Sect. 6. "That from and after the day so specified in such order, for the term of twenty-one years, and until further order of sessions after the expiration of that time, and subject to no alteration or revision during such term, except as hereinafter provided, all matters and things which by law are now or hereafter may be required to be, or which now are, usually transacted or determined within the division within which the same shall have arisen, or the parties therein concerned inhabit or exercise their trade or calling, and by or before one, two, or more justices of the peace dwelling or usually acting within the same, shall be transacted and determined, so far as the same matters and things arise within or concern the inhabitants of such new or altered division, or any of them, or the persons exercising their trade or calling therein, within the boundaries of such new or altered division; and such new or altered division shall thenceforward be, and be reputed and taken to be, for all purposes, and in the construction of all statutes now in force or hereafter to be made, and containing no special provision to the contrary, a lawful division for the holding of special sessions; and all bailiffs, constables, tithingmen, surveyors, overseers of the poor, and other officers, publicans, keepers of taverns, coffee houses, and victualling houses, and other persons, shall and they are hereby thenceforward required to give their attendance to and upon such justices of the peace at any time assembled in such special sessions, within the same division, as fully and effectually as by law they had been bound to do within any division reputed or taken before the passing of this act to be a lawful and accustomed division of justices for the purposes aforesaid."

Justices at sessions to cause inquiry into the extent of divisions, and alter the same, and affix names thereto.

Sect. 7. "That at the quarter sessions next after the laying of any such statement before the justices in such sessions assembled, it shall and may be lawful for such justices, if they shall deem it expedient and proper, not to proceed to the single consideration of such statement, but instead thereof to cause to be made an inquiry and examination into the boundary lines, extent, and other local circumstances, of all the existing and accustomed divisions for the holding of special sessions within the commission of such justices; and at such or any succeeding quarter sessions, to which the conclusion of such inquiry and examination may from time to time be adjourned, by order of sessions, to regulate, alter, new model, and subdivide all or any of such divisions, in such manner as shall appear to them proper and convenient, particularly specifying in such order the names of all such divisions, whether newly constituted, altered, or unaltered, the several parishes, tithings, townships, and places to be comprised in each, and affixing or continuing to each the name of some principal and convenient parish, township, or place within the same."

Clerk of the peace to publish a copy of such order.

Sect. 8. "That the clerk of the peace for any county, riding, or division in which such order shall have been made as last aforesaid, shall forthwith publish a copy of the same in three successive numbers of one or more such weekly newspapers as aforesaid, and shall also forthwith transmit, by the post, a copy of the same to the churchwardens and overseers of the poor of each parish within the said county, riding, or division, to be by them affixed on the principal door of the church of such parish; and at the foot of every such copy so published or transmitted shall add a notice specifying at what time such order will be enrolled as hereinafter provided, and at what time and in what manner any person or persons, or body corporate, aggrieved by such order, may petition against the same, or any part thereof, as hereinafter provided."

Order to specify time when it shall be enrolled.

Parties allowed to petition against such order.

Sect. 9. "That in every such order, some time, not earlier than the fourth quarter sessions next after the making thereof, shall be provisionally specified, in which the same shall be enrolled as hereinafter provided, subject to such alteration as may thereafter be made either in the particulars of the said order, or in the time of its enrolment; and that at any court of quarter sessions preceding such time, it shall and may be lawful for any one or more

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9 Geo. 4, c. 43.

person or persons, or body corporate, jointly or severally, to present a petition in writing to such court, against all or any part of such order, and to produce witnesses in support of such petition; and the justices at such court assembled shall and they are hereby required to hear and determine, in a summary way, the merits of such petition, and to amend such order so that it may upon such hearing appear proper and convenient: provided always that no such petition shall be received or examined into, unless after due proof that a notice in writing, specifying the grounds thereof, which upon such hearing shall alone be inquired into, hath been served, ten clear days before the commencement of such sessions, upon one of the overseers of the poor or the tithingman or constable, or two substantial housekeepers of the parish, tithing, township, or place respectively, as the case may be, wherein such petitioner or petitioners shall be resident at the time of presenting such petition, and also lodged, twenty clear days before such commencement, at the office of the clerk of the peace, who shall and he is hereby required forthwith to transmit a copy thereof to each of the justices usually acting within or for the district or places or place named in such notice."

Order to be enrolled as soon as petitions against the same have been determined, and shall not be subject to alteration for ten years.

Sect. 10. "That so soon as all such petitions against such order shall have been determined, and such amendments made therein as shall have appeared necessary or proper, the justices at such quarter sessions shall cause to be inserted therein some day not earlier than one month after such sessions for which the same shall take effect, and shall cause the same order to be enrolled, and the same shall remain an order of sessions, controlling any order or orders of sessions heretofore made for the separate constitution of any new divisions, or the partial alteration of any accustomed divisions under the former provisions of this act, and not subject itself to revocation or alteration of any kind for the space of ten years thence next ensuing; and during such ten years no such statement shall be received or proceedings had thereupon as above mentioned, but during all that time, and until further order of sessions after the expiration of that time, the several divisions, as limited, modified or constituted in and by such order, shall be and be taken to be, for all the purposes in this act mentioned, the lawful divisions of such county, riding or division, having such separate commission of the peace, for the meetings of justices in special sessions, under any statute now in force, or hereafter to be made, and containing no special provision to the contrary; and all high constables, tithingmen, surveyors, overseers of the poor, and other officers, publicans, keepers of taverns, coffee houses, and victualling houses, and other persons, shall and they are hereby required thenceforward, during the time last above limited, to give their attendance to and upon the justices of the peace at any time assembled in such special sessions, within the same divisions respectively, as fully and effectually as by law they have been bound to do within any division reputed and taken before the passing of this act to be a lawful and accustomed division for the meetings of justices for any of the purposes aforesaid."

Clerk of peace to publish copy of enrolment.

Sect. 11. "That immediately after the enrolment of such order, the clerk of the peace shall and he is hereby required to cause to be published a copy of the same in three successive numbers of one or more such weekly newspapers as aforesaid, and shall also transmit one copy thereof to each justice of the peace dwelling within or usually acting within and for such county, riding, or division, having such separate commission of the peace."

Proceedings not to be quashed for want of form.

Sect. 12. "That no order to be made, nor any proceeding to be had or taken, in pursuance of this act, shall be quashed or vacated for want of form, or removed by *certiorari*, or any other writ or process whatever, into any of his Majesty's courts of record at Westminster; any law or statute to the contrary notwithstanding."

Not to extend to Middlesex, &c.

Sect. 13. "That nothing in this act contained shall extend, or be construed or taken to extend, to the county of Middlesex in England, or to Scotland or Ireland."

County Court.(a)

[11 Hen. VII. c. 15; 2 & 3 Edw. VI. c. 25; 12 Geo. II. c. 13.]

County.

ANCIENTLY, the *comites*, *counts*, or *earls*, had the government of the counties; and afterwards the *vice-comites*, or *sheriffs*. And the *county* seemeth to be nothing else but the district of the *comes* or *count*. *Shire* is a *Saxon* word, from *scyran*, to share or divide, for that the shires and counties are divided by certain metes and bounds from each other. And the *sheriff*, in Saxon *syregeresa*, is the *reve*, *grave*, or governor of the *shire*; wherein he hath great power, being therein the chief officer under the King.

County court.

The sheriff holdeth in his county two courts, the *torn* and the *county court*. The *torn* is the King's court of record for criminal causes, and for redressing of common grievances within the county; the *county court* is not a court of record, but only a court-baron, for civil causes, and this is the court of the sheriff himself.

When to be holden.

By stat. 2 & 3 Edw. VI. c. 25, no county court shall be longer deferred than one month from court to court, so that the county court shall be kept every month, and not otherwise.

And this is to be accounted twenty-eight days to the month, and not according to the month of the calendar. 2 *Inst.* 71.

Where to be kept.

It may be kept at any place within the county, unless restrained by statute. *Wood's Inst.* b. 4, c. 1.

Who is the judge.

The suitors, that is, the freeholders, are the judges in this court; except that in re-disseisin, by the statute of *Merton*, the sheriff is judge. And by the statutes concerning parliamentary elections, he is judge at the election of knights; for he must make a true return at his peril. *Barl. County Court.*

Of what causes this court hath cognizance.

This court shall hold pleas betwixt party and party, where the debt or damage is under 40*s*. 4 *Inst.* 266.

But in a *replevin*, the sum may be above 40*s*. 4 *Inst.* 266.

Also it hath not cognisance of trespass *vi et armis*, because a fine is thereby due to the king, which it cannot impose. 4 *Inst.* 266

Writ of justicies.

And by virtue of a writ of *justicies* the court may hold plea of trespass *vi et armis*, and of any sum, or of all actions personal above 40*s*. For this writ is in the nature of a commission to the sheriff, for the sake of dispatch, to do the same *justice* in this county court, as might otherwise be had in the courts at Westminster. 4 *Inst.* 266.

By looking into any of the treatises on the county court, it will be seen that that court is considered in the nature of a court-baron. The writ of *justicies*, giving power to this court to hold pleas above 40*s*. in some instances does not alter the nature of this court. This is not a court *proprio vigore* holding pleas of above 40*s*. and therefore is not within the meaning of stat. 25 Geo. III. c. 80, which gives a penalty against attornies prosecuting or defending without a certificate any suit in any court holding pleas where the debt or damage shall amount to 40*s*. or more. *Cross* v. *Kaye*, 6 *T. R.* 663.

Cause of action must arise, and defendant reside within the county.

But no action can be brought in the county court, unless the cause of action arise, and the defendant reside within the county; and where that is not the case, the action may be brought in the courts above, although for a less sum than 40*s*. For if the action cannot be brought in the inferior jurisdiction, the plaintiff is not therefore to lose his debt; but he must sue in the superior courts. *Welch* v. *Troyte*, 2 *H. Black.* 29; *Tubb* v. *Woodward*, 6 *T. R.* 175.

Matters merely in aggravation of damages are inquirable of in this court, though arising out of the county. 1 *Saund.* 74 a, n.; 3 *B. & B.* 309.

One plaint for one trespass or contract.

By stat. 11 Hen. VII. c. 15, no plaint shall be entered in the county court, but where the plaintiff or his attorney is present, and the plaintiff shall find pledges to pursue his plaint, and he shall have but one plaint for

(a) As to county courts, see Watson's Office of Sheriff, 286 to 295; Com. Dig. *County*, (C. 8); Greenwood on Courts; Read on County Courts. The county court it will be seen has not jurisdiction over criminal matters.

COUNTY COURT.

one trespass or contract: on pain of 40s. half to the king, and half to the prosecutor. And one justice may examine the sheriff, or other officer making default, and shall, within a quarter of a year, certify the examination into the Exchequer.

But as to the pledges above mentioned they are now disused in this court, and were formerly used only in cases where the plaintiff lived out of the county. *Greenw.* 11; *Read's County Court.*

Who shall act as attorney in this court.

By stat. 12 Geo. II. c. 13. s. 7, if any person shall commence or defend any action, or sue out any writ, process, or summons, or carry on any proceedings in the county court, who shall not be admitted attorney or solicitor according to the act of 2 Geo II. c. 23, he shall forfeit 20*l.* with costs to him who shall sue in any court of record.

Same as.

The plaintiff in this court first takes out a summons, returnable at the next county court; and if the defendant do not appear, an attachment or *distringas* is to be made out; but if the defendant appear, the plaintiff must file his declaration, showing his cause of action, or matter of complaint, in what manner the action accrued, at what time and place the wrong was done, and the damage he had sustained. *Greenw.* 11; *Read's County Court.*

Capias.

No *capias* lies. *Com. Dig. County*, (C. 9); *Wats.* 291.

Declaration.

If the defendant doth appear, and the next court after gives a rule to declare, and the plaintiff doth not file his declaration within the time, he may be nonsuited. *Greenw.* 11; *Read's County Court.*

The entering of the plaint is the act of the party; and in a replevin sued in the county court if no plaint be entered the bond is forfeited. *Esp. B.* 2 *D. & R.* 13.

In the same case it was held, that where a sheriff, or his deputy, refused to enter a plaint in the county court for damage feasant, the Court of King's Bench will not compel him to do so on motion. *Id.* The plaintiff's remedy in that case would be to apply for a *mandamus* to enter the plaint, or it should seem to sue the sheriff. See *Id.*

Continuance.

When the plaintiff hath declared, he must continue his suit from court to court day, otherwise the defendant may take advantage of it; and this is called a continuance, being an adjourning of the suit from time to time to keep it on foot. *Greenw.* 11; *Read's County Court.*

Dies datus.

The rule, or *dies datus*, is when farther day is given to the plaintiff to declare, or to the defendant to plead, and the time given is usually to the next court day, but upon occasion it may be enlarged. *Id.*

Answer.

The next court after filing the declaration, and imparlance given, the defendant is to put in his answer or plea, and if the plaintiff join issue, they may proceed to trial the next court day, if they proceed not farther by replication, rejoinder, surrejoinder, and the like. *Id.*

Plea of freehold.

But if freehold be pleaded by the defendant, this court can proceed no farther, for freehold shall never be tried without writ; therefore the cause must be removed: as when a defendant avoweth for damage feasant, and the plaintiff justifieth by reason of common of pasture. *Wood's Inst.* b. 4 c. 1.

Judgment and distress.

Where a verdict is given for the plaintiff, and judgment entered thereupon, a *fieri facias* may be awarded against the defendant's goods, which may be taken by virtue thereof and appraised and sold, to satisfy the plaintiff; but if the defendant hath no goods whereupon to levy, the plaintiff remains without remedy in this court, for it being no court of record a *capias* lies there; but an action may be brought at common law upon the judgment entered. *Greenw.* 22; *Read's County Court; Wats. Sheriff*, 292.

Removal by recordari.

Causes are removed out of this court by a writ of *recordari*, which issues out of the Chancery, directed to the sheriff, commanding him to send the plaint that is before him in his county court, (without writ of *justicies*,) into the Court of King's Bench or Common Pleas, to the end the cause may be there determined. And the sheriff is hereupon to summon the other party to be in that court (into which the plaint is to be sent) at a day certain. And of all this he is to make certificate under his own seal, and the seals of four suitors of the same court. *Id.*; see *Wats. Sheriff*, 293.

Removal by pone.

Causes are also removed by *pone*, which differs in nothing from a *recordari*

but that it removes such suits as are before the sheriff by writ of *justicies*, and a *recordari* is to remove the suit that is by plaint only, without writ. *Id.*; see *Wats. Sheriff*, 293.

Removal after discontinuance.

And although the plea be discontinued in the county, yet the plaintiff or defendant may remove the plaint into the Common Pleas or King's Bench, and it shall be good, and he shall declare upon the same. *Greenw.* 22; *Read's County Court.*

Outlawry pronounced.

In this court, after the *quinto exactus*, the coroner gives judgment of outlawry. 4 *Inst.* 266.

False judgment.

If the judgment be bad, as if the proceedings do not properly allege that the cause of action accrued within the jurisdiction, the defendant may upset the proceedings by removing them into the King's Bench by writ of false judgment. See *Wats. Sheriff*, 294; 1 *T. R.* 151.

Hundred court.

Out of the county court is derived the hundred court, for the ease of the subject; and it hath like jurisdiction as the county court, and may be held every three weeks. 2 *Inst.* 71.

County Hall. *See* Shire Hall, Vol. V.

County Rate.

[12 Geo. II. c. 29; 13 Geo. II. c. 18; 55 Geo. III. c. 51; 56 Geo. III. c. 49; 57 Geo. III. c. 94; 1 & 2 Geo. IV. c. 85.]

When to be levied.

THE expenses to which counties are put to and which are to be levied by county rates, are for the most part as follows:—

Alehouses.

The expenses of peace officers prosecuting at sessions persons charged with a third breach of their alehouse license, 9 Geo. IV. c. 61; *ante*, **Alehouses**, p. 84.

Apprentices.

One half of the expenses of prosecuting masters for misusing parish apprentices, stat. 32 Geo. III. c. 57, s. 11; *ante*, **Apprentices**, p. 214.

The charges of carrying parish apprentices, bound to the sea service, to the port to which the master belongeth, stat. 2 & 3 Anne, c. 6; *ante*, **Apprentices to Sea Service**, p. 223.

Bridges.

The expenses of repairing county bridges, and highways thereto adjoining, and salaries for the surveyors of bridges, 22 Hen. VIII. c. 5; 1 Ann. st. 1, c. 18; 52 Geo. III. c. 110; and 55 Geo. III. c. 143, s. 5; *ante*, **Bridges**, p. 500, 502, 503.

The expenses, &c. of purchase of lands at the ends of county bridges, *ante*, **Bridges**, p. 494.

Burial of bodies.

The expenses of burying dead bodies cast on shore in England, 48 Geo. III. c. 75, s. 6, *ante*, 536.

Certiorari.

The expenses of the removal of any of the general county rates by *certiorari*, 12 Geo. II. c. 29; *post*, 925.

Coroner's fees.

The coroner's fee of *9d.* a mile for travelling to take an inquisition, and *20s.* for taking it, 25 Geo. II. c. 29; *ante*, **Coroner**, p. 884.

Gaols and prisoners.

The relief of prisoners in the county gaol, 14 Eliz. c. 5; *post*, **Gaols**, Vol. II.

The chaplain's salary in the county gaol, &c., 4 Geo. IV. c. 64, see **Gaols**, Vol. II.

The expenses of setting prisoners to work, *id.*

The expenses attending the preservation of the health of the prisoners, *id.*

The expenses of carrying persons to the gaol or house of correction, 27 Geo. II. c. 3; 3 Jac. I.; *ante*, **Costs**, p. 807; *post*, **Gaols**, Vol. II.

The allowance to discharged prisoners to enable them to return to their place of settlement, 5 Geo. IV. c. 85, s. 22 to 25.

The fees of gaoler for persons acquitted of felony or discharged by procla-

COUNTY RATE.

mation, 14 Geo. III. c. 20; 55 Geo. III. c. 50; 56 Geo. III. c. 11[illegible] Gaols, Vol. II.

The fees of clerks of assize, clerks of the peace, clerks of courts, or their deputies, upon the acquittal or discharge of prisoners, 55 Geo. III. c. [illegible] 56 Geo. III. c. 116; *ante*, 655.

The expenses of building, enlarging, and repairing county gaols, 11 & 12 Will. III. c. 19; 24 Geo. III. sess. 2, c. 54; 4 Geo. IV. c. 64; see Gaols, Vol. II.

Houses of correction.

The expenses of building, repairing, and fitting up houses of correction, employing the persons sent thither, 4 Geo. IV. c. 64. See Gaols, Vol. II.

The salary of the master of the house of correction, and for relieving the weak and sick in his custody, 7 Jac. I. c. 4. See Gaols, Vol. II.

King's Bench and Marshalsea prisons.

The relief of the prisoners in the King's Bench and Marshalsea prisons, and of poor hospitals, in the county, and of those that shall sustain loss by fire, water, the sea, or other casualties, and other charitable purposes for the relief of the poor, as the justices in sessions shall think fit, 42 Eliz. c. 2, s. 1; 53 Geo. III. c. 113; *post*, Gaols, Vol. II.

Insolvents.

The expenses of bringing insolvent debtors before the travelling commissioner, in order to their discharge, if the prisoners are not able to pay, 7 Geo. IV. 57; *post*, Insolvents, Vol. III. p. 390.

Lunatics.

The expenses of providing, &c. county lunatic asylums reported necessary by visiting justices, 9 Geo. IV. c. 40; *post*, Lunatics, Vol. III. p. 668, 673, 674.

Prosecutions.

The expenses of prosecuting and convicting felons, 7 Geo. IV. c. 64; *ante*, Costs, p. 899.

Shire halls

The expenses of repairing shire halls, by 7 Geo. IV. c. 63; *post*, Shire Hall, Vol. V. p. 827, 828.

Soldiers. Militia.

The expenses of the soldiers' carriages, over and above the officers' pay, by the same, by the several yearly acts against mutiny and desertion, and by the militia act, 42 Geo. III. c. 90, s. 95; *post*, Military Law, Vol. III. p. 775.

Transportation of felons.

The expenses of transporting felons, or conveying them to the places of labour and confinement, 7 Geo. IV. c. 64; *ante*, 899; *post*, Transportation.

Treasurer's salary.

The treasurer's salary, 12 Geo. II. c. 29, and 55 Geo. III. c. 51, s. 1. See County Treasurer, *post*, 945.

Vagrants.

The expenses of prosecuting vagrants or incorrigible rogues at the sessions or on appeals against their convictions, and of prosecuting constables &c. for neglect of duty, 5 Geo. IV. c. 83, s. 9, 12, *post*, Vagrants, Vol. V.

Weights and measures.

The expenses of procuring and transmitting models and copies of the standard weights and measures established, 5 Geo. IV. c. 74, s. 13; *post*, Weights and Measures, Vol. V.

Allowances to persons appointed to examine measures, 55 Geo. III. c. 43, s. 5; *id.*

Wreck.

The expenses of prosecuting and convicting persons plundering ship wrecked goods, 26 Geo. II. c. 19; *post*, Wrecks, Vol. V.

Litigating a question concerning a county.

If a fine be imposed on a county, which the justices at sessions think illegal, they may order the expense of litigating the question to be defrayed out of the county stock. *R.* v. *Essex*, 4 *T. R.* 591. The sessions had ordered money to be advanced by the treasurer to defend the county in a litigation respecting a fine of 500*l.* imposed on them by Lord Loughborough at the assizes, for not repairing the county gaol, and which had been estreated into the exchequer. On being removed by *certiorari*, it was objected that the magistrates could apply the public money to such purposes only as are specifically provided for by act of parliament, or sanctioned by long usage. But the court held, that the order was good; for wherever a duty is imposed on a county, and where costs necessarily and incidentally arise in questioning the propriety of acts done to enforce that duty, the magistrates, who have the superintendence over the county purse, have necessarily a right to defray such expenses out of the county stock. And *Buller*, J. said, in his opinion, the true construction of the act is, that the necessary expenses of every thing relating to the subjects therein mentioned must be borne by the county, and paid out of the county stock. If it were otherwise, the active

magistrates of a county would be put in a perilous situation in a variety of cases that might happen.

Prosecution by magistrate.

But the sessions cannot order the costs of a prosecution for a misdemeanor, though carried on under the order and direction of a magistrate, to be defrayed out of the county rate. *R.* v. *W. R. of Yorkshire*, 7 *T. R.* 377; *ante*, **Costs**, p. 897, 588, 589.

Rate to reimburse.

The justices have no right, except by following the provisions of particular acts of parliament, to anticipate the county rates, and so as to make the expense of public county works ultimately fall on different persons from those who are by law liable at the time it is incurred. An order of sessions, therefore, for levying and paying to the treasurer of the county a sum to enable him to reimburse certain persons for an antecedent debt, although such debt had been incurred for county purposes, is bad; and justices have no right to anticipate the county rates. *R.* v. *Js. Flintshire*, 5 *B. & A.* 761; 1 *D. & R.* 470, S. C. *Parke* had obtained a rule *nisi* in Michaelmas Term, 1824, for a *certiorari* to remove an order of sessions of the county of Flint, dated 12th July, 1824, for levying and paying into the hands of the treasurer of that county 200*l.* 5*s.*, to enable him to pay that sum, in part payment of the claim of Messrs. Sankey. It appeared that, by a former order of sessions, the treasurer had been empowered to borrow from Messrs. Sankey, who were bankers, the sum of 1000*l.* for carrying on the public works within the county, to be repaid by instalments. This money had been advanced, from time to time, in 1817 and 1818, and repaid in account, but further advances being made, the balance remaining due to the bank was 447*l.* in part payment of which this order was made. The affidavits on the other side stated, that the whole money had been, in fact, laid out for county purposes. The court (after hearing *Scarlett*, *Littledale*, and *D. F. Jones* against, and *Parke* in support of the rule,) made the rule absolute; observing, that this was a rate to reimburse persons for a debt previously contracted, which was clearly bad, inasmuch as the justices had no right, except by following the provision of particular acts of parliament, which had not been done here, to anticipate the county rates, and so to make the expense ultimately fall on different persons from those who were by law liable at the time it was incurred. Writ of *certiorari* granted. And see *ante*, 627, as to church rates.

And where such treasurer, being authorised by an order of sessions to raise money on the credit of the county rates, obtained advances from time to time from his bankers, and died in their debt: the sessions being satisfied that the money so advanced had been *bonâ fide* applied to county purposes, made an order for assessing and levying a sum of money towards the repayment of the debt; the court held such order to have been improperly made, and quashed it. *R.* v. *Js. Flintshire*, 2 *D. & R.* 843.

By an act for building a gaol, the justices at sessions were authorised to assess a *special* county rate upon every parish in the county, for the payment of the expenses of building such gaol, and that rate was made payable out of the monies collected in the parishes for the relief of the poor; and there was a proviso, that every tenant might deduct out of his rent one half the amount of the rate: it was held, that commissioners under a local act for paving and lighting the town and managing the poor, could not make a *retrospective* rate in order to *reimburse* themselves in one year money which they had paid in a former year on account of such special county rate for building the gaol. *Cortis* v. *Kent Water Works Company*, 7 *B. & Cres.* 314.

Sessions may lay a general rate instead of several rates. 12 Geo. 2, c. 29.

Formerly all county rates were assessed and collected by separate rates, which was not only extremely troublesome and inconvenient, but so expensive that the charge of collecting and assessing frequently exceeded the sum rated; for remedying this, a statute (12 Geo. II. c. 29,) was passed, intituled, "An Act for the more easy assessing, collecting, and levying of county rates," whereby the different purposes for which these separate rates had used to be collected are enumerated, and it is there by section 1 directed that "the justices of the peace within their respective limits throughout England, at their general or quarter sessions, or the greater part of them, shall have power to make, from time to time, one general rate instead of the

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several separate and distinct rates directed thereby to be made, levied and collected."

12 Geo. 2, c. 29.

Which rate shall be assessed in such proportions in every parish or place *as any of the rates by the said several former acts have been usually* assessed. 12 Geo. II. c. 29.

New assessments.

By the 55 Geo. III. c. 51, s. 1, *post*, 926, this is now to be understood: fair and equal proportionable rate upon every division, though indeed before the passing of this latter act, notwithstanding changes of circumstances and inequalities, the sessions had no power to vary the proportions in which the county rate had *usually* been *assessed* on the several parishes. *R.* v. *St. Paul's, Covent Garden, Cald.* 158.

Places exempted from part of the rate.

By the 12 Geo. II. c. 29, s. 5, where any person, liberty, division, or place hath usually contributed, or is liable to pay, only to one or more of and not to all the rates hereby intended to be raised and thrown into the general rate, the justices at their general or quarter sessions may order and ascertain what proportion thereof shall be assessed on, and paid by such person, liberty, division, or place.

As for instance, where by stat. 22 Hen. VIII. c. 5, towns corporate are charged for the repairing of bridges within their respective liberties, and the counties for the bridges out of such liberties; in such a case, a town corporate ought not to be charged towards the bridges in the county at large; and consequently ought to have an abatement in the rate charged upon them in such proportion as the expense of bridges is to the whole expense of the several articles charged upon the said general county rate: as if the expense of bridges be a tenth part of the whole expense, chargeable upon the county rate, then such town corporate shall have an abatement of one shilling for every ten, which it would otherwise be charged with in such rate.

Liberties and places, &c. exempted from the whole rate.

And by stat. 13 Geo. II. c. 18, s. 7, where any liberties or franchises have commissions within themselves, and are not subject to the county justices, and do not nor did before the 12 Geo. II. contribute to the county rates: the justices within such liberties may exercise the same powers within their liberties as justices in their counties.

A county rate may be levied for a town erected into a county of itself, although no such rate has been ever levied before. The quarter sessions for the town and county of the town of Nottingham, appointed a high constable for the ensuing year for the special purpose of collecting and raising from the overseers, &c. of each parish within the town the rates, &c. in the nature of a county rate. They appointed a treasurer to receive the said collection, subject to the order of the session. The application of the sum collected was directed to the relief of prisoners in prison, the repairs of the house of correction, keeper's salary, soldiers' carriages, transporting felons, and such other charges to which the same was by law applicable within the said town. The town of Nottingham was formerly part of the county; Henry VI. made it a county of itself, and confirmed the charters of its corporation, which it had by prescription. Two questions arose, *viz.* whether the justices had power to levy any such rate; and secondly, whether the present rate was good. *Per curiam.* "By the the common law, as also by the statute of Winchester, officers of this nature are incident to districts, having separate jurisdiction: and in many cases a *mandamus* will lie to appoint officers for the first time where the exigency of circumstances require it. While the expenses here were very small, the corporation might submit to pay them without a rate; but having become heavier, that previous payment does not preclude them from making this rate, or discharge other persons from liability." *James* v. *Green*, 12 *East's Rep.* 117.

Charter justices.

In the case of *Weatherhead* v. *Drewry and others* (11 *East*, 168; *ante, tit.* **Constable**, 797,) it was held that the words "liberties and franchises having commissions of the peace within themselves," contained *in stat.* 13 Geo. II. c. 18, include "charter justices;" and that by consequence a borough having such justices, may make a rate in the nature of a county rate.

In *Bates* v. *Winstanley*, 4 *M. & S.* 429, it was decided that a charter

giving jurisdiction to borough justices over a district *not within* the borough, without words of exclusive jurisdiction, does not exclude the county justices from rating the district to a county rate.

The proviso in the 50 Geo. III. c. 51, s. 1, *post*, 926, stating that that act shall not give any jurisdiction to the justices of the county over any places situate within the limits of any liberties or franchises having a separate jurisdiction, is confined to franchises having a separate jurisdiction co-extensive with that possessed by the county justices; and, therefore, where the justices of the city of B. had no jurisdiction by charter to try felons, it was held that the city of B. was liable to the county rate. *R.* v. *Clarke*, 5 *B. & Ald.* 665; 1 *D. & R.* 316, S. C.; more fully noticed, *post*, 927, n.

High constable to make demand of the overseers, &c.

Which said rates the high constable shall, at such times as the said justices, by their order in sessions (*a*), shall direct, demand of the churchwardens and overseers; which demand shall be made in writing (*b*), and given to them or any of them, or left at their dwelling houses, or affixed on the church doors by the said high constables. 12 Geo. II. c. 29, s. 2.

Who are to pay in 30 days after.

Whereupon the said churchwardens and overseers shall, in thirty days after such demand made, or the money collected for the relief of the poor, pay the sums so assessed on each parish or place. *Id.*

R. v. *Justices, Yorkshire*, 12 *East*, 117. In this case there were two questions directed to be tried:—1, Whether the said two townships of Hartishead and Clifton, in the West Riding, did or did not before and since stat. 12 Geo. II. c. 29, form *one* constablery, known by the name of H. *cum* C., for the purpose of raising such rates? 2, Whether H. and C. were or were not before and since that statute two separate townships, for the purpose of raising such rates? And it was admitted that before the statute these two townships usually contributed between themselves in a certain proportion to the county rate imposed upon the two separately. The jury found that there was an union of the two townships in one joint constablery. And upon this a motion was made for a *mandamus* to the defendants, to make at the next quarter sessions an order upon the constablery of H. *cum* C. to levy a sum, by *an equal rate*, for the proportion of the said constablery towards the county rates. And this application was granted by the court. And *per* Lord *Ellenborough*, C. J.—By stat. 12 Geo. II. c. 29, s. 1, the proportions of the general rate as between the several towns, parishes and places which had before been separately assessed, were to be preserved; but the money was to be raised upon each by one aggregate rate, instead of by the several distinct rates before leviable under different acts of parliament for distinct purposes. Now H. and C., though acting as two townships for some purposes, yet for the purpose of county rates, and *quoad* the act of the 12 Geo. II., they constituted but one place. The sect. 2 must be understood of parishes and places in which one general poor's rate is collected, and cannot therefore apply to a case like the present, where there is no such general fund raised upon the entire district which is assessed to the county rate. The case, therefore, must come within the provision of the 3d section, (*post*, 924,) that where there is no poor's rate, that is, no poor's rate co-extensive with the district assessed, the county rate shall be levied by the petty constable, "in the same manner as the money for the relief of the poor is by law to be rated or levied," that is, by *equal* taxation of the inhabitants, &c. of the place rated. The rate, therefore, must be levied equally on the whole of this artificial place or district, being that on which the county rates had, before the act, been usually assessed as if it had been one parish. *Grose*, J., and *Le Blanc*, J., agreed, as did *Bayley*, J., who said, that by *proportions*, the legislature only referred to the proportions between the several districts before assessed to the county rates, with reference to the county at large. And see *R.* v. *Austen, D. & R. C. N. P.* 24.

To be levied by distress.

And by the same, section 2, "if the churchwardens or overseers, or any of them, shall neglect or refuse so to pay, the high constable shall levy the

(*a*) See form, *post*, (No. 1.) (*b*) See form, *post*, (No. 2.)

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same by distress (*a*) and sale of the goods of such churchwardens or overseers so refusing or neglecting, by warrant of two or more justices residing in or near such parish or place.

High constable's receipt.

And the receipt of such high constable shall be a full discharge to the churchwardens and overseers, or other persons paying the same. 12 Geo. II. c. 29, s. 2.

Case where there is no poor rate.

Where there is no poor rate, the justices, in their general or quarter sessions, shall by their order direct the sum assessed on such parish, township, or place to be rated and levied by the petty constable, or other peace officer *as money for relief of the poor is by law to be rated or levied;* which sum so rated and levied shall be paid by him to the high constable, and shall be demanded of, paid by, or levied on such petty constable, in the same manner as before of the churchwardens and overseers. And if any petty constable shall pay such sum before he hath collected it, he may afterwards rate and levy the same, or may be allowed and reimbursed the same out of any constable's or other rate, which the justices in their sessions shall order and direct. Sect. 3. See also further the stats. 55 Geo. III. c. 51, s. 8, *post*, 930, and 56 Geo. III. c. 49, *post*, 936.

As money for relief of the poor is to be rated or levied]—That is to say, by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes, coal mines, or saleable underwoods. Stat. 43 Eliz. c. 2, s. 1.

Northern counties.

By the same stat. and 12 Geo. II. c. 29, s. 4, and whereas it will be inconvenient to many towns, parishes, and places, in the counties of York, Derby, Durham, Lancaster, Chester, Westmoreland, Cumberland, and Northumberland, that the said rates shall be paid out of the poor rate, the justices at the general or quarter sessions, *if they shall think convenient*, may order the sum assessed on any such town, parish or place, to be paid by and levied on the petty constable (*b*) in such manner as is above directed, in case where no rate is made for the poor.

If they shall think convenient]—By which words the justices in those counties may order the rate to be paid by either of the two methods before mentioned, according to their discretions; that is to say, either by the churchwardens and overseers out of the poor rate, or by the petty constables by an assessment after the manner of the poor rate.

High constable to pay to the treasurer.

By the same stat., 12 Geo. II. c. 29, s. 6, the said high constables, at or before the next sessions respectively after they have received the money, shall pay the same to the treasurer; and the money so paid shall be deemed the public stock.

Treasurer's receipt.

Sect. 9. The treasurer's receipt shall be a sufficient discharge to the high constable.

High constables to levy and account for the rates.

And by sect. 8, "the respective high constables shall and they are hereby required to demand and levy such rates and assessments in manner before directed, and shall account for the same before the said justices at their respective general or quarter sessions, if thereunto required, in the like manner as the said treasurer or treasurers is and are hereby directed to account;

Or on default to be committed to gaol.

and in case such high constables, or any of them, shall neglect or refuse so to demand, levy, or account, then it shall and may be lawful to and for the said justices, at their respective general or quarter sessions, or the greater part of them then and there assembled, to commit such high constable or high constables to the common gaol of the county, riding, division, city, town corporate, liberty, or place, there to remain without bail or mainprize, until he or they shall have caused such rates or assessments to be demanded and levied, and shall have rendered a true account or accounts in the manner hereby directed; and in case it shall appear by such account or accounts that any sum or sums of money is or are remaining in his or their hands, which he or they shall have received of the respective churchwardens and

(*a*) See form, *post*, (No. 5.)
(*b*) See form, *post*, (No. 2.)
(*c*) See form, *post*, (No. 3.)

overseers, or other persons, which ought to have been paid to the respective treasurer or treasurers at the time or times limited by this act, or of the respective treasurer or treasurers, in order to be applied to the purposes aforesaid; and if he or they shall neglect or refuse to pay the same over into the hands of the respective treasurer or treasurers, or otherwise, if thereunto required by order of the said justices at their respective general or quarter sessions, or the greater part of them then and there assembled, then it shall and may be lawful for the said justices at such their general or quarter sessions, or the greater part of them then and there assembled, to commit such high constable or high constables to the common gaol of the county, riding, division, city, town corporate, liberty, or place, there to remain without bail or mainprize, until he or they shall have made full payment of the sum or sums of money that shall appear to be due on such account or accounts; and all the accounts and vouchers of the said treasurers and high constables shall, after having been passed by the said justices at their respective general or quarter sessions, be deposited with the clerk of the peace for the time being of each county respectively, or the town clerk, high bailiff, or chief officer of any city, town corporate, or liberty, who is and are hereby required to keep them among the records of such county, city, town corporate, or liberty, to be inspected from time to time by any of the said justices, within the limits of their commissions, as occasion shall require, without fee or reward."

12 Geo. 2, c. 29.

Vouchers to be kept among the records of the county, &c.

Sect. 17. The justices, at their general or quarter sessions, may oblige by their order the petty constables, or any other person empowered to levy, collect or receive any sum for the purposes aforesaid, and who have any sum in their hands, to account and pay over the same, in like manner as the high constables.

Petty constables and others to account.

Sect. 6. And the treasurer shall pay so much of the money in his hands to such persons as the justices in sessions shall by their order from time to time appoint, for the uses and purposes of the said above-mentioned acts, and for any other uses and purposes to which the public stock of any county, city, division, or liberty is or shall be applicable.

Treasurer's disbursements.

Sect. 10. No new rate shall be made until it appear by the treasurer's accounts, or otherwise, that three-fourths of the money collected have been expended for the purposes aforesaid.

New rate when to be made.

Sect 12. If the churchwardens and overseers of any parish or place shall think such parish or place is over-rated, they may appeal to the next general or quarter sessions against such part of the rate only as may affect such parishes or places; but such rate, upon the appeal, shall not be quashed in regard to any other parishes or places.

Appeal. (a)

Sect. 21. No *certiorari* to remove any rates, or any orders or other proceedings of the sessions touching such rates, shall be granted but upon motion the first week of the next term after the time for appealing from such rates or orders is expired, and on making it appear to the court by affidavit or otherwise that the merits of the question on such appeal or orders will by such removal come properly in judgment. And no such *certiorari* shall be allowed until sufficient security be given to the treasurer, in the sum of 100*l.*, to prosecute the *certiorari* with effect, and to pay the costs if the rates or orders shall be confirmed. Nor shall any such rates, orders, or proceedings be quashed for want of form only.

Certiorari. (b)

Sect. 18. And no action shall be commenced against any person who shall have collected or received any money on any rate which shall be quashed on a *certiorari* or otherwise, for any money collected or received on such rate before the *certiorari* was brought; but the persons who have paid on such rate more than they ought to have paid shall be repaid, or have the same allowed in the next rate.

Money not returned.

Great inequalities and disproportions in the assessments to county rates were produced by length of time and the improper mode of assessments, which the writs of law had not power to remedy; wherefore the 55 Geo. III.

55 Geo. 3, c. 51.

(a) See *ante*, Appeal.

(b) See *ante*, Certiorari.

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55 Geo. 3, c. 51.

Justices in general or quarter sessions to make a fair and equal county rate, whenever circumstances appear to require it.

c. 51, was passed. By that statute it is enacted, "that from and after the passing of this act it shall be lawful for the justices of the peace of the several counties of that part of Great Britain called England, assembled at their general or quarter sessions, or at any adjournment or adjournments thereof, and they are hereby authorised and empowered whenever circumstances shall appear to require it, to order and direct a fair and equal county rate to be made for all the purposes to which the county stock or rate is now or shall hereafter be made liable by law,(*a*) according to the directions hereinafter mentioned; and for that purpose to assess and tax every parish, township, and other place, whether parochial or extra-parochial, within the respective limits of their commissions, rateably and equally according to a certain pound rate (to be from time to time fixed and publicly declared by such justices,) of the full and fair annual value of the messuages, lands, tenements and hereditaments, rateable to the relief of the poor therein; any law or statute to the contrary thereof notwithstanding: provided also, that nothing in this act contained shall extend or be construed to extend to give any jurisdiction to the justices of the peace of the said several counties over any places situate within the limits of any liberties or franchises having a separate jurisdiction, which before the passing of this act were subject to rates in the nature of county rates imposed and assessed by the justices of the peace in such liberties or franchises, or which were exempt from the rates of the county in which they lie, either in the whole or in part; nor to alter any proportion of county rate payable by any liberty or franchise having a separate jurisdiction as established between the county and the said liberty or franchise, provided such exemption or proportion shall have been created by or derived from grant, charter, or any special local act of parliament; nor to compel any such liberty or franchise paying to some one or more of the rates specified in the preamble of an act passed in the twelfth year of the reign of our late Majesty King George the Second, intituled, 'An Act for the more easy assessing, collecting, and levying county rates,' to pay to any other rate therein mentioned, to which such liberty or franchise was not liable to contribute before the passing of the said act; nor to repeal or alter the provisions of any acts now in force which shall have fixed the times and places of holding any general or annual general sessions or adjournment thereof, for the assessing the rates of any county, or for the raising, levying, or collecting the same, but that such provisions so fixing the time or place of holding such general or annual general sessions or adjournment thereof, and of there and there exclusively transacting the matters therein mentioned respecting the county rates, shall be and remain in full force; and that all the matters and things which in and by this act are authorised to be done by the justices of the peace at their general or quarter sessions or at any adjournment or adjournments thereof, shall be done and performed exclusively at such general or annual general sessions or at some adjournment thereof, and at no other time or place than such as shall have been fixed by any such act."

Not to alter proportion of any franchise having a separate jurisdiction.

12 Geo. 2, c. 29.

Nor to alter the times of holding any general quarter sessions for assessing the rates of any county.

Decisions on enactment.

It is no ground of appeal against a county rate that individuals in one parish are rated in a higher proportion than in another. *R.* v. *Westmorland*, 10 *B. & Cres.* 226. (*b*)

(*a*) See *ante*, 919, 920, as to the purposes for which the rate may be made.

(*b*) In this case a rule had been obtained calling upon the defendant to show cause why a writ of *mandamus* should not issue, commanding them to cause continuances to their next general quarter sessions of the peace, to be holden in and for the said county, to be entered upon the appeal of the churchwardens and overseers of the poor of the township of Shap, in the county of Westmoreland, and J. M., J. W., and J. R. against the churchwardens and overseers of the poor of the parish of Bampton, in the said county, T. R., T. A., W. H., T. M., and J. M., touching the county rate for the said appellants. It appeared that the following notice of appeal had been served on the respondents:—"This is to give notice to you and every one of each of you, that the churchwardens and overseers of the poor of the township of Shap, in the county of Westmoreland, and J. M., J. W., and J. R. being severally inhabitants and owners or occupiers of certain messuages, lands, and tenements in the township and parish of

The proviso in this section extends only to places which have a jurisdiction separate from and co-extensive with the jurisdiction of the county justices; and, therefore, where the justices of the city of B. had no jurisdiction to try felons, it was held, that the city of B. was liable to the county rate. *R.* v. *Clarke*, 1 *D.* & *R.* 316; 5 *B.* & *A.* 665, S.C. (*a*)

Shap, in the county of Westmoreland, and rated to the relief of the poor within the said township in respect thereof, are aggrieved by a certain rate or assessment made by virtue of an order from his Majesty's justices of the peace in and for the said county of Westmoreland, at their general quarter sessions assembled, and issued to the constable of the township of Shap, under the hand of T. H., high constable for the division of West Ward in the said county of Westmoreland, on the 1st day of May last past, for the purpose of raising the sum of 10*l.* 19*s.* 6*d.* for and towards a general county rate or assessment in and for the said county of Westmoreland, and that they do intend to appeal against the said county rate or assessment at the next general quarter sessions of the peace to be holden at Appleby, in and for the said county of Westmoreland, on Monday, the 13th day of July next; and that the grounds of such appeal are, that T. R., T. A., W. H., T. N. and J. M. and others, are in the general county rate or assessment for the parish or constablewick of Bampton, in the said county of Westmoreland, severally under-rated in respect of the yearly value of their respective messuages, lands, tenements, and premises by them occupied in the said parish or constablewick of Bampton. And also that they the said J. M., J. W., and J. R. are in the said general county rate or assessment for the township of Shap, in the said county of Westmoreland, severally over-rated in respect of the yearly value of their respective messuages, lands, tenements, and premises by them respectively occupied in the said township and parish of Shap, and for that the said rate is in other respects unequal, unjust, defective, and informal. Dated the 26th of June, 1829." The appellants tendered evidence to prove the general inequality and disproportion of the respective county rates of the township of Shap and of the parish of Bampton; but the court of quarter sessions dismissed the appeal without entering into the merits, on the ground that the statement of the causes of appeal contained in the said notices was defective.

After argument, Bayley, J. said, "I am of opinion that this rule must be made absolute. I think that the true construction to be put on the clause giving the right of appeal, is that stated by Mr. Aglionby, viz. that the parish, township, or place must be aggrieved. Here the fact stated in the notice is, that particular individuals are rated higher in the township of Shap than other individuals are in the parish of Bampton. I think that it is incumbent on a party appealing against a county rate to show that the appellant parish, township, or place is rated in a higher proportion, with reference to some other parish, than it ought to be. But no act of parliament having required the grounds of appeal to be specified in the notice, the sessions ought either to have heard or adjourned the appeal to the next sessions. If the justices thought that the respondents were misled by the terms of the notice of appeal, they ought to have adjourned it. But they refused to hear the appeal altogether, which was improper." *Littledale* and *Parke*, Js. concurred. Rule absolute. *R.* v. *Westmoreland*, 10 *B.* & *C.* 226.

(*a*) The following is the judgment of *Abbott*, C. J. in that case:—"I am of opinion, that the city of Bath is liable to contribute to the county rate, and that in this case our judgment should be for the crown. The question depends on the construction to be put upon the 55 Geo. III. c. 51, s. 1, by which a power is given to the justices of the county to tax every parish, township, and other place, whether parochial or extra-parochial, within the respective limits of their commissions. The first question, therefore, which arises is, whether the city of Bath be within the limits of the jurisdiction of the justices of the county of Somerset. Now it appears from the statement of the case, that they alone have the power of trying felonies committed within the city. It is, therefore, clear, that Bath is within the limits of their jurisdiction. Then comes the proviso, which states, that the act shall not give any jurisdiction to the justices of the county over any places situate within the limits of any liberties or franchises having a separate jurisdiction. Then is the city of Bath a franchise 'having a separate jurisdiction?' I think that these words must mean 'having a separate jurisdiction co-extensive with that possessed by the county justices.' Here it is clear, that the justices of Bath have no such jurisdiction: for their ju-

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5 Geo. 4. c. 85.

returns as aforesaid, as to the said justices so assembled shall appear reasonable, and all such allowances and compensations, and other expenses as shall be thereby incurred, shall be by the said justices so assembled charged upon the parish, township or place, whether parochial or otherwise, of which the churchwarden or churchwardens, overseer or overseers of the poor, shall have so neglected or made default as aforesaid, in addition to the proportion of the said county rate to be paid by such parish, township or place, whether parochial or otherwise; and such allowances, compensations, and expenses shall and may be raised, levied, and collected by such and the like ways and means as the said county rate can or may be raised, levied and collected, or shall be paid therewith, due distinction being made in the case of every such additional assessment between the sum or sums charged for and on account of any such expenses and the sum or sums assessed as and for the county rate." And see 1 & 2 Geo. IV. c. 85, *post*, 940.

Parties may be summoned where no overseers or churchwardens, or where no poor's rate or where neglect occurs through error.

Sect. 7. "That in all cases and places as aforesaid, where there are no churchwardens or overseers of the poor, or where no rate is made and collected for the relief of the poor, or where the justices of the peace of the county or of any division thereof, assembled as aforesaid, for the purpose of receiving such returns as aforesaid of the annual value of the property chargeable to the county rate, shall be of opinion that the returns made by them do not afford a full, fair, and just account of the annual value of such property rateable, it shall and may be lawful to and for the said justices of the peace so assembled, to summon before them any one or more substantial inhabitant of such places respectively, or any other person or persons whom they the said justices may think proper, to give evidence as to the fair annual value of such rateable property; and then and there to examine such inhabitant or inhabitants and other person or persons respectively on oath, (which oath any one or more of the said justices is and are hereby authorised to administer,) as to the annual value of such property."

Where no poor's rate or overseer, justices to appoint.

Sect. 8. "That in such place or places where there is no poor's rate, or overseer of the poor or churchwarden, or other officer, necessary for the execution of the provisions of this act, residing within the limits of the jurisdiction of the justices of the peace of the county requiring such returns, or in which there is any property liable to the poor's rate, but not rated or assessed thereto, it shall and may be lawful for the said justices of the peace of the county, assembled as aforesaid, or for the justices of the peace resident in and acting for any division of the county in which such place or places are situate, at any petty sessions or adjournment thereof, to be holden by them within such division as aforesaid, and they are hereby authorised and required to appoint one or more proper person or persons to act as overseer or overseers, or other such officer as aforesaid, who is and are hereby authorised, empowered, and required to act within such place or places respectively for effecting the purposes of this act; and such person or persons respectively shall have the like powers vested in him or them, and shall be subject to the same regulations and penalties for effecting all such purposes, as fully and effectually, to all intents and purposes, as if he or they had been appointed overseer or overseers of the poor, or churchwarden or churchwardens, or other officer or officers, under any law or laws now in force."

Person so appointed to have full powers as if appointed overseer.

See 56 Geo. III. c. 49; and 1 & 2 Geo. IV. c. 85; *post*, 940.

Justices empowered to call for all parliamentary and parochial assessments, &c.

Sect. 9. "And for the better enabling as well the said justices in general or quarter sessions assembled, as the justices of the several divisions acting under the order or orders of the justices assembled as aforesaid, respectively, to ascertain the fair annual value of all property liable to be so rated; it is hereby further enacted, that it shall and may be lawful to and for such justices, or any two or more of them, from time to time, whenever the same may be, in the judgment of such justices, necessary for the more correct execution of this act, to cause any of the books of assessment of any rates or taxes, parliamentary or parochial, which have lately been, are *now*, or shall hereafter be laid on any part of the property, liable to be assessed towards the purposes for which a county rate is applicable, and the valuation by which

55 Geo. 3, c. 51.

such assessments are or were made, mentioned and described, within any parish or place within the limits of the jurisdiction of the said justices, in the hands of any constable, churchwarden, overseer, assessor, or collector, to be brought before them or him, and to take copies or extracts of and from such books, or any parts thereof, or to order and direct any person to take such copies or extracts from such books, in the hands of them or any of them, without having the same brought before the said justices, or to call before them any such constable, churchwarden, overseer, assessor or collector, to give evidence respecting the same, as they, or he, or any of them shall think fit, such compensation being made to the person or persons employed for any of the purposes aforesaid, as the said justices, or any two or more of them, shall think reasonable; and if any person or persons, in whose custody or power any of the said books may be, shall neglect or refuse to attend the said justices with such book or books, or to permit any such copies or extracts to be taken as aforesaid, or to give such information or evidence on oath as may be required by such justices, (which oath such justices, or any one or more of them, are and is hereby authorised to administer,) then and in every such case, every person who shall so refuse or neglect, shall for every such offence forfeit and pay any sum not exceeding ten pounds; and moreover it shall be lawful for such justices in the like cases, from time to time to cause copies of the total amount assessed in each parish, township or place, in respect of any aids or taxes payable to his Majesty, his heirs or successors, and the total amount of the valuation of the property on which such assessments were made in any year then elapsed, to be made out by the clerk to the commissioners of each district within the limits of the jurisdiction of such justices, such compensation being made to the respective clerks as the said justices, or any two of them, shall think reasonable; and if any such clerk shall neglect or refuse to make out such copies within a reasonable time after his receipt of the order of such justices, every such clerk shall forfeit and pay the sum of twenty pounds."

May take copies or extracts from books of assessment, &c.

Persons in whose custody said books are, neglecting to attend or to permit extracts, to forfeit 10*l*.

Penalty on clerks to commissioners neglecting to make out assessments.

Sect. 10. "And for the better enabling the churchwardens and overseers of the poor, chief constables, and other persons, to make accurate returns as hereinbefore required, in cases where doubts are entertained, be it further enacted, that it shall be lawful for them, or any of them, or for such other person or persons as they may select for that purpose, by warrant under the hands and seals of any two or more justices of the peace of the county in general or quarter sessions assembled, to enter upon, view, and examine all and any lands or other property chargeable to the county rate, in order to ascertain the annual value at which the same ought to be charged: provided always, that no such entry shall in any case be made, unless fourteen days' previous notice of the intention of making such entry shall have been given, under the hands and seals of the justices authorising the same, to the churchwardens or overseers, or to the person or persons appointed to act, in default of such churchwardens or overseers of the parish, township or place, whether parochial or otherwise, and to the person or persons whose lands are to be entered upon for the purpose of making such valuation."

Persons authorised to enter upon lands to ascertain value.

Notice of intention of entry to be given.

Sect. 11. "That whenever the justices in general or quarter sessions assembled shall have ordered any county rate to be made, which they are hereby authorised to order from time to time, whenever the same shall be necessary, and the justices in petty sessions shall by any of the aforesaid ways and means have ascertained to their own satisfaction the fair and just annual value of any or of all the rateable property within their respective divisions, and they are hereby required from time to time to certify under their hands the true amount thereof to the then next general or quarter sessions of the peace for the same county, to the intent that at such general or quarter sessions, or at some adjournment or adjournments thereof, or at some subsequent general or quarter sessions, or adjournment or adjournments thereof, the justices there assembled may from time to time, and as often as they shall deem it necessary, make a fair and equal rate on all such rateable property, or correct any inequalities which upon appeal shall be shown to their satisfaction to exist in any rate now existing or hereafter to be made."

Justices of division to certify value ascertained to justices in quarter sessions.

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55 Geo. 3, c. 51.

Justices authorised to issue warrants for levying new rates, according to usual practices.

Sect. 12. "And it shall be lawful to and for the justices of the peace of any county, or the major part of them, in general or quarter sessions, or at any adjournment or adjournments thereof, assembled, as often as they shall have deemed it necessary to make a rate or rates, assessment or assessments on all the rateable property within the limits of their jurisdiction, according to the fair annual value of the same, as derived from any or all of the several sources of information which are hereinbefore mentioned, and they are hereby authorised and empowered to order warrants to be from time to time issued, in the same manner as now authorised and practised by law for collecting the county rates, to the several high constables within their respective counties, ordering and requiring them to issue their warrants to the respective overseers of the poor within their respective divisions, to levy collect, and pay to the said high constables, within a time to be named and limited in the warrant to be issued from the sessions as aforesaid, all such rate or rates, assessment or assessments, which each high constable shall as he is hereby directed and required to pay, at such time as shall be specified in such warrant, to the treasurer of the county for the time being, to be applied and disposed of in such manner and for such purposes as the county stock or rate is now applicable or may hereafter be made applicable by law.

Overseer not paying county rate.

And in case any overseer or overseers of the poor, or other person appointed to act as such under the provisions of this act, in any of the several parishes, townships, or places, whether parochial or otherwise, within any county liable to pay the same, shall neglect, make default, or refuse to pay the same within the time to be specified and limited for that purpose as aforesaid, the high constable of the division within which such overseer or overseers or other person or persons so liable and neglecting to pay, shall reside or be appointed to act, it shall and may be lawful for any justice of the peace of the said county, upon complaint thereof made by any such high constable by warrant under the hand and seal of any such justice, to levy the same by distress and sale of the offender's goods; and the overseer or overseers of the poor of any parish, township, or place, whether parochial or otherwise, or other person or persons appointed to act as such overseer or overseers, shall and may and is and are hereby empowered to levy and raise by an equal rate or assessment upon all and every the several estates and property rateable to the relief of the poor, within their respective parishes, townships, or places, whether parochial or otherwise, such sum and sums of money as shall be required and necessary, in order to raise the several sums assessed upon such parishes, townships, or places respectively; or to reimburse such overseer or overseers, or other person or persons as aforesaid, such sum or sums of money as they shall respectively have paid on account of the same; such rate or assessment to be paid by the occupier or occupiers for the time being of such estates and rateable property as aforesaid."

To reimburse overseers.

Rate to be paid by the occupier.

In places where poor rate does not separately apply, Justices may order county rate to be levied as when no poor rate.

Sect. 13. "And whereas it would be inconvenient and oppressive to many townships or places, that the sum of money which may be assessed on them as for a county rate under this act, should be paid out of any rate made for the relief of the poor, where such poor rate doth not apply separately and distinctly to the parish, township, or place; it is enacted, that it shall be lawful for the justices of the peace, at their general or quarter sessions, or at any adjournment thereof, if they shall think convenient, to order the sum of money directed to be assessed as or for the county rate on any such parish, township, or place, whether parochial or otherwise, to be paid and levied by the churchwardens, overseers, or petty constables, of or for any such parish, township, or place, in such manner as the same is herein directed to be paid and levied in cases where no rate is made for the relief of the poor; any thing herein contained, or any law, usage, or custom, to the contrary notwithstanding." See 56 Geo. III. c. 49, and 1 & 2 Geo. IV. c. 8, *post*, 940.

Parishes aggrieved may appeal.

Sect. 14. "That if the churchwarden or churchwardens, overseer or overseers of the poor, or other inhabitant or inhabitants of any parish, township, or place, whether parochial or otherwise, where there is no churchwarden or overseer, or person appointed to act as such, shall at any time have reason to

think that such parish, township, or place is aggrieved by any rate now existing or hereafter to be made, either in pursuance of this act or of any act or acts now in force, whether it be on account of the proportions assessed upon the respective parishes, townships, or places being unequal, or on account of some one or more of them being without sufficient cause omitted altogether from the rate, or on account of such parish, township, or place being rated at a higher proportion of the pound sterling according to the fair annual value of the rateable property therein, or on account of some other parish or parishes, township or townships, place or places, being rated at a lower proportion of the pound sterling according to the fair annual value of the rateable property therein, than has been fixed and declared by the justices of the peace of the said county, in sessions assembled, as the basis of the rate of the said county, or on account of any other just cause of complaint whatsoever; it shall be lawful for such churchwarden or churchwardens, overseer or overseers of the poor, or other inhabitant or inhabitants where there is no churchwarden or overseer, or person appointed to act as such, to appeal to the justices of the peace for the county at any general or quarter sessions, against such part of the rate only as may affect the parish or parishes, township or townships, place or places, which are unequally rated, or which shall appear to be over-rated or under-rated, or omitted altogether from the rate; and the said justices are hereby empowered to hear and finally determine the same, and either to confirm such parts of the rate as have been appealed against, or to correct such inequalities, disproportions or omissions, as shall be proved to exist therein, in such manner as to them the said justices shall appear fair, just, and equitable; any thing in this act, or any former act or acts, or any law, usage, or custom to the contrary thereof notwithstanding: provided nevertheless, that upon such appeal, no such rate shall be quashed or destroyed in regard to any other parish, township, or place, unless in cases where the justices of the peace of any county, in general or quarter sessions assembled, or the major part of them, shall deem it necessary to proceed to the making of an entire new rate, and shall proceed therein according to the provisions of this act." And see stat. 56 Geo. III. c. 44; 56 Geo. III. c. 49, s. 25; 57 Geo. III. c. 94, s. 1, 2, and 1 & 2 Geo. IV. c. 85, s. 1, *post*, 940.

A power of appeal is given by 55 Geo. 3, c. 51, s. 14, against a county rate made in fixed proportions, and invariably adopted for a series of years.

By this section an appeal is given against a county rate made in fixed proportions invariably adopted for a series of years. *R.* v. *Js. of York*, 2 *B. & Cres.* 771. A rule had been obtained calling upon the defendants to show cause why a writ of mandamus should not issue, commanding them to cause continuances to their next general quarter sessions of the peace, to be holden in and for the said city and county, to be entered, upon the appeal of the overseers of the poor of the parish of St. Crux in the said city, against a rate or assessment made by virtue of an order of the court of general quarter sessions of the peace, held for the said city and county, on Friday, the 17th day of October, 1823, whereby the inhabitants of the parish of St. Crux were assessed in the sum of 32*l.* 14*s.* 9*d.* as their proportion of the sum by the court directed to be estreated on the inhabitants of the said city and county, and at such next general quarter sessions of the peace to hear and determine the merits of the said appeal. It appeared that a rate had been made, and imposed upon the respective parties within the city and county in such fixed proportions as had been for a long series of years invariably adopted. Against this rate the parish of St. Crux had appealed, on the ground of being over-rated, but the sessions refused to entertain the appeal, conceiving that they were not authorised by any existing law to vary the fixed proportions of the county rates from the form in which they had for many years existed. After argument by *Tindal* against the mandamus, and *Coltman* and *Alexander* in support of it, *Abbott*, C. J. said, "We are of opinion, that a power of appealing is given by the fourteenth section of stat. 55 Geo. III. c. 51, in a case like the present; and instead of thinking such power at variance with the object of that act, we consider it the most convenient construction that the statute can receive. The rule must therefore be made absolute." Rule absolute.

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55 Geo. 3, c. 51.

Justices authorised to issue warrants for levying new rates, according to usual practices.

Sect. 12. "And it shall be lawful to and for the justices of the peace of any county, or the major part of them, in general or quarter sessions, or at any adjournment or adjournments thereof, assembled, as often as they shall have deemed it necessary to make a rate or rates, assessment or assessments on all the rateable property within the limits of their jurisdiction, according to the fair annual value of the same, as derived from any or all of the several sources of information which are hereinbefore mentioned, and they are hereby authorised and empowered to order warrants to be from time to time issued, in the same manner as now authorised and practised by law for collecting the county rates, to the several high constables within their respective counties, ordering and requiring them to issue their warrants to the respective overseers of the poor within their respective divisions, to levy, collect, and pay to the said high constables, within a time to be named and limited in the warrant to be issued from the sessions as aforesaid, all such rate or rates, assessment or assessments, which each high constable shall as he is hereby directed and required to pay, at such time as shall be specified in such warrant, to the treasurer of the county for the time being, to be applied and disposed of in such manner and for such purposes as the county stock or rate is now applicable or may hereafter be made applicable by law;

Overseer not paying county rate.

and in case any overseer or overseers of the poor, or other person appointed to act as such under the provisions of this act, in any of the several parishes, townships, or places, whether parochial or otherwise, within any county liable to pay the same, shall neglect, make default, or refuse to pay the same within the time to be specified and limited for that purpose as aforesaid; the high constable of the division within which such overseer or overseers or other person or persons so liable and neglecting to pay, shall reside or be appointed to act, it shall and may be lawful for any justice of the peace of the said county, upon complaint thereof made by any such high constable by warrant under the hand and seal of any such justice, to levy the same by distress and sale of the offender's goods; and the overseer or overseers of the poor of any parish, township, or place, whether parochial or otherwise, or other person or persons appointed to act as such overseer or overseers, shall and may and is and are hereby empowered to levy and raise by an equal rate or assessment upon all and every the several estates and property rateable to the relief of the poor, within their respective parishes, townships, or places, whether parochial or otherwise, such sum and sums of money as shall be required and necessary, in order to raise the several sums assessed upon such parishes, townships, or places respectively; or to reimburse such overseer or overseers, or other person or persons as aforesaid, such sum or sums of money as they shall respectively have paid on account of the same; such rate or assessment to be paid by the occupier or occupiers for the time being of such estates and rateable property as aforesaid."

To reimburse overseers.

Rate to be paid by the occupier.

In places where poor rate does not separately apply, justices may order county rate to be levied as when no poor rate.

Sect. 13. "And whereas it would be inconvenient and oppressive to many townships or places, that the sum of money which may be assessed on them as for a county rate under this act, should be paid out of any rate made for the relief of the poor, where such poor rate doth not apply separately and distinctly to the parish, township, or place; it is enacted, that it shall be lawful for the justices of the peace, at their general or quarter sessions, or at any adjournment thereof, if they shall think convenient, to order the sum of money directed to be assessed as or for the county rate on any such parish, township, or place, whether parochial or otherwise, to be paid and levied on the churchwardens, overseers, or petty constables, of or for any such parish, township, or place, in such manner as the same is herein directed to be paid and levied in cases where no rate is made for the relief of the poor; any thing herein contained, or any law, usage, or custom, to the contrary notwithstanding." See 56 Geo. III. c. 49, and 1 & 2 Geo. IV. c. 35, *post*, 940.

Parishes aggrieved may appeal.

Sect. 14. "That if the churchwarden or churchwardens, overseer or overseers of the poor, or other inhabitant or inhabitants of any parish, township, or place, whether parochial or otherwise, where there is *no churchwarden or* overseer, or person appointed to act as such, shall at any time have reason to

55 Geo. 3, c. 51.

repealed) shall be good, valid, and effectual, for the purposes of assessing, levying, collecting, and enforcing the payment of the rate or rates hereafter to be made in pursuance of this act, and for carrying this act into execution."

Counties where rates have been regulated by particular acts, authorised to make use of the provisions of this act.

Sect. 21. "And whereas several acts have passed in the reign of his present Majesty, and are now in force, empowering the justices of the peace of certain counties to make fair and equal county rates within their respective counties;" it is enacted, "that it shall and may be lawful to and for the said justices respectively, and they are hereby empowered, at any time and at all times after the passing of this act, to proceed in the assessing, levying, and collecting, and enforcing the payment of the county rate, and in all matters relating to the equalizing the same, either under the authority and according to the provisions and enactments of this act, or under the authority and according to the provisions and enactments of the particular acts affecting their respective counties, as to them shall seem fit and proper, in all cases in which the provisions and enactments of this act are not inconsistent with the provisions and enactments of such particular acts." See 56 Geo. III. c. 49, s. 2, and 1 & 2 Geo. 4, c. 85, s. 1, *post*, 940.

Forfeitures, &c. how to be levied and applied.

Sect. 22. "That the several forfeitures and penalties inflicted by this act shall, if not immediately paid, be levied by distress and sale of the offender's goods and chattels, by virtue of any warrant under the hand and seal of any one justice of the peace for the county, not only in the county in which the offence shall have been committed, but in any other county, city, town, borough, franchise, or place, (the warrant or warrants for levying the same being in such last-mentioned case first indorsed by some justice of the peace for the county, or mayor, or other head officer of the city, town, borough, or franchise, where any goods of the respective defaulters shall be found,) returning the overplus (if any) after the charges of such distress and sale shall be deducted; and in case sufficient distress shall not be found, then it shall be lawful for such justices to commit the offender to the common gaol of the said county, there to remain without bail or mainprize, for any time not exceeding three calendar months, unless the forfeitures and charges be sooner paid; and the said forfeitures, when recovered, shall be paid to the treasurer of the county, or of any division thereof, in which they shall have been incurred, to be applied in aid of the rates of the said county or division thereof; and no person shall be deemed incompetent to be a witness for the execution of the purposes of this act, or in any appeal or other proceeding instituted by virtue thereof, by reason of his paying or being liable to pay towards the poor rates or county rates within the said county."

Persons paying county rates deemed competent witnesses.

Limitation of actions. (a)

Sect. 23. "That no action or suit shall be brought, commenced, or prosecuted against any person or persons, for any thing done or to be done by virtue of or in pursuance of this act, after three calendar months next after the fact committed; and every such action shall be brought and laid in the county where the cause of action shall have arisen, and not elsewhere; and the defendant or defendants in every such action or suit shall and may plead at his, her, or their election, this act specially or the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance or by the authority of this act; and if upon trial of such action or suit it shall appear to have been so done, or that such action or suit shall have been brought after the time limited for bringing the same as aforesaid, or be brought or laid in any other county than as aforesaid, then and every the said cases the jury shall find a verdict for the defendant or defendants; and in all cases where a verdict shall be found for any defendant or defendants in such action or suit, or the plaintiff or plaintiffs therein shall discontinue the same after the defendant or defendants shall have appeared thereto, or shall be nonsuited, or if upon demurrer, judgment shall be given against such plaintiff or plaintiffs, then and in every such case the defendant or defendants shall recover treble costs, and have the like remedy for recovering the same as any defendant or defendants hath or have for recovering costs of suit in any other cases by law."

(a) See **Constables**, *ante*, 805; *post*, **Justices**, Vol. III. 495.

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55 Geo. 3, c. 51.

The appeal may be made *at any time*, though the rate was made under a particular act of parliament, which required the appeal to be made within a certain time. *R.* v. *Js. of Buckinghamshire*, 7 *B. & Cres.* 3; 9 *D. & R.* S.C.; see *ante*, Appeal, p. 137 to 141.

Appeal.

In the late case of *R.* v. *Js. of Westmoreland*, 10 *B. & Cres.* 226, it was held not necessary in a notice of appeal against a county rate to specify the grounds of appeal, but if the appellant states in his notice, as causes of appeal, things which are not so, the court of quarter sessions ought to adjourn the appeal if they think the respondents have been misled by the terms of the notice, or otherwise to hear it. See the case more fully noticed, *ante*, 926, n.

In the same case, it was held no ground of appeal against a county rate that individuals in one parish are rated in a higher proportion than in another.

Sect. 15, which enacts that the expense of appeals shall be paid by parishes, or persons appealing, is repealed by the 57 Geo. III. c. 94, s. 3.

Power to justices to compensate persons employed, out of county rates.

Sect. 16. "That it shall and may be lawful for the justices of the peace of any county, in general or quarter sessions, or any adjournment thereof from time to time assembled, to order such allowances and compensations to be made to the overseers, churchwardens, constables, assessors, collectors, clerks, or other persons employed in the execution of this act, which have not hereinbefore been provided for, from, by and out of the monies assessed, levied and collected by any county rate made under this or any former act or acts, as to the said justices shall appear reasonable and proper."

High constables to give security.

Sect. 19. "That the justices of the peace of the said several counties are hereby authorised and empowered to demand and take, whenever they shall think fit, good and sufficient security, to be approved of by the said justices in general or quarter sessions assembled, from the high constables employed in the collecting and levying the rates; and that if any such high constable, upon being so called upon by the said justices, shall neglect or refuse to give such security as shall be approved by them, it shall then be lawful for the said justices of the peace in quarter sessions assembled to order and direct the churchwardens and overseers of the poor, or other persons appointed to assess, collect, and levy the rates of any parish, township, or place, to pay the quota which shall be assessed thereupon towards the county rate to the treasurer of the county, division, or place, in which such parish, township, or place, shall be situate; and the receipt of such treasurer shall be a sufficient discharge for the same." See sect. 2 of 57 Geo. III. c. 94, as to Exclusive Jurisdictions, *post*, 939.

Former acts extended to this act. 12 Geo. 2, c. 29.

13 Geo. 2, c. 18.

Sect. 20. "That all and every the clauses, powers, directions, provisions and authorities, contained in the said act made in the twelfth year of his late Majesty King George the Second, intituled 'An Act for the more easy assessing, collecting, and levying county rates;' and also so much of another act made in the thirteenth year of the reign of his said late Majesty King George the Second, intituled 'An Act to continue several acts therein mentioned, for punishing such persons as shall wilfully and maliciously pull down or destroy turnpikes for repairing highways; or locks or other works erected by authority of parliament for making rivers navigable; for preventing exactions of the occupiers of locks and weirs upon the river of Thames westward, and for ascertaining the rates of water carriage upon the said river: for preventing frivolous and vexatious arrests; and for better securing the lawful trade of his Majesty's subjects to and from the East Indies, and for the more effectual preventing all his Majesty's subjects trading thither under foreign commissions; and for limiting the time for suing forth writs of *certiorari* upon proceedings before justices of the peace, and for regulating the time and manner of applying for the same; for the better and more speedy execution of process within particular franchises and liberties; and for extending the powers and authorities of justices of the peace of counties, touching county rates, to the justices of the peace of such liberties and franchises as have commissions of the peace within themselves, as relate to county rates (save and except such parts thereof respectively as are hereby varied, altered, or

peace of counties and ridings, and divisions and parts of counties, and other places of distinct and separate jurisdiction, in that part of Great Britain called England, assembled at their several and respective general or quarter sessions of the peace, or at any adjournment thereof, shall be and they are hereby authorised and required, in any case in which any question or doubt does or shall exist, or shall have arisen, or may in the judgment of the said justices be likely to arise, as concerning any boundary between any counties, ridings, divisions, or parts of any county, or other places of distinct and separate jurisdiction, for which they respectively act as such justices, to nominate and appoint two justices of the peace of each such county, riding, division, or parts of any county, or other places of distinct and separate jurisdiction, between which the boundary is required to be ascertained, for the purpose of fixing and determining such boundary, and the clerks of the peace, town clerks, and other proper officer of the several and respective general or quarter sessions of the peace at which such justices shall be appointed, shall forthwith give notice to each other and to such justices of such appointment; and the justices so appointed shall in every such case, as soon as may be after their appointment, meet and proceed to ascertain the boundary, upon such evidence as can be obtained by them, or as they shall deem necessary for that purpose, either by examination of witnesses upon oath, (which oath any one of the said justices is hereby empowered to administer,) or of any maps, plans, surveys, or any other records or documents, or in such other manner as they the said justices so appointed shall think requisite; and it shall be lawful for such justices, or for any persons authorised, under the hand of any three or more of such justices, to enter upon any lands, grounds, or premises, for the purpose of examining the same, or making any measurement, maps or plans thereof, for the purposes aforesaid; and it shall be lawful for the said justices to summon any witnesses to be examined in that behalf, and to impose any penalty or forfeiture not exceeding 10*l.* upon any witness who shall, without reasonable excuse, refuse or neglect to attend to be examined upon any such summons, which penalty or forfeiture may be recovered as any penalty or forfeiture may be recovered under any of the provisions of the said recited act; and such justices shall thereupon fix, ascertain, and determine the boundary so referred to them to be ascertained, and shall cause the boundary so fixed and determined to be laid down on two maps or plans, to be signed by the said justices so appointed as aforesaid, which shall be deposited with the clerks of the peace, town clerks, or other proper officer, for the counties, ridings, divisions, or parts of counties, or other places of distinct and separate jurisdiction, between which such boundary shall be so fixed and determined, and which maps and plans shall be kept amongst the records of their respective sessions, and shall be received as evidence of such boundaries; and such boundaries, so fixed and determined, shall be and be deemed the boundaries between the respective counties, ridings, divisions, or parts of counties, or other places of distinct and separate jurisdiction, for which the same shall have been so ascertained, for all the purposes of this and of the said recited act, and the carrying the provisions thereof respectively into execution; any thing contained in any other act or acts of parliament, relating to such counties, ridings, divisions, or parts of such counties, or other places of distinct and separate jurisdiction, or any law usage, or custom to the contrary notwithstanding." See 1 & 2 Geo. 4, c. 85, *post*, p. 940.

Appointment of new justices.

Sect. 3. "That if any of the four justices so appointed as aforesaid, or who shall be appointed in manner hereinafter mentioned, shall, before the execution of all the powers and authorities hereby in them respectively vested, die, decline or refuse to act, or become incapable of acting, the justices of the peace of counties, ridings, divisions, and parts of counties, and other places of distinct and separate jurisdiction, assembled at their several and respective general or quarter sessions of the peace, or at any adjournment thereof, from which such justice so appointed or to be appointed shall die, decline, refuse to act, or become incapable of acting, shall, and they are hereby authorised and required to appoint another justice in the room of him so dying, declining, refusing to act, or becoming incapable of acting as aforesaid, and so

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from time to time as often as any justice so to be appointed as last aforesaid shall die, decline or refuse to act, or become incapable of acting; and every justice to be appointed as aforesaid shall have the like power and authority as the justice in whose place he shall be appointed was invested with by virtue of this act: and that notice shall be given by the clerks of the peace, town clerks, or other proper officer, to such justice of his appointment, in manner hereinbefore directed."

In case of difference between justices, a referee to be appointed to meet them, and determine boundary.

Sect. 4. "That if it shall happen that the justices so appointed to ascertain, and determine the boundaries as aforesaid, shall disagree in opinion touching the boundary between any county, riding, division, or parts of any county, or other place of distinct and separate jurisdiction, so referred to them under and by virtue of this or the said recited act, and there shall be an equality of votes, so that the said justices cannot make any determination thereon, then and in such case the said justices, or the major part of them, shall forthwith appoint under their hands such person as they may think proper to act as referee, which person so appointed as referee shall, within twenty-one days from the receipt of such appointment, fix a time and place to meet such justices; and at such meeting the said person so to be appointed as referee as aforesaid shall, together with the said justices to whom any boundary shall be referred to be ascertained as aforesaid, proceed to fix, ascertain, and determine the boundary about which such disagreement shall take place amongst them the said justices, in such and the same manner and with such and the like powers in all respects as hereinbefore expressed, and that the determination and decision of the said justices, and of the person whom they shall appoint as referee as aforesaid, or of the major part of them, shall be for ever binding and conclusive; and that the said justices, and the person whom they shall appoint as referee as aforesaid, or the major part of them, shall cause the boundary so fixed and determined to be laid down on two maps or plans, to be signed by the said justices and the person so appointed as referee as aforesaid, or by the major part of them, which shall be deposited with the clerks of the peace, town clerks, or other proper officer, as hereinbefore directed, and kept amongst the records of their respective sessions, and shall be received as evidence of such boundaries; and such boundaries, so fixed and determined, shall be and be deemed the boundaries between the respective counties, ridings, divisions, or parts of counties, or other places of distinct and separate jurisdiction, for which the same shall have been so ascertained for all the purposes of this and of the said recited act, and the carrying the provisions thereof respectively into execution, any thing contained in any other act or acts of parliament relating to such counties, ridings, divisions, or parts of such counties, or other places of distinct and separate jurisdiction, or any law, usage, or custom to the contrary notwithstanding."

Sect. 5, which directs how appeals are to be proceeded in, is repealed by stat. 57 Geo. III. c. 94, s. 1.

Act not to determine any question of boundary.

Sect. 6. "That nothing in this act contained, nor any proceedings under the same, shall extend or be construed to extend, to determine any question of boundary for any purpose, except for the purpose of assessing, collecting, and levying rates, according to the provisions of this act, and of the said recited act."

Former act extended to this act.

Sect. 7. "That all the powers, authorities, provisions, clauses, and regulations contained in the said recited act, shall be deemed and taken to apply to this act, as if the same were severally and respectively repeated and re-enacted in this act; and this act and the said recited act shall be construed as one act."

57 Geo. 3, c. 94. So much of the 56 Geo. 3, c. 49, as respects appeals.

Stat. 57 Geo. III. c. 94, after reciting stat. 56 Geo. III. c. 49, and that "'whereas it is expedient to repeal so much of the said act as directs, that in all cases in which any appeal or appeals shall be made under the said recited act (55 Geo. 3, c. 51) to any rate or assessment made in pursuance thereof or of this act, the same should be made to the next general or quarter sessions of the peace after the cause of appeal shall have arisen, and that fourteen clear days no-

57 Geo. 3, c. 94.

tice in writing should be given of the intention to try such appeal, previous to such general or quarter sessions; and that, notwithstanding such appeal or notice thereof, the rate or rates made upon any parish, township, or place (whether parochial or otherwise) under the said recited act and this act, should be paid, and should and might be levied, recovered and received in the same manner as if no appeal had been made or notice given thereof; and that if upon the hearing of any such appeal or appeals, the court of general or quarter sessions of the peace should order any rate or assessment to be decreased or lowered, and it should appear to the said court that any parish, township, or place have or hath, previously to the hearing such appeal or appeals, paid any sum or sums of money in consequence of such rates or assessments, which ought not to have been paid or charged therein, then and in every such case the said court should order all and every such sum and sums of money to be repaid and returned to the person or persons, parish, township, or place, having paid the same respectively:'" it is enacted, "that the hereinbefore recited provision shall be and the same is hereby repealed."

Rate to be raised notwithstanding appeals, until determination of justices.

Sect. 2. "That from and after the passing of this act the rate or rates made upon any parish, township, or place (whether extra parochial or otherwise) under any act or acts passed for the assessing, collecting, and levying of county rates, shall be paid, and shall and may be levied, recovered and received, nowithstanding any appeal or appeals may have been made to the general or quarter sessions of the peace against any such rate or rates; and such rate or rates shall continue to be raised, levied and received, until the decision of the justices shall be made upon such appeal or appeals: provided always, that if upon the hearing of any such appeal or appeals the court of general or quarter sessions of the peace shall order any rate or assessment to be set aside, decreased, or lowered, and it shall appear to the said court that any parish, township, or place have or hath, previously to the determination of such appeal or appeals, paid any sum or sums of money in consequence of such rates or assessments, which ought not to have been paid or charged therein, then and in every such case the said court shall order such proportion of such sum or sums of money as shall have been so paid by any person or persons, parish, township, or place, subsequently to the notice which shall have been given of such appeal or appeals, to be repaid and returned to the person or persons, parish, township, or place, which have or hath paid the same respectively, out of the general rate of the county in which the cause of appeal shall have arisen: provided always, that fourteen clear days' notice in writing shall be given by the parties intending to appeal against any rate or assessment, to the parties against whose rate the appeal is to be made, the clerk of the peace of the county, and the hundred constable, of the intention to try such appeal at the next general quarter sessions of the peace; any thing in any act or acts to the contrary notwithstanding."

In case justices order rate to be set aside, decreased, or lowered;

money paid subsequent to the time of appeal to be returned out of the general county rate.

Notice of appeal.

So much of recited act as directs that the expenses of appeal shall be paid by such parishes as the justices shall appoint, repealed.

Sect. 3. "That so much of the said recited act as directs that the expenses of all appeals, actions, suits, or proceedings at law, in respect of any thing done in pursuance of the said recited act, shall be paid by such respective parishes, townships, places, and persons as the said justices in general or quarter session shall direct, or such court wherein such proceeding shall be instituted shall order, and shall not be charged to or be paid out of the county rate, shall be and the same is hereey repealed."

Expenses of appeals shall be paid in such proportions as the justices shall award.

Sect. 4. "That in case of any appeals, actions, suits, or proceedings at law respecting any thing done in pursuance of this act, or any other act or acts relating to the county rate, the expenses of all such appeals, actions, suits, or proceedings at law shall be borne and paid by such respective parishes, townships, places, and persons, or such of them, and in such proportions, as the said justices shall upon any appeal in their general or quarter sessions award and order, or as such courts wherein such actions suits, or proceedings shall be instituted shall adjudge and order."

Where there are no high constables, other constables may levy the rates.

Sect. 5. "And whereas there are several parishes, townships, and places in and over which the high constables have no jurisdiction," it is enacted, "that in all such cases it shall be lawful for the justices of the peace of any county in which such parishes, townships, or places shall be situate, to issue

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from time to time as often as any justice so to be appointed as last aforesaid shall die, decline or refuse to act, or become incapable of acting; and every justice to be appointed as aforesaid shall have the like power and authority as the justice in whose place he shall be appointed was invested with by virtue of this act; and that notice shall be given by the clerks of the peace, town clerks, or other proper officer, to such justice of his appointment, in manner hereinbefore directed."

In case of difference between justices, a referee to be appointed to meet them, and determine boundary.

Sect. 4. "That if it shall happen that the justices so appointed to fix, ascertain, and determine the boundaries as aforesaid, shall disagree in opinion touching the boundary between any county, riding, division, or parts of any county, or other place of distinct and separate jurisdiction, so referred to them under and by virtue of this or the said recited act, and there shall be an equality of votes, so that the said justices cannot make any determination thereon, then and in such case the said justices, or the major part of them, shall forthwith appoint under their hands such person as they may think proper to act as referee, which person so appointed as referee shall, within twenty-one days from the receipt of such appointment, fix a time and place to meet such justices; and at such meeting the said person so to be appointed as referee as aforesaid shall, together with the said justices to whom any boundary shall be referred to be ascertained as aforesaid, proceed to fix, ascertain, and determine the boundary about which such disagreement shall take place amongst them the said justices, in such and the same manner and with such and the like powers in all respects as hereinbefore expressed, and that the determination and decision of the said justices, and of the person whom they shall appoint as referee as aforesaid, or of the major part of them, shall be for ever binding and conclusive; and that the said justices, and the person whom they shall appoint as referee as aforesaid, or the major part of them, shall cause the boundary so fixed and determined to be laid down on two maps or plans, to be signed by the said justices and the person so appointed as referee as aforesaid, or by the major part of them, which shall be deposited with the clerks of the peace, town clerks, or other proper officer, as hereinbefore directed, and kept amongst the records of their respective sessions, and shall be received as evidence of such boundaries; and such boundaries, so fixed and determined, shall be and be deemed the boundaries between the respective counties, ridings, divisions, or parts of counties, or other places of distinct and separate jurisdiction, for which the same shall have been so ascertained for all the purposes of this and of the said recited act, and the carrying the provisions thereof respectively into execution, any thing contained in any other act or acts of parliament relating to such counties, ridings, divisions, or parts of such counties, or other places of distinct and separate jurisdiction, or any law, usage, or custom to the contrary notwithstanding."

Sect. 5, which directs how appeals are to be proceeded in, is repealed by stat. 57 Geo. III. c. 94, s. 1.

Act not to determine any question of boundary.

Sect. 6. "That nothing in this act contained, nor any proceedings under the same, shall extend or be construed to extend, to determine any question of boundary for any purpose, except for the purpose of assessing, collecting, and levying rates, according to the provisions of this act, and of the said recited act."

Former act extended to this act.

Sect. 7. "That all the powers, authorities, provisions, clauses, and regulations contained in the said recited act, shall be deemed and taken to apply to this act, as if the same were severally and respectively repeated and re-enacted in this act; and this act and the said recited act shall be construed as one act."

57 Geo. 3, c. 94. So much of the 56 Geo. 3, c. 49, as respects appeals, &c. repealed.

Stat. 57 Geo. III. c. 94, after reciting stat. 56 Geo. III. c. 49, and that "'whereas it is expedient to repeal so much of the said act as directs, that in all cases in which any appeal or appeals shall be made under the said recited act (55 Geo. 3, c. 51) to any rate or assessment made in pursuance thereof or of this act, the same should be made to the next general or quarter sessions of the peace after the cause of appeal shall have arisen, and that fourteen clear days no-

1 & 2 Geo. 4, c. 85.

to, if such constables, churchwardens, overseers, or other officers had resided within the limits of the jurisdiction of the justices making and issuing such precepts, warrants, orders, and directions: provided always, that nothing herein contained shall extend, or be construed, deemed or taken to extend to authorise any justice or justices of the peace to act in the cases aforesaid, or any of them, beyond the limits of the jurisdiction within which he or they shall be generally appointed and authorised to act as such justices."

Justices not to act beyond their jurisdiction.

Sect. 2. "And whereas by the said recited act of the fifty-sixth year of the reign of his late Majesty, it was enacted, that all messuages, lands, tenements, and hereditaments situate, lying, or being in any extra-parochial place, or other places, whether rated to the relief of the poor or not so rated, although the same might not be deemed rateable to the relief of the poor within such extra-parochial places, or other places where no rate is made for the relief of the poor, should be and the same were thereby declared to be subject to be assessed, taxed, and rated, by and under the order, direction, and authority of justices of the peace, in such and the same manner as the messuages, lands, tenements, and hereditaments, within any parishes or places where a rate is made for the relief of the poor; and that the justices of the peace should, in all cases where the same might be necessary, appoint proper persons within such extra-parochial or other places, as directed in and by the said therein recited act of the fifty-fifth year of the reign of his late Majesty, for the assessing, taxing, and rating such extra-parochial messuages, lands, tenements, and hereditaments, and levying, collecting, and paying over such assessments, taxes, or rates under the provisions of the said recited act: and whereas there are extra-parochial and other places where no rate is made for the relief of the poor, in which there are no messuages, or no person or persons resident proper to be appointed for the assessing, taxing, and rating such extra-parochial or other places, and levying, collecting, and paying over such assessments, taxes, or rates under the provisions of the said last recited act; and it is expedient that in those cases the justices of the peace should be authorised and empowered, in their discretion, to appoint proper persons, who do not reside within such extra-parochial or other places, to assess, tax, and rate all messuages, lands, tenements, and hereditaments situated in such extra-parochial or other places; it is enacted, that the justices of the peace in and for any county, riding, or division, shall in all such cases, where they shall deem it necessary, appoint proper persons within such county, riding, or division, as directed in and by the said recited act of the fifty-fifth year aforesaid, whether such persons do or do not reside within such extra-parochial or other place as aforesaid, to assess, tax, and rate all such messuages, lands, tenements, and hereditaments as are situated in such extra-parochial or other places as aforesaid; any thing in the said last recited act to the contrary in anywise notwithstanding."

In extra-parochial places, where no poor rate is made, justices may appoint persons to tax and assess county rate.

Sect. 3. "And for the more effectually levying money assessed for the purposes aforesaid, it is enacted, that the goods of any person assessed, or by the said recited acts, or this or any of them, made liable to pay the rates thereby authorised to be raised and levied, or any proportion thereof, for any county, riding, division, city, borough, town corporate, or place, and refusing to pay, may be levied by warrant of distress, not only in the place for which such assessment was made, but in any other place within the same county or precinct; and if sufficient distress cannot be found within the said county, riding, division, city, borough, town corporate, or place, on oath made thereof before some justice of any other county or precinct, (which oath shall be certified under the hand of such justice on the said warrant,) such goods may be levied in such other county, riding, division, city, borough, town corporate, or place, by virtue of such warrant and certificate; and if any person shall find him or herself aggrieved by such distress as aforesaid, it shall and may be lawful for such person to appeal to the next general or quarter sessions of the peace for the county or precinct where such assessment was made, and the justices there are hereby required to hear and finally determine the same."

The goods of persons liable to pay rates may be seized by warrant of distress in any other place than the place of assessment, &c.

Appeal to quarter sessions.

Sect. 4. "That in all cases where any penalty, forfeiture, fine, or other money may, under or by virtue of the said recited acts or this act, or any of them, by the warrant of any justice or justices of the peace, be directed to

Where sufficient distress cannot be found in one

COUNTY RATE.

57 Geo. 3, c. 94.

their warrants for collecting the county rate to one or more of the constables of such parishes, townships, or places, and such constable or constables shall collect, levy, and pay such county rate in such and the like manner as the high constables are by the said act empowered and required to do, and shall be subject to the like penalties in case he or they shall neglect to demand, levy, or account for such county rates, as the said high constables are subject or liable to by any law or statute now in force."

1 & 2 Geo. 4, c. 85, to amend the foregoing acts.

The 1 & 2 Geo. IV. c. 85, s. 1, after reciting stats. 12 Geo. II. c. 29, 13 Geo. II. c. 18, 55 Geo. III. c. 51, 56 Geo. III. c. 49, and 57 Geo. III. c. 49, and that "whereas there are several parishes, townships, hamlets, and places, situated in and extending into two or more counties, ridings, or divisions, having separate and distinct commissions of the peace, part of such parishes, townships, hamlets, and other places being situated in one county, riding, or division, and other part or parts thereof in another county or other counties, riding or ridings, division or divisions, and the messuages, lands, tenements, and hereditaments situated in such parishes, townships, hamlets, or other places, are rateable to the relief of the poor therein, and to the county rates of the respective counties, ridings, or divisions, in which such messuages, lands, tenements, and hereditaments are respectively situate; but the constables, churchwardens and overseers are appointed for the whole of such parishes, townships,, hamlets, or places, and it frequently happens that such constables, churchwardens, and overseers are resident in one division of such parishes, townships, hamlets, or other places, and that there are no constables, churchwardens, or overseers residing in the other division thereof, or within the limits of the jurisdiction of the justices making such county rate or rates, whereby considerable difficulties have in such cases arisen in raising the county rates in such divisions;" it is enacted, "that from and after the passing of this act, all and every the powers and provisions, clauses, pains, penalties, and forfeitures, given, granted, provided, made or imposed, by the said recited acts or any of them, shall extend, and be deemed, construed and taken to extend, to all cases and places as aforesaid, where there are no separate churchwardens or overseers of the poor, or where no separate or distinct rate is made and collected for the relief of the poor of any such division, or part of any parish, township, or place, situate in and extending into two or more counties, ridings, or divisions as aforesaid, as fully and effectually to all intents and purposes, as if the said several powers, provisions, clauses, pains, penalties, and forfeitures, were herein and hereby repeated and re-enacted, as to all such cases and places aforesaid; and that from and after the passing of this act, all and every the constables, churchwardens and overseers of any such parishes, townships, hamlets, or other places as are situated in and extend into two or more counties, ridings, or divisions, having separate and distinct commissions of the peace as aforesaid, shall be subject to the precepts, warrants, orders, and directions of the several justices of the peace for the respective divisions or parts of such parishes, townships, hamlets, or other places, so far as the same may relate to the making of the returns required by the said recited acts or any of them, and the assessing, levying, and collecting of the proportion of the county rate for such respective divisions or parts of such parishes, townships, hamlets, or other places, or otherwise to the execution of the said recited acts, and of other acts relating thereto, within the parts of such parishes, townships, hamlets, or other places, as shall be situated within the limits of the jurisdiction of the justices making and issuing such precepts, orders, warrants, and directions, and shall be subject to the fines, penalties, and forfeitures for neglect and disobedience of such warrants, so far as the same relate to the said recited acts, or any of them, or otherwise to the acting in relating to the assessing, making and collecting such rates within the limits of the jurisdiction of the justices making such rates, and of the constables, churchwardens, and overseers, and of the officers not

Powers of recited acts to extend to places where there are no separate churchwardens, &c. or where no separate or distinct poor rate is made for any place extending into two or more counties, &c.

1 & 2 Geo. 4, c. 85.

to, if such constables, churchwardens, overseers, or other officers had resided within the limits of the jurisdiction of the justices making and issuing such precepts, warrants, orders, and directions: provided always, that nothing herein contained shall extend, or be construed, deemed or taken to extend to authorise any justice or justices of the peace to act in the cases aforesaid, or any of them, beyond the limits of the jurisdiction within which he or they shall be generally appointed and authorised to act as such justices."

Justices not to act beyond their jurisdiction.

Sect. 2. "And whereas by the said recited act of the fifty-sixth year of the reign of his late Majesty, it was enacted, that all messuages, lands, tenements, and hereditaments situate, lying, or being in any extra-parochial place, or other places, whether rated to the relief of the poor or not so rated, although the same might not be deemed rateable to the relief of the poor within such extra-parochial places, or other places where no rate is made for the relief of the poor, should be and the same were thereby declared to be subject to be assessed, taxed, and rated, by and under the order, direction, and authority of justices of the peace, in such and the same manner as the messuages, lands, tenements, and hereditaments, within any parishes or places where a rate is made for the relief of the poor; and that the justices of the peace should, in all cases where the same might be necessary, appoint proper persons within such extra-parochial or other places, as directed in and by the said therein recited act of the fifty-fifth year of the reign of his late Majesty, for the assessing, taxing, and rating such extra-parochial messuages, lands, tenements, and hereditaments, and levying, collecting, and paying over such assessments, taxes, or rates under the provisions of the said recited act: and whereas there are extra-parochial and other places where no rate is made for the relief of the poor, in which there are no messuages, or no person or persons resident proper to be appointed for the assessing, taxing, and rating such extra-parochial or other places, and levying, collecting, and paying over such assessments, taxes, or rates under the provisions of the said last recited act; and it is expedient that in those cases the justices of the peace should be authorised and empowered, in their discretion, to appoint proper persons, who do not reside within such extra-parochial or other places, to assess, tax, and rate all messuages, lands, tenements, and hereditaments situated in such extra-parochial or other places; it is enacted, that the justices of the peace in and for any county, riding, or division, shall in all such cases, where they shall deem it necessary, appoint proper persons within such county, riding, or division, as directed in and by the said recited act of the fifty-fifth year aforesaid, whether such persons do or do not reside within such extra-parochial or other place as aforesaid, to assess, tax, and rate all such messuages, lands, tenements, and hereditaments as are situated in such extra-parochial or other places as aforesaid; any thing in the said last recited act to the contrary in anywise notwithstanding."

In extra-parochial places, where no poor rate is made, justices may appoint persons to tax and assess county rate.

Sect. 3. "And for the more effectually levying money assessed for the purposes aforesaid, it is enacted, that the goods of any person assessed, or by the said recited acts, or this or any of them, made liable to pay the rates thereby authorised to be raised and levied, or any proportion thereof, for any county, riding, division, city, borough, town corporate, or place, and refusing to pay, may be levied by warrant of distress, not only in the place for which such assessment was made, but in any other place within the same county or precinct; and if sufficient distress cannot be found within the said county, riding, division, city, borough, town corporate, or place, on oath made thereof before some justice of any other county or precinct, (which oath shall be certified under the hand of such justice on the said warrant,) such goods may be levied in such other county, riding, division, city, borough, town corporate, or place, by virtue of such warrant and certificate; and if any person shall find him or herself aggrieved by such distress as aforesaid, it shall and may be lawful for such person to appeal to the next general or quarter sessions of the peace for the county or precinct where such assessment was made, and the justices there are hereby required to hear and finally determine the same."

The goods of persons liable to pay rates may be seized by warrant of distress in any other place than the place of assessment, &c.

Appeal to quarter sessions.

Sect. 4. "That in all cases where any penalty, forfeiture, fine, or other money may, under or by virtue of the said recited acts or this act, or any of them, by the warrant of any justice or justices of the peace, be directed to

Where sufficient distress cannot be found in one

COUNTY RATE.

1 & 2 Geo. 4, c. 85.

county, &c. justices of other counties may indorse the warrant, and direct distress to be levied.

be levied by distress and sale of the goods and chattels of any person or persons, if sufficient distress cannot be found within the limits of the jurisdiction of the justice granting such warrant of distress, on oath thereof made by one witness before any justice of the peace of any other county, riding, division, city, borough, town corporate, or place, (which oath shall be by him certified by indorsement on such warrant,) such penalty, forfeiture, fine, or other money, or so much thereof as may not have been before levied or paid, shall and may, by virtue of such warrant and indorsement, be raised and levied by the person or persons to whom such warrant of distress shall have been originally directed, by distress and sale of the goods and chattels of such person or persons in such other county, riding, division, city, borough, town corporate, or place; and the money arising by such distress and sale shall be applied and disposed of for such purpose, and in like manner, as if sufficient goods and chattels of such person or persons had been found within the jurisdiction of the justice originally granting such warrant; and if no such distress can be found, such offender or offenders shall and may be forthwith proceeded against according to law."

Justices not accountable for irregularities.

Sect. 5. "That no justice who shall indorse any certificate upon, or authorise the execution of any such warrant of distress, which may not have been granted within his jurisdiction, shall be answerable or accountable for any irregularity which may have been committed or done in or about the obtaining or granting of such warrant of distress."

Forms.

(No. 1.)

Precept from justices in sessions to collect a county rate. (a)

To the High Constable of the hundred of , in the county of .

County of } *WE the under mentioned justices, in his Majesty's name, hereby command you, within days after receipt hereof, to demand, collect, and receive of and from the overseers of the poor, and other persons appointed to act as such, of the several parishes and places hereunder named, (being within your said hundred,) the several and respective sums of money hereunder set down and expressed opposite to and against the names of such parishes and places; the said several sums being respectively charged and assessed thereon in and by a rate or order made at the last general quarter sessions of the peace held at , in and for the said county, for and towards one general rate or assessment made for raising such sum and sums of money within the hundred of , in the said county, as may be sufficient to answer the several county charges, expenses, and purposes, to which the public stock of the county is applicable by law; and you are hereby also commanded, that upon the receipt of the said several sums of money, you do pay the same at or before the next general quarter sessions of the peace to be held at , in and for the said county, into the hands of C. T. Esquire, the treasurer appointed to receive the same. And if any of the overseers of the poor, or other persons appointed to act as such, of the said several parishes and places, shall refuse or neglect to pay the same within days next after you shall have demanded the same in writing given to the said churchwardens or overseers of the poor, or any of them, or left at their or any of their dwellinghouse or houses, or affixed on any of the church doors of such parishes or places to which such overseers, or persons appointed to act as such, shall belong, that then you inform us, or some other of his Majesty's justices of the peace in and for the said county thereof, that such further proceedings may be had and taken as the law directs. And herein fail not at your peril. Given under our hands and seals, at , in the said county, the day of , in the year of our Lord one thousand eight hundred and .*

J. P.
R. S.

[Here follows a list of the parishes and places above referred to, and the sums charged and assessed thereon.]

(a) See the 55 Geo. III. c. 51, s. 12, *ante*, 932, and the 12 Geo. II. c. 29, *ante*, 921. By the 55 Geo. III. c. 51, s. 5, *ante*, 929, where there are no high constables, other constables may levy the rates.

(No. 2.)

High constable's warrant thereon to levy the rate, directed to the churchwardens, &c.

County of } *To the Overseers of the Poor of the township* [or *parish*] *of* , *in the said county.*

BY virtue of an order of his Majesty's justices of the peace in and for the said county, in their general [or *quarter*] *sessions assembled, you are hereby required in days' time from your receipt of this precept, or otherwise having had due notice thereof, to pay to me out of the money by you collected or to be collected for the relief of the poor, the sum of , being the proportion of your said township* [or *parish*] *for and towards the general county rate. And herein you are not to fail, on the peril that shall ensue thereof. Given under my hand the day of in the year of our Lord one thousand eight hundred and .*

J. B. High Constable.

Or, in the northern counties, the justices, if they think fit, instead of ordering the money to be paid by the churchwardens and overseers, may order it to be paid by the petty constables; and then the high constable's precept to the petty constables may be thus:

The like to the petty constables.

County of } *To the Constable of the township* [or *parish*] *of* , *in the said county.*

BY virtue of an order from his Majesty's justices of the peace in and for the said county, in the general [or *quarter*] *sessions assembled, you are hereby required to raise the sum of within your constablewick, for which you are to make an equal rate within your said constablewick, and to levy the same in such manner as money for the relief of the poor is by law to be rated or levied; which said sum you are to pay unto me in thirty days' time from your receipt of this precept, or otherwise having had due notice thereof; the same being the proportion of your said constablewick, for and towards the general county rate. And herein you are not to fail, on the peril that shall ensue thereof. Given under my hand the day of in the year of our Lord one thousand eight hundred and .*

J. B. High Constable.

(No. 3.)

Summons of high constable for not paying county rate to the treasurer. (a)

County of } *To J. B. High Constable of the hundred of , in the county of .*

WHEREAS information and complaint have been made before us J. P. and L. S. two of his Majesty's justices of the peace in and for the said county, by A. B. gentleman, treasurer of the public stock of the said county, that you, the said J. B. have neglected and refused to pay to the said A. B. the sum of £ , being the amount now due and owing from you to the public stock of the said county, and which said sum of £ has or ought to have been received and levied by you from the overseers of the poor of the respective parishes and townships within your said hundred of .

These are therefore to summon you, the said J. B., to appear before us or others of his Majesty's justices of the peace in and for the said county, at , in the said county, on the day of next, at the hour of in the forenoon, to answer to the said information and complaint, and to be further dealt with according to law. Given under our hands and seals the day of, &c.

(No. 4.)

Summons of overseers for not paying the county rate to high constable. (a)

County of } *To C. D. and E. H. Overseers of the Poor of the township* [or *parish*] *of , in the said county.*

WHEREAS information and complaint have been made before me J. P. one of his Majesty's justices of the peace in and for the said county, by J. B. high constable of the hundred of , in the said county, that you the said overseers of the poor of the said township [or *parish*] *of were in pursuance of his warrant, for that purpose to you directed, ordered and required to levy, collect, and pay to the said J. B. the sum of , within the space of days from the receipt* [or *date*, as the case may be] *of the said warrant, being the proportion of your said township* [or *parish*] *for and towards the general county rate, and that you, the said overseers* [*although*

(a) See the 55 Geo. III. c. 51, s. 12, *ante*, 932.

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you received the said warrant on, &c.] have refused and neglected, and do refuse to pay the same:

These are therefore to summon you, the said overseers, to appear before me or some other of his Majesty's justices of the peace in and for the said county, at , in the said county, on next, at the hour of in the forenoon, to answer to the said information and complaint, and to show cause why a warrant of distress should not issue forthwith to levy the said sum of upon your goods and chattels, according to the directions of the statute in such case made and provided. Given under my hand and seal the day of , in the year of our Lord one thousand eight hundred and . J. P.

(No. 5.)

Warrant of distress thereon.

County of } To the High Constable of the hundred of , in the said county
} of .

WHEREAS at the general [or quarter] sessions of the peace, holden in and for the said county of , on, &c. a rate or assessment was duly made, pursuant to the statute made and passed in the fifty-fifth year of the reign of his late Majesty King George the Third, for the purpose therein in that behalf mentioned; and the township [or parish] of , in the said county, was thereby duly rated and assessed in the sum of £ of lawful money of Great Britain; and whereas by virtue of an order of his Majesty's justices of the peace of the said county, in their general [or quarter] sessions assembled, on, &c. a warrant was duly issued to you the high constable of the hundred of , in the said county, ordering and requiring you to issue your warrant to the overseers of the poor of the said township [or parish] to levy, collect, and pay the said rate or assessment of £ to you, the said high constable, within the space of then next following, and which you were thereby directed to pay within the space of into the hands of the treasurer of the said county, to be applied and disposed of in the manner and for the purposes in the said warrant in that behalf mentioned; and whereas the said overseers have neglected and refused, and still neglect and refuse to pay the same to you, the said high constable, and you have thereof made complaint to [me] J. P. Esquire, one of his Majesty's justices of the peace in and for the said county; and whereas C. D. and E. F. the overseers of the poor of the said township [or parish] having appeared before me in pursuance of my summons for that purpose, have not showed to me any sufficient cause why the same should not be paid: these are therefore to require you forthwith to make distress of the goods and chattels of them the said overseers, and if within the space of days next after such distress by you taken, the sum of £ together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you detain the said sum of £ and also your reasonable charges of taking, keeping, and selling the said distress, rendering to them, the said overseers, the overplus on demand. Given under my hand and seal, at , this day of, &c. J. P.

County Treasurer.

[11 Geo. II. c. 20; 12 Geo. II. c. 29; 55 Geo. III. c. 51.]

Treasurer how chosen.

BY the 12 Geo. II. c. 29, s. 6, the treasurers of counties shall be persons resident in the county or division, and shall be appointed by the justices at their general or quarter sessions; first giving sufficient security to be accountable for the money which shall be paid to them in pursuance of this act, (for levying of county rates,) and to pay such sums as shall be ordered by the justices in sessions, and for the due and faithful execution of the trust reposed in them.

A *quo warranto* will not lie against a county treasurer to show by what authority he holds the office, if he has been *de facto* elected by the justices in quarter sessions; nor will mandamus lie to the justices in sessions to make a new election of a county treasurer, on the ground that one of the justices

who had voted at the election had not taken the qualification oath prescribed by stat. 18 Geo. II. c. 20, prior thereto, for the acts of the justice are not void, although he may be liable to penalties. *R.* v. *Js. Herefordshire, and a Treasurer of the same*, 1 *Chitt. Rep.* 709; and see *Margate Pier Co.* v. *Hannam*, 3 *B. & Ald.* 266, *post*, Vol. III. p. 457.

The 11 Geo. II. c. 20, s. 3, which requires his election to be certified into the Court of King's Bench, is repealed by the 53 Geo. III. c. 113, s. 1.

Continuance in his office.

By the 12 Geo. II. c. 29, s. 12, the justices at general or quarter sessions may continue the treasurer from time to time in his office, and remove him at their pleasure, and appoint another in his place; and may allow him a salary not exceeding 20*l.* a-year, to be paid out of the county rates. See the 55 Geo. III. c. 51, s. 17, *infra*, as to his salary.

His account.

By sect. 7 & 8. And the treasurer shall keep books of entries of the several sums by him received and paid; and shall deliver in a true and exact account upon oath, if required, of his receipts and disbursements, distinguishing the particular uses to which the several sums have been applied, to the justices at every general or quarter sessions, and shall lay before them the proper vouchers for the same; which accounts and vouchers, after having been passed by the said justices, shall be deposited with the clerk of the peace, to be kept amongst the records, to be inspected by any of the justices without fee.

His discharge.

Sect. 9. And the discharge of the justices, by their order at their general or quarter sessions, shall be a sufficient release and discharge to such treasurer.

His salary.

By the 55 Geo. III. c. 51, s. 17. "And whereas the allowance which the justices of the peace are authorised to make to the treasurer or treasurers for his or their care and pains in the execution of his or their office, stands limited by the before recited act made in the twelfth year of the reign of his Majesty King George the Second, to a sum not exceeding twenty pounds a-year; and whereas such sum has been in some, and may be found in many cases inadequate to remunerate him or them for such care and pains; be it hereby further enacted, that so much of the said act as limits the said allowance to twenty pounds a year is hereby repealed; and that it shall and may be lawful for the said justices of the peace, at their respective general or quarter sessions, or the greater part of them then and there assembled, to allow to the treasurer or treasurers of their counties, and to every of them insisting on the same, such reasonable sum or sums of money for such purpose as aforesaid, as they in their discretion shall think fit, of which they are hereby empowered to direct the payment out of the monies arising by the rates of their respective counties: provided always, that no such augmentation of allowance shall be made at any such general or quarter sessions, unless application for such augmentation shall have been made by the said treasurer or treasurers, or* the justices of the peace, at some previous general or quarter sessions assembled, and unless notice of the intention of taking the said augmentation into consideration shall have been advertised for three successive weeks in some newspaper usually circulating in such county, in the month immediately preceding the time fixed for considering the same."

* Sic.

Notice to be advertised in some county newspaper for three successive weeks in the month preceding time fixed for considering same.

Treasurers to publish once in every year an abstract of their accounts.

Sect. 18. "That the said several treasurers of counties, or of divisions of counties, shall and they are hereby required, once in every year, to publish in some one of the newspapers usually circulating in the county or division of the county in which they respectively act, a true and accurate abstract of the account of their receipts and expenditures, under their several heads, for the year immediately preceding the publication of such abstract, signed by the justices of the peace who shall have audited the same, under a penalty of fifty pounds for every omission of such publication."

Treasurer's bond.

The condition of a bond, after reciting that the obligor had been nominated treasurer and receiver of the rates and assessments made for the county, upon his giving security to the clerk of the peace for the due and faithful execution of the trusts reposed in him, according to the statute, was, that the obligor should, when he was thereto required by the justices of the peace assembled at quarter sessions, or the major part of them, or by any com-

COUNTY TREASURER.

mittee of the said magistrates duly appointed for that purpose by any order of the said court of quarter sessions now made or hereafter to be made, well and truly account for all sums of money received by him by reason or on account of his office, and also should faithfully perform all the trusts reposed in him by virtue of his said appointment; it was held, that by the condition of this bond the county treasurer was bound to account for monies received by him in discharge of duties imposed on him by acts of parliament passed either prior or subsequently to the 12 Geo. 2, c. 29, which required that the county treasurer should give sufficient security to be accountable for the money paid to him in pursuance of that act, and for the due and faithful execution of the trusts reposed in him, and that a breach of the condition was sufficiently assigned, which stated that the defendant while he was treasurer received divers sums of money, and that he was required by the justices at sessions to account, but did not do so, it being unnecessary to allege that he had been required by an order of the court of quarter sessions, the words in the condition of the bond, "by any order of the said court of quarter sessions now made or hereafter to be made," applying only to the appointment of a committee, and not to the requisition by the justices to account. *Farr* v. *Hollis*, 9 *B. & Cres.* 315; and see the other points decided in this case, *post*, tit. **Military Law, Militia**, Vol. III. p. 852.

For the various duties and trusts of the county treasurers, see the title throughout this work.

Courts.

As to proof of proceedings in, see *post*, **Evidence**, Vol. II. p. 42 to 55; as to the county court, see *ante*, **County Court**; as to the court-baron, see *ante*, **Baron Court**; as to the court-leet, see **Leet**, Vol. III.; as to the sheriff's tourn, see **Tourn**, Vol. V.; as to the court of sessions, see **Session**, Vol. V.

Where the word *courts* is used generally in a statute, it must be taken to mean the King's courts at Westminster. *Gregory's case*, 6 *Rep.* 20, and 1 *B. & Ald.* 282.

Criminal Information.

See post, **Information, Justices**, Vol. III. p. 481 to 486.

Credible Witnesses.

See post, **Evidence**, Vol. II. p. 78 to 81.

Customs.

The laws relating to the customs, so far as justices of the peace, constables, and other such officers are concerned therein, being considerably connected with the laws of excise, it is thought proper to refer this subject to the title **Excise**, Vol. II., where the whole will be more clearly comprehended under one view.

As to customs and usages in general, see *post*, Vol. V. p. 634 to 636.

As to the proof of custom and usage, see **Evidence**, Vol. II. p. 31.

Custos Rotulorum.

[37 Hen. VIII. c. 1; 3 & 4 Edw. VI. c. 1; 1 Will. III. c. 21.]

THE *custos rotulorum* is he that hath the keeping of the rolls or records of the sessions. (*a*) He is always a justice of the peace and *quorum* in the county where he hath his office. He is a man, for the most part, especially picked out either for wisdom, countenance, or credit. He is the principal *civil* officer in the county, as the *lord lieutenant* is the chief in *military* command. 4 *Blac. Com.* 272. His office is quite distinct from that of the lord lieutenant. He is considered rather in the character of a minister than a judge. *Dick. Sess.* 31. Who is, and his office.

By stat. 37 Hen. VIII. c. 1, (which was altered by stat. 3 & 4 Edw. VI. c. 1, but restored by stat. 1 Will. III. c. 21,) no person shall be appointed to the office of *custos rotulorum*, but such as shall have a bill signed with the King's hand for the same; which bill signed shall be a sufficient warrant to the lord chancellor to make a commission, assigning and authorising thereby the same person to be *custos rotulorum*, until the King hath by another bill with his own hand appointed one other person to have the same office by himself or his sufficient deputy, learned in the laws, and meet and able to supply the said office. How appointed.

In pursuance whereof, the last clause in the commission of the peace is generally to this effect: "Lastly, we have assigned you the aforesaid keeper of the rolls of our peace in our said county, and therefore you shall cause to be brought before you and your said fellows, at the days and places aforesaid, the writs, precepts, processes, and indictments aforesaid, that they may be inspected, and by a due course determined, as is aforesaid." See further the late case of *Harding* v. *Pollock*, 6 *Bing.* 25.

Where the manner of holding a special session is prescribed by the statute which directs it to be holden, the precise requisitions of the statute must of course be obeyed. Where no such direction is to be found, as in the great majority of instances, the special session may be convened at the instance of the *custos rotulorum* of the county, of the clerk of the peace or his deputy, or of two justices. *Dick. Sess.* 7; *post*, **Sessions, Special and Petty**, Vol. V. Convening session.

A general session may be convened by any two justices within the jurisdiction, one being of the *quorum*, or by the *custos rotulorum* and any one justice, but not by the *custos rotulorum* alone. *Lamb*, 375; *post*, **Sessions**, Vol. V.

The *custos rotulorum*, by virtue of his office, having the custody of the rolls of session, ought to attend there by himself or his deputy, who is the clerk of the peace. *Crown Circuit Comp.* 34. Ought to attend the sessions.

He is directed by statute to appoint a sufficient person, residing within the county, to execute the office of clerk of the peace by himself or sufficient deputy, such deputy being admitted by the *custos rotulorum* so often as the office of clerk of the peace shall be vacant. 37 Hen. VIII. c. 1, s. 3; and see the late important case of *Harding* v. *Pollock*, 6 *Bing.* 25, fully confirming the right of the *custos rotulorum* to appoint the clerk of the peace. Appointment of clerk of peace.

But he may not sell the said place directly or indirectly, under the penalty of losing his own office of *custos rotulorum*, and forfeiting double the value of what he shall have received, to be recovered by any common informer in the superior courts. 1 W. & M. ss. 1, c. 21, s. 8. Sale of office of clerk of peace.

(*a*) Yet so far they remain by reputation of law in custody of all the justices, that a certiorari to remove proceedings is directed to all. *Com. Dig. Justices*, (D. 4.)

Cutlers.

[59 Geo. III. c. 7.]

59 Geo. 3, c. 7.

THE stat. 59 Geo. III. c. 7, after reciting that "whereas knives, forks, razors, scissors, shears, and other cutlery wares, edge tools and hardware requiring a cutting edge, forged and formed of wrought steel, and iron and steel, have for many years been a great branch of trade in England; and such articles being esteemed in foreign countries for their superior quality, great quantities thereof have been sent to foreign markets: and whereas the practice prevails of casting or forming in a mould from cast iron, knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, and some of such articles are, by a chemical process, previous to the finishing and polishing thereof, made to resemble so nearly the like sort of articles wrought of steel and iron and steel, as scarcely to be distinguishable from wrought steel, and iron and steel, even by persons skilled in the manufactory of cutlery, edge tools and hardware;" enacts, sect. 1, "that from and after the passing of this act it shall be lawful for all and every person and persons who shall make, forge, form or manufacture, or cause, direct or procure to be made, forged, formed or manufactured, by means of the hammer, any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, of wrought steel, or of iron and steel, to mark, strike, stamp, grave, or impress, or cause, direct or procure to be marked, struck, stamped, graved or impressed, in or upon any part of every such knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, so forged and formed by means of the hammer, of wrought steel, and of iron and steel, the figure or form of a hammer, at any time, and not at any other time except as hereinafter provided, after the forging, and previous to the same respectively being ground or polished, so as to denote that such knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, are so formed by means of the hammer, of wrought steel, and iron and steel, and so as to distinguish the same articles from such articles cast or formed in a mould, or otherwise than by means of the hammer."

Where articles are formed by the hammer, manufacturers to have the privilege of marking them with the figure of a hammer.

Sect. 2. "That it shall be lawful for all and every person and persons who shall, on the passing of this act, have in his, her or their custody or possession, any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, made, forged, formed or manufactured by means of the hammer, of wrought steel, or of iron and steel, at any time within the space of six calendar months next after the passing of this act, to mark, strike, stamp, grave or impress, or cause, direct or procure to be marked, struck, stamped, graved or impressed, in and upon any part of such knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, so forged and formed by means of the hammer, of wrought steel, and of iron and steel, so in his, her or their possession, the figure or form of a hammer, so as to denote that such knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, were so formed by means of the hammer, of wrought steel, or of iron and steel, and so as to distinguish the same articles from such articles cast or formed in a mould, or otherwise than by means of the hammer."

Persons having manufactured articles in their possession empowered to mark the same with the figure of a hammer.

Sect. 3. "That from and after the passing of this act it shall not be lawful for any person or persons to cast, mark, strike, stamp, grave or impress, or cause, direct or procure to be cast, marked, struck, stamped, graved or impressed, in or upon any part of any knives, knife blades, forks, razors, razor blades, scissors, shears, or any other cutlery articles whatsoever, edge tools or hardware requiring a cutting edge, which shall be cast or formed in a mould,

Persons casting cutlery wares, edge tools, and hardware requiring a cutting edge, to mark the same with the figure of a hammer, &c.

or formed otherwise than by means of the hammer, either at the time of casting or forming such articles in the mould, or otherwise than by means of the hammer, or subsequently thereto, and previous to the *bonâ fide* sale thereof to the user, the figure or form of a hammer, or any symbol or device resembling a hammer, or having any similitude thereto, nor to have in his, her or their possession, for the purpose of sale, nor to sell, expose or offer to sale, or cause, direct or procure to be sold, exposed or offered to sale, any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, which shall have been cast or formed in a mould, or otherwise than by means of the hammer, having marked or struck thereon the figure or form of a hammer, or any symbol or device resembling a hammer, or having any similitude thereto; and all and every person and persons who shall cast, mark, strike, stamp, grave or impress, or cause, direct or procure to be cast, marked, struck, stamped, graved or impressed, in or upon any part of any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, which shall have been cast or formed in a mould, or otherwise than by means of the hammer, either at the time of casting or forming thereof, or subsequently thereto, and previous to the *bonâ fide* sale thereof to the user, the figure or form of a hammer, or any symbol or device resembling a hammer, or having any similitude thereto; or who shall have in his, her or their possession for the purpose of sale, or who shall sell, expose or offer to sale, or cause, direct or procure to be sold, exposed or offered to sale, any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, which shall have been cast or formed in a mould, or otherwise than by means of the hammer, having marked or struck thereon the figure or form of a hammer, or any symbol or device resembling a hammer, or having any similitude thereto, shall, in all and every the cases aforesaid, forfeit all and every such knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, having thereon the figure or form of a hammer, or any symbol or device resembling a hammer, or having any similitude thereto, together with the sum of *5l.* for any quantity not exceeding one dozen of such articles so marked, struck, sold or exposed to sale; and for any quantity of such articles exceeding one dozen, *5l.* for every one dozen thereof; such sum and sums respectively to be levied, recovered and applied as hereinafter directed."

59 Geo. 3, c. 7. or the words steel, shear steel, &c. or having in possession or selling, &c. such cast articles so marked.

Persons offending.

Penalty.

Sect. 4. "That from and after the passing of this act it shall not be lawful for any person or persons to cast, mark, strike, stamp, grave or impress, or cause, direct or procure to be cast, marked, struck, stamped, graved or impressed, in or upon any part of any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, forged and formed with the hammer, of wrought steel, or of iron and steel, or cast in a mould, either at the time of forging or casting such articles, or subsequently thereto, previous to the *bonâ fide* sale thereof to the user, any word or words which shall or may denote or indicate the quality of such articles to be otherwise than the real and true quality thereof; nor to have in his, her or their possession for the purpose of sale, nor to sell or expose or offer to sale, or cause, direct or procure to be sold, exposed or offered to sale, any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, forged and formed with the hammer, of wrought steel, and iron and steel, or cast in a mould, having marked thereon any word or words which shall or may denote or indicate the quality of such articles to be otherwise than the real and true quality thereof; and all and every person or persons who shall cast, mark, strike, stamp, grave or impress or cause or procure to be cast, marked, struck, stamped, graved or impressed, in or upon any part of any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, forged or formed with the hammer, of wrought steel,

No person to mark any knives, &c. forged with the hammer, or cast in a mould, with any words which shall indicate the quality to be otherwise than the true quality; or have in his possession any such articles improperly marked.

Persons offending.

CUTLERS.

59 Geo. 3, c. 7.

or iron and steel, or cast in a mould, either at the time of forging or casting, or subsequently thereto, previous to the *bonâ fide* sale thereof to the user, a word or words which shall or may denote or indicate the quality of such articles to be otherwise than the real and true quality; or who shall have in his, her or their possession for the purpose of sale, or shall sell, expose or offer to sale, or cause, direct or procure to be sold, exposed or offered to sale any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, forged and formed with the hammer, of wrought steel, or iron and steel, or cast in a mould, having thereon any word or words which shall or may denote or indicate the quality of such articles to be otherwise than the real and true quality thereof, shall, in all and every the cases aforesaid, forfeit all and every such knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge being marked, possessed, sold or exposed to sale, contrary to the directions of this act, together with the sum of *5l.* for any quantity not exceeding one dozen of such articles so marked, sold or exposed to sale; and for any quantity of such articles exceeding one dozen, *5l.* for every one dozen thereof such sum and sums respectively to be levied, recovered and applied as hereinafter directed."

Penalty.

No person to cast, mark, &c. any articles with the words "London," or "London made" thereon, except made within the city of London or a certain distance thereof, nor to have in possession, sell, &c. such articles.

Persons offending.

Sect. 5. "That from and after the passing of this act it shall not be lawful for any person or persons to cast, mark, strike, stamp, grave or impress, or cause, direct or procure to be cast, marked, struck, stamped, graved or impressed, in or upon any part of any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, forged and formed with the hammer, of wrought steel, or of iron and steel, or cast in a mould, either at the time of forging or casting such articles, or subsequently thereto, previous to the *bonâ fide* sale thereof to the user, the word or words "London," "London made," or any word or words having any similitude thereto, unless the articles so cast, marked, struck, stamped, graved or impressed, shall have been manufactured within the city of London, or within twenty miles distance therefrom: nor to have in his, her or their possession, for the purpose of sale, nor to sell, nor expose or offer to sale, or cause, direct or procure to be sold, exposed or offered to sale, any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, forged and formed with the hammer of wrought steel, or iron and steel, or cast in a mould, having marked thereon the word or words "London," "London made," or any word or words having any similitude thereto, unless the articles so cast, marked, struck, stamped, graved, or impressed, shall have been manufactured within the city of London, or within twenty miles distance therefrom; and all and every person or persons who shall cast, mark, strike, stamp, grave or impress, or cause or procure to be cast, marked, struck, stamped, graved, or impressed, in or upon any part of any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, forged or formed with the hammer, of wrought steel, or iron and steel, or cast in a mould, either at the time of forging or casting, or subsequently thereto, previous to the *bonâ fide* sale thereof to the user, the word or words "London," "London made," or any word or words having any similitude thereto, unless the articles so cast, marked, struck, stamped, graved or impressed, shall have been manufactured within the city of London, or within twenty miles distance therefrom; or who shall have in his, her or their possession, for the purpose of sale, or shall sell, expose or offer to sale, or cause, direct or procure to be sold, exposed or offered to sale, any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, forged and formed with the hammer, of wrought steel, or iron and steel, or cast in a mould, having thereon the word or words "London," "London made," or any word or words having any similitude thereto, unless the articles so cast, marked, struck, stamped, graved or impressed, shall have been manufac-

tured within the city of London, or within twenty miles distance therefrom, shall, in all and every the cases aforesaid, forfeit all and every such knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, being marked, possessed, sold or exposed to sale, contrary to the directions of this act, together with a sum of 10*l.* for any quantity not exceeding one dozen of such articles so marked, sold or exposed to sale; and for any quantity of such articles exceeding one dozen, 10*l.* for every dozen thereof; such sum and sums respectively to be levied, recovered and applied as hereinafter directed."

59 Geo. 3, c. 7.

Penalty.

Sect. 6. "That from and after the passing of this act, in case any person or persons shall have in his, her, or their possession, for the purpose of sale, or shall sell, expose, or offer for sale, or cause, direct or procure to be sold or offered for sale, any knives, knife blades, forks, razors, razor blades, scissors, shears, or any other cutlery articles whatsoever, edge tools and hardware requiring a cutting edge, formed with the hammer, or cast in a mould in a finished state, having marked thereon any word or words contrary to the directions of this act, shall, at or upon any information or complaint being laid or made against him, her, or them, prove satisfactorily, by the oath of himself or herself, or any other person, before one or more of his Majesty's justices of the peace, that such knives, knife blades, forks, razors, razor blades, scissors, shears, or any other cutlery articles whatsoever, edge tools and hardware requiring a cutting edge, were purchased or came into the possession of him, her, or them, or were made, formed, cast, or manufactured before the passing of this act, then and in such case the person or persons so having the said articles in a finished state in his, her, or their possession, for the purpose of sale, or selling, exposing or offering the same for sale, or causing, directing, or procuring the same to be sold or offered for sale, shall not be liable to the pains and penalties aforesaid."

Proviso for persons having in their possession, selling, &c. articles marked contrary hereto before the passing of this act.

Sect. 7. "That from and after the passing of this act, in case any person or persons shall have in his, her, or their possession, for the purpose of sale, or shall sell, expose, or offer for sale, or cause, direct, or procure to be sold or offered for sale, any knives, knife blades, forks, razors, razor blades, scissors, shears, or any other cutlery articles whatsoever, edge tools, or hardware requiring a cutting edge, cast or formed in a mould, or forged and formed with the hammer, which shall not have been made, formed, cast, or manufactured before the passing of this act, having marked thereon the figure or form of a hammer, or any word or words contrary to the directions of this act, shall, at or before any information or complaint shall be laid or made against him, her, or them, prove satisfactorily by the oath of himself, herself, or themselves, before one or more of his Majesty's justices of the peace, that he, she, or they purchased such articles, with the figure, words, or marks thereon respectively, without knowing at the time of such purchase that the same were articles marked contrary to the directions of this act, and shall discover to any two or more justices of the peace the name or names of the person or persons of whom he or she purchased the same, so that such person or persons shall be prosecuted to conviction for the same, then and in such case the person or persons who shall have in his, her, or their possession any of such articles as aforesaid, for the purposes aforesaid, shall not be liable to the pains and penalties aforesaid, but shall be entitled to two third parts of the penalty as other informers."

Proviso for persons having in their possession articles marked contrary to act, who shall, before information laid, prove upon oath the purchase without knowing that the articles were improperly marked.

Sect. 8. "That it shall and may be lawful to and for any two or more of his Majesty's justices of the peace for the county, city, or place where the offender or offenders shall reside, or where the offence shall be committed, to hear and determine any offence or offences against this act; and all such justices are hereby authorised and required, upon any information exhibited or complaint made in that behalf, to summon the party or parties accused, and the witnesses on each side, and to examine into the matter of such complaint; and upon due proof thereof, either by confession of the party complained of, or by the oath of one or more credible witness or witnesses, to give judgment or sentence for the pecuniary penalty, with costs, to be allowed

Two justices may determine offence.

One witness.

CUTLERS.

30 Geo. 3, c. 7.

Penalty recovered by distress.

If no distress, imprisonment.

by such justices, and to award and issue out their warrant under their hands and seals for the levying such penalty and costs on the goods and chattels of the offender or offenders, and to cause sale to be made thereof in case such goods and chattels shall not be redeemed within five days inclusive of the day of the seizure, rendering the overplus (if any,) after defraying the expenses of such distress and sale, to the person or persons whose goods and chattels shall have been so distrained and sold; and for want of a sufficient distress, such justices shall and may commit such offender or offenders to his Majesty's gaol for the county, city, or place, where such offence shall be committed as aforesaid, there to remain for any time not exceeding three calendar months, unless payment shall be sooner made of the said penalty and costs."

Appeal.

Sect. 9. "That if any person or persons shall think himself, herself, or themselves aggrieved by the judgment of such justices, he, she, or they may (upon giving security with a sufficient surety to the amount of the value of such penalty or penalties and costs, together with such further costs as shall be awarded in case such judgment shall be affirmed,) appeal to the next general quarter sessions of the peace for the county, city, or place where such conviction shall be made; and the justices at such sessions are hereby empowered to summon and examine witnesses on oath, and to hear and finally determine the matter of the said appeal, and to award such costs as the said court shall think reasonable to the party in whose favour such appeal shall be determined."

Costs.

Mitigation of penalties.

Sect. 10. "That it shall be lawful for any justices of the peace, before whom any information may be laid, and also for the said justices in quarter sessions assembled, (if they respectively should think fit,) to mitigate the said penalties in such manner as to them shall seem expedient; provided that such penalties shall in no case be mitigated to less than one half, or where such penalties shall be less than the sum of 50*l.* to less than 25*l.*

Proceedings not quashed for want of form only.

Sect. 11. "That no conviction made upon any offence or offences in this act mentioned or created, shall be set aside in or by any court whatsoever for want of form, or through the mistake of any fact, circumstance, or other matter whatsoever; provided that the material facts alleged in such conviction, and upon which the same shall be grounded, be proved to the satisfaction of the said court; any law, statute, or custom to the contrary notwithstanding."

Conviction.

Sect. 12. "That a conviction in the form and to the effect following, (*mutatis mutandis*), as the case may require, shall be good and effectual to all intents and purposes whatsoever, without further stating the case, or the facts or evidence in any particular manner; (that is to say,)

Form of conviction.

"BE it remembered, that on the day of in the year of our Lord at in the county of A. B. came before us C. D. and E. F. of his Majesty's justices of the peace for the said county, [city, or place, as the case may be,] and informed us, that G. H. of on the day of now last past, at in the said county, [city, or place, as the case may be; here set forth the fact for which the information is laid]. Whereupon the said G. H. after being duly summoned to answer the charges, appeared before us on the day of at in the said county, [city, or place,] and having heard the charge contained in the said information, declared he was not guilty of the said offence, [or, as the case may happen to be, did not appear before us, pursuant to the said summons, or, did neglect and refuse to make any defence against the said charge,] but the same being fully proved before us, upon the oath of J. K. a credible witness [or as the case may happen to be,] acknowledged and voluntarily confessed the same to be true; and it manifestly appeared to us, that the said G. H. is guilty of the offence charged upon him in the said information; we do therefore hereby convict him of the offence aforesaid, and do declare and adjudge that he the said G. H. hath forfeited the said [here describe the articles formed, cast, sold, or offered to sale, not being marked according to the directions of this act,] together with the sum of of lawful money of Great Britain, for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given under our hands and seals the day of ."

50 Geo. 3, c. 7.

Compelling the attendance of witnesses.

Sect. 13. "That if any person shall be summoned as a witness to give evidence before such justices of the peace, touching any of the matters relative to this act, either on the part of the informer or of the person or persons accused, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such his, her, or their neglect or refusal, to be allowed of by such justices of the peace, or appearing shall refuse to be examined on oath and give evidence before such justices, then every such person shall forfeit for every such offence the sum of 10*l.* to be levied and paid in such manner and by such means as are herein directed as to other penalties."

Justice by warrant may seize knives, &c. liable to be forfeited.

Sect. 14. "That it shall and may be lawful to and for any justice of the peace of the county, city, or place where the offence is committed, or where the offender or offenders reside, by warrant under his hand and seal, to cause any such knives, knife blades, forks, razors, razor blades, scissors, shears, or any other cutlery articles whatsoever, edge tools or hardware requiring a cutting edge, as shall be liable to be forfeited by virtue of this act, to be seized, and the same when seized to keep in safe custody, for the purpose of producing the same in evidence upon any prosecution to be instituted or carried on for the pecuniary penalties incurred in respect thereof; and when and as soon as the further production thereof in evidence shall become unnecessary, then the same shall, by order of such justices, be destroyed, or disposed of in any manner as the court before which such articles shall be produced may direct."

Produced in evidence, and then court may dispose thereof.

Limitation of informations.

Sect. 15. "That no information shall be exhibited for any of the offences aforesaid, unless within the space of six calendar months after the commission of such offences respectively."

Application of penalties.

Sect. 16. "That one third part of the pecuniary penalties to be recovered as aforesaid shall be paid and payable to the poor of the parish, township, or place where the offence shall be committed, and the other two third parts of such penalties to the person or persons who shall inform of any the offences aforesaid."

Parishioners may be witnesses.

Sect. 17. "That in all informations, complaints, and other proceedings, in pursuance of this act, or in relation to any matter or thing herein contained, any inhabitant of the parish, township, or place in which any offence or offences shall be committed, contrary to the true intent and meaning of this act, shall be admitted to give evidence, and shall be deemed competent witnesses, notwithstanding his, her, or their being an inhabitant or inhabitants of the parish, township, or place, wherein any such offence or offences shall be supposed to have been committed."

Persons disclosing by whose order any thing punishable under act was done, not liable to penalty.

Sect. 18. "That in case any person or persons who shall be liable to any of the penalties aforesaid, by reason of any thing done by him, her, or them, under the order, direction, or procurement of any other person or persons, shall, before any information or complaint shall be laid or made against him, her, or them, discover to any two or more justices the name or names of the person or persons by whose order, direction, or procurement he, she, or they shall have done such act, which shall have made him, her, or them liable to any of the penalties, so that the person or persons, by whose order, direction, or procurement, he, she, or they shall have done such act, shall be prosecuted to conviction for the same, then and in such case such person or persons who shall give such information, or make such complaint, shall not be liable to the pains and penalties aforesaid, but shall be entitled to two third parts of the penalty as other informers."

Servants in.

See further as to cutlers and artificers in the cutlery trade, title, **Servant**, Vol. V.

Cyder. *See ante*, Alehouses; *post*, Excise, Vol. II.

Dancing. *See* Disorderly Houses, *post*, p. 958.

Dead Bodies. *See ante*, Burial; Church, p. 615.

Deaf Witness. *Examination of, post*, Evidence, Vol. II. p. 86.

Death, Sentence of. *See* Judgment, Vol. III. p. 399 Felony, Vol. II.; *Proof of, see* Evidence, Vol. II. p. 31.

Death-bed Declarations. *Evidence of, see* Evidence, Vol. II. p. 33, 34.

Debtors. *See ante*, Bankrupt; Gaol, Vol. II.; Insolvent Debtors, Vol. III.

Deceit. *See ante*, Cheat.

Decency. *See ante*, Bathing; Lewdness, Vol. III.

Declarations. *See* Evidence, Vol. II. p. 29 to 33.

Decree. *Proof of. Post*, Evidence, Vol. II. p. 46.

Deed. *Proof of. Post*, Evidence, Vol. II. p. 56 to 62.

Deer. *See* Game, Vol. II.

Defamation. *See* Libel, Vol. III.; Slander, Vol. V.

Defence. *See ante*, Assault and Battery, p. 270; Homicide, Vol. III. p. 247; Sessions, Vol. V. p. 465; Trial, Vol. V.

Defendant. *When a Co-Defendant a competent Witness. Post*, Evidence, Vol. II. p. 77.

Demurrer.

A DEMURRER (from *demorari*) signifies an abiding in point of law, upon which the defendant joins issue, allowing the *facts* to be true as laid in the indictment. *Wood's Inst.* b. 4, c. 5.

In criminal cases, *not capital*, if the defendant demur to an indictment, &c., whether in abatement or otherwise, the court will not give judgment against him to answer over, but final judgment, 2 *Hawk.* c. 31, s. 7; *R.* v. *Gibson*, 8 *East*, 112; but in *capital* cases this seems otherwise. See 2 *Hawk.* by *Curwood*, c. 31, s. 5.

Demurrers, however, to indictments are seldom used; since the same advantages may be taken from a plea of not guilty; or oftentimes afterwards in arrest of judgment, when the verdict has established the fact. 4 *Bla. Com.* 334. See *post*, **Indictment**, Vol. III. p. 352, the stat. of 7 Geo. IV. c. 64, s. 20, as to what defects are cured after verdict, and must be demurred to, if defendant intends taking advantage of them.

As to amendments, see *ante*, **Amendment**.

As to demurrers to evidence, *post*, **Evidence**, Vol. II. p. 92.

(No. 1.)

Demurrer to an indictment or information.

AND the said C. D., in his own proper person, cometh into court here, and having heard the said indictment [or *information*] *read, saith that the said indictment* [or *information*] *and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law, and that he the said C. D. is not bound by the law of the land to answer the same: and this he is ready to verify. Wherefore, for want of a sufficient indictment,* [or *information*] *in this behalf, the said C. D. prays judgment, and that by the court here he may be dismissed and discharged from the said premises in the said indictment* [or *information*] *specified.*

(No. 2.)

Joinder.

AND A. B., who prosecutes for our said Lord the King in this behalf, saith, that the said indictment, and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law to compel the said C. D. to answer the same; and the said A. B., who prosecutes as aforesaid, is ready to verify and prove the same, as the court here shall direct and award. Wherefore, inasmuch as the said C. D. hath not answered to the said indictment, nor hitherto in any manner denied the same, the said A. B., for our said Lord the King, prays judgment, and that the said C. D. may be convicted of the premises in the said indictment specified.

The like form, *mutatis mutandis*, may be adopted in the case of informations, and of indictments in the Court of King's Bench.

(No. 3.)

Demurrer to a plea in bar.

AND A. B., who prosecutes for our said Lord the King in this behalf, as to the said plea of the said C. D. by him above pleaded, saith, that the same, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude our said Lord the King from prosecuting the said indictment against him the said C. D.; and that our said Lord the King is not bound by the law of the land to answer the same: and this he the said A. B., who prosecutes as aforesaid, is ready to verify. Wherefore, for want of a sufficient plea in this behalf, the said A. B., for our said Lord the King, prays judgment, and that the said C. D. may be convicted of the premises in the said indictment specified.

The like forms, *mutatis mutandis*, may be adopted in the case of informations and of indictments in the Court of King's Bench. A demurrer to a plea in abatement in the same form, except that it concludes with praying *judgment, and that the said indictment may be adjudged good, and that the said C. D. may further answer thereto, &c.*

FORM.

(No. 4.)

Joinder.

AND the said C. D. saith, that his said plea by him above pleaded, and the matter therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude our said Lord the King from prosecuting the said indictment against him the said C. D.; and the said C. D. is ready to verify and prove the same, as the said court here shall direct and award. Wherefore, inasmuch as the said A. B. for our said Lord the King hath not answered the said plea, nor hitherto in any manner denied the same, the said C. D. prays judgment, and that by the court here he may be dismissed and discharged from the said premises in the said indictment specified.

The joinder is the same, if the demurrer be to a plea in abatement, except that it concludes with praying *judgment, and that the said indictment may be quashed, &c.*

Deodand.

What it is.

DEODAND is, when any movable thing inanimate, or beast animate, doth move to or cause the untimely death of any reasonable creature, by mischance, without the will or fault of himself, or any person. 3 *Inst.* 57.

By deodand is meant whatever personal chattel is the immediate occasion of the death of any reasonable creature, which is forfeited to the King, to be applied to pious uses, and distributed in alms by his high almoner, though formerly destined to a more superstitious purpose. It seems to have been originally designed, in the blind days of popery, as an expiation for the souls of such as were snatched away by sudden death, and for that purpose ought properly to have been given to Holy Church, in the same manner as the apparel of a stranger, who was found dead, was applied to purchase masses for the good of his soul. And this may account for that rule of law, that no deodand is due, where an infant under the age of discretion is killed by a fall *from* a cart, or horse, or the like, not being in motion; whereas if an adult person falls from thence and is killed, the thing is certainly forfeited. 1 *Bla. Com.* 300.

This forfeiture is still part of the casual revenue of the crown, unless where lords of franchises are entitled to it by *grant;* for no man can *prescribe* to it, or to the goods of self-murderers or other felons, or of out-laws, happening within his royalty. *Fost.* 265.

Infant killed.

It seems clearly settled, contrary to the former opinions, that a horse, or the like, killing an *infant* within the age of discretion, is as much forfeited as if he were of age. 1 *Hawk.* c. 26, s. 4.

Things fixed to the freehold.

Also it was anciently holden, that things *fixed to a freehold*, as the wheel of a mill, or a bell hanging in the steeple, may be deodands; but by the later resolutions they cannot, unless they were severed before the accident happened. 1 *Hawk.* c. 26, s. 5.

Falling from the shafts of a waggon.

If a man riding on the shafts of a waggon fall to the ground and break his neck, the horses and waggon only are forfeited, and not the loading, because it *no way* contributed to his death; for which reason, where a thing not in motion causes a man's death, that part thereof *only* which is the immediate cause is forfeited. As where one climbing upon the wheel of a cart while it stands still, falls from it, and dies of the fall, the wheel only is forfeited. But if he had been killed by a bruise from one of the wheels being in motion, the loading also would have been forfeited, because the weight thereof made the hurt thereof the greater. And it is a general rule, that wherever the thing which is the occasion of a man's death is in motion at the time, not only that part thereof which immediately wounds him, but all things which move together with it, and help to make the wound more dangerous, *are forfeited also*. *Id.* s. 6. Thus a cart met a loaded waggon upon the road, and the cart endeavouring to pass by the waggon was driven up a high bank and overturned, and threw a person that was in the cart just be-

fore the wheels of the waggon, and the waggon ran over him and killed him: it was resolved in this case that the cart, waggon, loading, and all the horses were deodands, because they all moved to the death. 1 *Salk.* 220.

Accidents out of common law jurisdiction.

No deodands are due for accidents which happen out of the jurisdiction of the common law, as where a man falls from a ship in salt water and is drowned; 1 *Hawk.* c. 26, s. 6; but if a man fall from a ship or boat in fresh water and be drowned, the vessel is forfeited. *Id.*; 1 *Com.* 302.

Year and day.

If the party wounded die not of his wound within a year and day after he received it, there shall be nothing forfeited; for the law doth not look on such a wound as the cause of a man's death, after which he lives so long. But if the party die within that time, the forfeiture shall have relation to the wound given, and cannot be saved by any alienation or other act whatsoever in the mean time. 1 *Hawk.* c. 26, s. 7.

Must be first found by the coroner's inquest.

However, nothing can be forfeited as a deodand, nor seized as such, till it be found by the coroner's inquest to have caused a man's death. But after such inquisition, the sheriff is answerable for the value of it, and may levy the same on the town where it fell, and therefore the inquest ought to find the value of it. *Id.* s. 8.

And if the coroner omits his duty in this case, the inquisition may be made by the commissioners of the gaol delivery, oyer and terminer, or of the peace. 1 *Hale*, 419.

Mitigation of forfeitures.

After all, as this forfeiture seemeth to have been originally founded rather in the superstition of an age of ignorance than in the principles of sound reason and policy, it has not of late years met with great countenance in Westminster-hall; and when juries have taken upon them to use a judgment of discretion, not strictly within their province, for reducing the *quantum* of the forfeiture, the Court of King's Bench have refused to interpose in favour of the crown or lord of the franchise. In the case of *R.* v. *Rolfe*, coroner of Kent, H. 5 Geo. II., the coroner's inquest found that a man sitting on his waggon accidentally fell to the ground, and that the horses drawing the waggon forward one of the fore-wheels crushed his head, of which he instantly died, and then concluded that only the wheel, on which they set a small value, moved to his death. A motion was made, in behalf of Mr. Monpesson, lord of the franchise, for quashing this inquisition, upon affidavits tending to show that the cart and horses were equally instrumental, which indeed the finding of the jury did sufficiently imply. But the court was very clear that neither this court nor the coroner can oblige the jury to conclude otherwise than they have done, and would not suffer the affidavits for quashing the inquisition to be read. A like cause came on, M. 29 Geo. II., *R.* v. *Drew*, coroner of Middlesex. The coroner's jury, upon view of the body of a person killed by the like accident, found that only one wheel of the waggon moved to the death. The court, on motion, in behalf of the lord of the franchise, granted a rule for showing cause why the inquisition should not be quashed for this misbehaviour of the jury. On the day for showing cause, the counsel for the lord of the franchise informed the court that upon looking into precedents he was satisfied he could not support the rule; and thereupon it was discharged. The case of *R.* v. *Rolfe* was mentioned on this occasion, and greatly relied on. 2 *Bac. Abr.* 294; *Fost.* 266.

These forfeitures are now generally mitigated to something very trifling.

Depositions. *See* **Coroners**, *ante*, p. 878; **Examination**, Vol. II. p. 97, 98; **Evidence**, Vol. II. p. 46, 53.

DISORDERLY HOUSE.

Deputy. *See ante,* **Constable,** p. 795; **Coroner,** p. 874; **Justices,** Vol. III. p. 446.

Deserter. *See* **Military Law,** Vol. III. p. 786.

Detainer. *See* **Forcible Detainer,** Vol. II.; *see also ante,* **Arrest**; **Commitment.**

Dice. *See ante,* **Cards and Dice**; **Gaming,** Vol. II.

Disorderly House.

25 Geo. 2, c. 36.

BY the 25 Geo. II. c. 36, (made perpetual by 28 Geo. II. c. 18,) sect. 1 reciting, "'the multitude of places of entertainment for the lower sort of people is another great cause of thefts and robberies, as they are thereby tempted to spend their small substance in riotous pleasures, and in consequence are put on unlawful methods of supplying their wants, and renewing their pleasures:' in order therefore to prevent the said temptation to thefts and robberies, and to correct as far as may be the habit of idleness, which is become too general over the whole kingdom, and is productive of much mischief and inconvenience:" it is enacted, "that from and after the 1st day of December, 1752, any house, room, garden, or other place kept for public dancing, music, or other public entertainment of the like kind, in the city of London and Westminster, or within twenty miles thereof, without a license had for that purpose from the last preceding Michaelmas quarter sessions of the peace, to be holden for the county, city, riding, liberty or division in which such house, room, garden, or other place is situate, (who are hereby authorised and empowered to grant such licenses as they in their discretion shall think proper,) signified under the hands and seals of four or more of the justices there assembled, shall be deemed a disorderly house or place: and every such license shall be signed and sealed by the said justices in open court, and afterwards be publicly read by the clerk of the peace, together with the names of the justices subscribing the same; and no such license shall be granted at any adjourned sessions; nor shall any fee or reward be taken for any such license: and it shall and may be lawful to and for any constable, or other person, being thereunto authorised, by warrant under the hand and seal of one or more of his Majesty's justices of the peace of the county, city, riding, division, or liberty where such house or place shall be situate, to enter such house or place, and to seize every person who shall be found therein, in order that they may be dealt with according to law: and every person keeping such house, room, garden, or other place, without such license as aforesaid, shall forfeit the sum of 100*l.* to such person as will sue for the same; and be otherwise punishable as the law directs in cases of disorderly houses."

Unlicensed places of entertainment deemed disorderly houses.

Constables may seize persons found there.

Person keeping the same to forfeit 100*l.*

Sect. 3 enacts, "that in order to give public notice what places are licensed pursuant to this act, there shall be affixed and kept up in some notorious place over the door or entrance of every such house, room, garden, or other place, kept for any of the said purposes, and so licensed as aforesaid, an inscription in large capital letters, in the words following, *viz.* LICENSED PURSUANT TO ACT OF PARLIAMENT OF THE TWENTY-FIFTH OF KING GEORGE THE SECOND; and that no such house, room, garden, or other place, kept for any of the said purposes, although licensed as aforesaid, shall be open for any of

Licensed places to have an inscription over them,

and not to open before five in the evening.

25 Geo. 2, c. 36.

he said purposes before the hour of five in the afternoon; and that the affixing and keeping up of such inscription as aforesaid, and the said limitation or restriction in point of time, shall be inserted in, and made conditions of, every such license; and in case of any breach of either of the said conditions such license shall be forfeited, and shall be revoked by the justices of peace in their next general or quarter sessions, and shall not be renewed; nor shall any new license be granted to the same person or persons, or any other person on his or their or any of their behalf, or for their use or benefit, directly or indirectly, for keeping any such house, room, garden, or other place, for any of the purposes aforesaid."

On breach of either of the conditions, the license to be revoked.

Sect. 4 provides, "that nothing in this act contained shall extend, or be construed to extend, to the theatres royal in Drury Lane and Covent Garden, or the theatre commonly called the King's Theatre in the Haymarket, or any of them; nor to such performances and public entertainments as are or shall be lawfully exercised and carried on under or by virtue of letters-patent, or license of the crown, or the license of the lord chamberlain of his Majesty's household; any thing herein contained notwithstanding."

Places licensed by the crown, or the lord chamberlain, excepted.

Sect. 5, reciting, "that in order to encourage prosecutions against persons keeping bawdy-houses, gaming-houses, or other disorderly houses," enacts, "that if any two inhabitants of any parish or place, paying scot and bearing lot therein, do give notice in writing to any constable (or other peace officer of the like nature, where there is no constable) of such parish or place, of any person keeping a bawdy-house, gaming-house, or any other disorderly house, in such parish or place, the constable, or such officer as aforesaid, so receiving such notice, shall forthwith go with such inhabitants to one of his Majesty's justices of the peace of the county, city, riding, division, or liberty in which such parish or place does lie; and shall, upon such inhabitants making oath before such justice, that they do believe the contents of such notice to be true, and entering into a recognizance in the penal sum of 20*l.* each, to give or produce material evidence against such person for such offence, enter into a recognizance in the penal sum of 30*l.*, to prosecute with effect such person for such offence at the next general or quarter sessions of the peace, or at the next assizes to be holden for the county in which such parish or place does lie, as to the said justice shall seem meet; and such constable or other officer shall be allowed all the reasonable expenses of such prosecution, to be ascertained by any two justices of the peace of the county, city, riding, division, or liberty where the offence shall have been committed, and shall be paid the same by the overseers of the poor of such parish or place; and in case such person shall be convicted of such offence, the overseers of the poor of such parish or place shall forthwith pay the sum of 10*l.* to each of such inhabitants; and in case such overseers shall neglect or refuse to pay to such constable or other officer such expenses of the prosecution as aforesaid, or shall neglect or refuse to pay, upon demand, the said sums of 10*l.* and 10*l.*, such overseers, and each of them, shall forfeit to the person entitled to the same double the sum so refused or neglected to be paid."

Constable's duty upon notice of persons keeping a bawdy-house, gaming-house, &c.

The charges of prosecution,

and 10*l.* on conviction to each of the two inhabitants, to be paid by the overseers, on penalty of forfeiting double.

Sect. 6. "That upon such constable or other officer entering into such recognizance to prosecute as aforesaid, the said justice of the peace shall forthwith make out his warraut to bring the person so accused of keeping a bawdy-house, gaming-house, or other disorderly house, before him, and shall bind him or her over to appear at such general or quarter session or assizes, there to answer to such bill of indictment as shall be found against him or her for such offence; and such justice shall and may, if in his discretion he thinks fit, likewise demand and take security for such person's good behaviour in the mean time, and until such indictment shall be found, heard and determined, or be returned by the grand jury not to be a true bill."

Persons keeping bawdy-houses, &c. to be bound over.

58 Geo. 3, c. 70.

The 58 Geo. III. c. 70, s. 7, after reciting the above provision of 25 Geo. II. c. 36, s. 5, and that it is expedient, that when any two inhabitants of any parish or place, paying scot and bearing lot therein, shall give notice in writing to any constable of such parish or place, of any person keeping a bawdy-house, gaming-house, or any other disorderly house in such parish or

Notices directed by 25 Geo. 2, c. 36, to be given to constables in certain cases, to be

DISORDERLY HOUSE.

place, that the overseers of the poor of such parish or place shall have notice thereof, it is enacted, "that a copy of the notice (*a*) which shall be given by such constable shall also be served on or left at the places of abode of the overseers of the poor of such parish or place, or one of them, and such overseers or overseer of the poor shall be summoned or have reasonable notice to attend before such justice of the peace before whom such constable shall have notice to attend; and if such overseers or overseer of the poor shall attend and there enter into such recognizance to prosecute such offender as such constable is in and by the said act required to enter into, then it shall not be necessary for, nor shall such constable be required to enter into such recognizance; but if such overseers or overseer of the poor shall neglect to attend such justice on having such notice, or shall attend and shall decline or refuse to enter into such recognizance to prosecute, then such constable shall enter into the same, and shall prosecute, and shall be entitled to his expences to be allowed as in and by the said act is directed."

38 Geo. 3, c. 70. given also to the overseers of the poor, who are to prosecute.

25 Geo. 2, c. 36. Penalty.

By the 25 Geo. II. c. 36, s. 7, "if any such constable shall neglect or refuse, upon such notice, to go before any justice of the peace, or to enter into such recognizance, or shall be wilfully negligent in carrying on the said prosecution, he shall for every such offence forfeit the sum of 20*l.* to each such inhabitants so giving notice as aforesaid."

Who shall be deemed the keeper of such bawdy-house, &c.

Sect. 8, reciting, that "by reason of the many subtle and crafty contrivances of persons keeping bawdy-houses, gaming-houses, or other disorderly houses, it is difficult to prove who is the real owner or keeper thereof, which means many notorious offenders have escaped punishment," enacts "that any person who shall at any time hereafter appear, act, or behave himself or herself as master or mistress, or as the person having the care, government, or management of any bawdy-house, gaming-house, or other disorderly house, shall be deemed and taken to be the keeper thereof, and shall be liable to be prosecuted and punished as such, notwithstanding he or she shall not in fact be the real owner or keeper thereof."

Evidence may be given by an inhabitant, &c.

Sect. 9 provides, "that upon any such prosecution against any person for keeping a bawdy-house, gaming-house, or other *disorderly* house, any person may give evidence against the defendant or on behalf of the defendant on such prosecution, notwithstanding his or her being an *inhabitant* or parishioner of the said parish or place, or having entered into such recognizance as aforesaid."

Indictment not removable by *certiorari*.

Sect. 10 enacts, "that no indictment which shall at any time after the said 1st day of June be preferred against any person for keeping a bawdy-house, gaming-house, or other disorderly house, shall be removed by any writ of *certiorari* into any other court; but such indictment shall be heard, tried and finally determined, at the same general or quarter session or assizes where such indictment shall have been preferred, (unless the court shall think proper, upon cause shown, to adjourn the same,) any such writ or allowance thereof notwithstanding."

Recovering of forfeitures.

Sect. 13 enacts, "that any person entitled to any of the *forfeitures* by this act imposed, may sue for the same by action of debt, in any of his Majesty's courts of record at Westminster, in which it shall be sufficient to declare that the defendant is indebted to the plaintiff in the sum of [illegible] forfeited by an act, intituled, 'An Act for the better preventing thefts and robberies, and for regulating places of public entertainment, and punishing persons keeping disorderly houses;' and the plaintiff, *if he recover in any* such action, shall have his full costs."

Limitations of actions.

Sect. 14. "That no action shall be brought by virtue of this act, unless the same shall be commenced within the the space of *six calendar months* after the offence committed."

Common nuisances. Indictment for.

Common gaming-houses are in general deemed nuisances. In an indictment for keeping one it seems to be sufficient to allege, that the defendant

(*a*) See form, *post*, (No. 2).

kept a common gaming-house. *R.* v. *Rogier*, 1 *B. & C.* 275; 2 *D. & R.* 431, S. C. In that case it was held, that the keeping a common gaming-house, and for lucre and gain unlawfully causing and procuring divers idle and evil-disposed persons to frequent and come to play together, at a game called *rouge et noir*, and permitting the said idle and evil-disposed persons to remain playing at the same game for divers large and excessive sums of money, is an indictable offence at common law. DISORDERLY HOUSES.

It seems that it is an offence for which a *feme covert* may be indicted. 1 *Russ.* 299; *R.* v. *Williams*, *Salk.* 384. Wife liable.

Any number of persons may be included in the same indictment, for keeping different disorderly houses, stating that they "severally" kept, &c. such houses. *Collyer's Stat.* 416. Several offenders.

It seems that it is necessary to state where the house is situate, and the time, so as to make a particular statement of the offence, which is the *keeping* of the house. But particular facts need not be stated; and though the charge is thus general, yet, at the trial, evidence may be given of particular facts, and of the particular time of doing them. Situation of house, &c.

It is not necessary to prove who frequents the house, for that may be impossible; but if any unknown persons are proved to be there, behaving disorderly, it is sufficient to support the indictment. 1 *Russ.* 302; and see *J'Anson* v. *Stuart*, 1 *T. R.* 754. See *Collyer's Statutes*, 416; and see further, *post*, **Gaming**, Vol. II.; **Lewdness**, **Nuisance**, Vol. III. Evidence.

Forms.

(No. 1.)

—— *THE jurors for our Lord the King upon their oath present, that C. D. late of, &c. and E. F. late of the same place, on, &c. and on divers other days and times between that day and the day of taking this inquisition, with force and arms, at, &c. aforesaid, and within twenty miles of the cities of London and Westminster, unlawfully did keep and maintain a certain room and place for public dancing and music, situate in the parish of in the county of aforesaid, and within twenty miles of the cities of London and Westminster, without a license had for that purpose, from the last preceding Michaelmas quarter sessions of the peace for the county aforesaid, signified under the hands and seals of four or more of the justices there assembled at such session, according to the directions of the statute in such case made and provided, to the great damage and common nuisance of all the liege subjects of our said Lord the King, against the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity. And the jurors aforesaid, on their oath aforesaid, further present, that the said C. D. and E. F. on, &c. aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully did keep and maintain, within twenty miles of the cities of London and Westminster, a certain room for public dancing without a license had for that purpose from the then last preceding Michaelmas quarter sessions of the peace, holden for the county of Middlesex, in which the said room is situate, against the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity.* [Add another count like the second, using the word "*music*" instead of "*dancing*."] *And the jurors aforesaid, on their oath aforesaid, do further present, that the said C. D. and E. F. with force and arms, at the parish aforesaid, in the county aforesaid, on the day and year aforesaid, did keep and maintain a certain common ill-governed and disorderly room for public music and dancing, and in said room, for their own lucre and gain, did cause and procure divers persons, as well men as women of evil name and fame, and of dishonest and improper conversation and conduct, to frequent and come together, to the great damage and common nuisance of all the liege subjects of our Lord the King, and against the peace of our said Lord the King his crown and dignity.* Indictment on 25 Geo. 2, c. 36, for keeping an unlicensed dancing house. Second count. Third count. Fourth count, for a nuisance at common law.

(No. 2.)

} *To A. B. constable of the parish* [or *township*] *of in the county of*
—— } *and to E. F. and G. H. overseers of the poor of the said parish* [or *township*].

WE, J. J. and K. L. two of the inhabitants of the said parish [or *township*], *paying scot and bearing lot therein, do give you and each of you notice, that J. O. of the said* Notice by two inhabitants to the constable and overseers, to ground a prose-

FORMS.

caution on stats. 25 Geo. 2, c. 36, and 58 Geo. 3, c. 70, s. 7. (a)

parish of [*gentleman,*] *doth keep a gaming-house* [or *bawdy-house,* or *other disorderly house,* as the case is,] *to wit, at a messuage and premises in the parish aforesaid, and we do hereby require you, the said constable and overseers, forthwith to go before some one of his Majesty's justices of the peace in and for the said county of to the intent that such proceedings may be had for the prosecution of the said J. O. for the said offence, as in and by the statute made and passed in the twenty-fifth year of the reign of the late King George the Second, intituled "An Act for the better preventing of thefts and robberies, and for regulating places of public entertainments, and punishing persons keeping disorderly houses," and also in and by a statute made and passed in the fifty-eighth year of the reign of his late Majesty King George the Third, are directed and required.*

Witness our hands, this day of &c. J. J.
K. L.

(No. 3.)

Affidavit of truth thereof before a justice.

——— } *J. J. and K. L. severally make oath and say, that they severally believe the contents of the notice hereunto annexed, (a copy of which they have caused to be served on A. B. constable of the parish* [or *township*] *of and also upon E. F. and G. H. overseers of the poor of the said parish* [or *township*], *in the said notice, to be true in substance and fact.* J. J.
K. L.

Sworn by, &c. this day of, &c. before me, J. P. Esquire, one of his Majesty's justices of the peace in and for the county of } J. P.

(No. 4.)

Constable's or overseer's recognizance to prosecute.

——— } *BE it remembered, that on, &c. at in the said county, A. B. one of the constables of the parish* [or *township*] *aforesaid,* [or *E. F. and G. H. overseers of the poor of the said parish* [or *township*], *personally came before me, J. P. Esquire, one of his Majesty's justices of the peace in and for the said county, and acknowledged himself* [or *themselves*] *to be indebted to our sovereign Lord the King in the penal sum of pounds.*

Whereas J. J. and K. L. two of the inhabitants of the said parish [or *township*], *have given notice in writing to the above bounden A. B. constable of the said parish* [or *township,* or *E. F. and G. H. overseers of the poor of the said parish, or township,*] *that I. O. of the parish aforesaid, in the county aforesaid,* [*gentleman,*] *doth keep a gaming-house,* [*bawdy-house,* or *other disorderly house,*] *in the said parish* [or *township*] *and county, and having severally made affidavit of their belief in the truth of the contents of the said notice, have also severally entered into a recognizance in the penal sum of pounds each before me, the said justice, on condition that they shall give or produce material evidence against the said I. O. for the said offence. Now the condition of the present recognizance is such, that if the above bounden A. B.* [or *E. F. and G. H.*] *shall prosecute with effect the said I. O. for the said offence, then this recognizance to be void, otherwise of force.*

Acknowledged before me, J. P.

(No. 5.)

Warrant to apprehend the keeper of a disorderly house.

——— } *To the Constable of the parish* [or *township*] *of in the said county.*

WHEREAS J. J. and K. L. two of the inhabitants of the parish [or *township*] *of in the said county of paying scot and bearing lot within the said parish* [or *township*], *have given notice in writing to A. B. constable of the said parish* [or *township*], *and also to E. F. and G. H. overseers of the poor of the said parish* [or *township*], *that I. O. of the said parish* [or *township*], [*gentleman,*] *doth keep a gaming-house,* [or *bawdy-house,* or *other disorderly house,*] *in the said parish* [or *township*] *and have also this day severally made affidavit before me one of his Majesty's justices of the peace in and for the said county, that they believe the contents of the said notice to be true; and have also severally entered into a recognizance in the penal sum of pounds each, on condition to give or produce material evidence against the said I. O. These are therefore to command you forthwith to bring the said I. O. before me, or*

(*n*) See the acts, *ante,* 959.

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the day of next, at the hour of in the noon, at to be bound over to appear at the next [general quarter] sessions of the peace to be held in and for the said county, there to answer to such bill of indictment as shall be found against him for such offence. Given under my hand and seal, &c.

(No. 6.)

Allowance of constable's expenses in the prosecution by two justices, and order on overseers to pay them.

——— } *WHEREAS A. B. constable of the parish* [or *township*] *of in the* } *to wit.* } *said county, hath this day made oath before us, J. P. and L. M. Esquires, two of his Majesty's justices of the peace in and for the said county, that he hath truly and bonâ fide expended the sum of in the prosecution of one I. O. for keeping a gaming-house,* [*bawdy-house, or other disorderly house,*] *at aforesaid, in pursuance of the condition of the said A. B.'s recognizance: Now we the said justices do hereby ascertain and allow the said A. B. the said sum of as and for the reasonable expenses of the said prosecution, and we do hereby require the overseers of the poor of the said parish of forthwith to pay the said A. B. the said sum of*

In witness whereof we have hereunto set our hands, at aforesaid, in the county aforesaid, this day of, &c.

J. P.
L. M.

Dissenters.

I. *Of Protestant Dissenters in general*, 963.

[1 Eliz. c. 2; 23 Eliz. c. 1; 29 Eliz. c. 6; 35 Eliz. c. 1; 3 Jac. I. c. 4; 3 Jac. I. c. 5; 1 W. & M. c. 18; 52 Geo. III. c. 155; 53 Geo. III. c. 160.]

II. *Dissenting Ministers*, 967.

[1 W. & M. c. 18; 10 Ann. c. 2; 19 Geo. III. c. 44; 42 Geo. III. c. 90; 43 Geo. III. c. 10; 43 Geo. III. c. 96; 52 Geo. III. c. 155.]

III. *Dissenting Schoolmasters*, 971.

[23 Eliz. c. 1; 13 & 14 Car. II. c. 4; 19 Geo. III. c. 44.]

I. Of Protestant Dissenters in general.

Persons to resort to church, &c.

BY the 1 Eliz. c. 2, s. 14, every person not having reasonable excuse shall resort to his parish church or chapel, or upon reasonable let thereof, to some usual place where common prayer shall be used, on every Sunday and holiday; on pain of punishment by the censures of the church, or of forfeiting for every offence 12*d*. See *post*, Lord's Day, Vol. III. p. 657.

Every person above the age of sixteen, who shall not repair to some church or chapel, or usual place of common prayer, shall forfeit for every month 20*l*. And if he shall forbear for twelve months, he shall be bound to the good behaviour till he conform. 23 Eliz. c. 1.

Penalty for not doing so.

Every offender in not repairing to church, having been once convicted, shall, without any other indictment or conviction, pay half-yearly into the exchequer 20*l*. for every month afterwards, until he conform; which, if he shall omit to do, the King may seize all his goods, and two parts of his lands. 29 Eliz. c. 6.

And the King may refuse the 20*l*. a month, and take two parts of the land, at his option. 3 Jac. I. c. 4.

No recusant in not repairing to church, being convicted thereof, shall enjoy any public office, or shall practise law or physic, or be executor, administrator, or guardian. 3 Jac. I. c. 5.

And if any person refusing to repair to church shall be present at any assembly, meeting, or conventicle, under pretence of any exercise of religion, he shall be imprisoned till he conform; and if he shall not conform in three

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months, he shall abjure the realm; which if he shall refuse to do, or after abjuration shall not go, or shall return without license, he shall be guilty of felony without benefit of clergy. (*a*) And whether he shall abjure or not, he shall forfeit his goods, and shall forfeit his lands during life. 35 Eliz. c. 1.

Privilege given by the act of toleration.

Several statutes relating to this subject were repealed at the time of the Revolution, and the 1 Will. III. c. 18, s. 1, was passed, (commonly called *The Act of Toleration*, declared by stat. 19 Geo. III. c. 44, to be a public act,) and which enacts that neither the statutes aforesaid nor any other made against papists and popish recusants, (except stat. 25 Car. II. c. 2, concerning the qualifying for offices, and 32 Car. II. st. 2, c. 1, containing the declaration against popery,) shall extend to any person dissenting from the church of England, who shall, at the general sessions of the peace to be held for the county or place where such person shall live, take the oaths of allegiance and supremacy, and make and subscribe the said declaration against popery, of which the court shall keep a register, and no officer shall take any fee above 6*d.* for registering the same, nor that more than once, and 6*d.* for a certificate thereof signed by such officer.

Places of meeting to be certified.

Provided that no congregation or assembly for religious worship shall be permitted until the place of meeting be certified to the bishop of the diocese, or to the archdeacon of the archdeaconry, or to the justices of the peace at the general or quarter sessions of the county, city or place. And the registrar or clerk of the peace shall register or record the same, and give certificate thereof to any who shall demand the same; for which no greater fee shall be taken than 6*d.* And provided, that during the time of meeting, the doors shall not be locked, barred or bolted. Sect. 19 & 5.

Lutherans.

A congregation of Lutherans, using the German language in their service, are within the protection of the above act of William. *R.* v. *Hube*, Peake, 142; 5 *T. R.* 542, S. C.

All places of religious worship to be certified and registered.

The stat. 52 Geo. III. c. 155, s. 1, repeals certain old statutes, and by sect. 2 enacts, that no congregation or assembly for religious worship of Protestants, (at which there shall be present more than twenty persons besides the immediate family and servants of the person in whose house or upon whose premises such meeting, congregation, or assembly shall be had,) shall be permitted or allowed, unless and until the place of such meeting, if the same shall not have been duly certified and registered under any former act or acts of parliament relating to registering places of religious worship, shall have been or shall be certified to the bishop of the diocese, or to the archdeacon of the archdeaconry, or to the justices of the peace at the general or quarter sessions of the peace for the county, riding, division, city, town, or place in which such meeting shall be held; and all places of meeting which shall be so certified to the bishop's or archdeacon's court shall be returned by such court once in each year to the quarter sessions of the county, riding, division, city, town or place, and all places of meeting which shall be so certified to the quarter sessions of the peace shall be also returned once in each year to the bishop or archdeacon; and all such places shall be registered in the said bishop's or archdeacon's court respectively, and recorded at the said general or quarter sessions; the registrar or clerk of the peace whereof respectively is hereby required to register and record the same; and the bishop, or registrar, or clerk of the peace, to whom any such place of meeting shall be certified under this act, shall give a certificate thereof to such person or persons as shall request or demand the same, for which there shall be no greater fee nor reward taken than 2*s* 6*d.*; and every person who shall knowingly permit or suffer any such congregation or assembly as aforesaid to meet in any place occupied by him, until the same shall have been so certified as aforesaid, shall forfeit for every time any such congregation or assembly shall meet contrary to the provisions of this act, a sum not exceeding 20*l.* nor less than 20*s.*, at the discretion of the justices who shall convict for such offence.(*b*)

Penalty for permitting meetings in places not duly certified.

(*a*) The benefit of clergy is now abolished. See *ante*, Clergy, Benefit of.
(*b*) *R.* v. *Hall*, 1 *T. R.* 320. This was a conviction on stat. 22 Car. II. c. 1,

And by sect. 11 of the same statute, no meeting, assembly, or congregation of persons for religious worship shall be had in any place with the door bolted

Door not to be barred, &c.

repealed by stat. 52 Geo. III. c. 155, s. 1. The following is the form of such conviction.

" *Parts of Kesteven, in* } *BE it remembered, that on the 2d day of March, in the the county of Lincoln.* } *twenty-sixth year, &c. at New Sleaford, in the parts of K. aforesaid, &c. Robert Benson, Clerk, came before me Richard Brown, Esquire, one of the justices, &c. and gave me the said justice to understand and be informed that one Samuel Hall, carpenter, being the occupier of a certain dwellinghouse, situate in the parish of Heckington, in the parts and county aforesaid, did, on the 26th of February now last past, at the parish of Heckington aforesaid, wittingly and willingly suffer a meeting and unlawful assembly of divers persons to be held in his said dwellinghouse, for the exercise of religious worship, in other manner than according to the liturgy and practice of the Church of England, between the hours of one and eight o'clock in the afternoon of the same day; at which meeting and unlawful assembly, five persons and more were assembled together over and above those of the said S. Hall's household; (the dwellinghouse in which the said meeting and unlawful assembly was held not being certified to the bishop of the diocese, or to the archdeacon of that archdeconry, or to the justices of the peace at their general or quarter sessions of the peace for the parts and county in which the said meeting was held, nor registered in the said bishop's or archdeacon's court, nor recorded at the said general or quarter sessions;) against the form of the statutes in such case made and provided, whereby the said S. Hall hath forfeited the sum of 20l. to be distributed, &c. And now, on the 6th day of the said month of March, in the twenty-sixth year, &c. at, &c. came the said S. Hall before me the said justice, in pursuance of my summons, &c. when the said information, together with the examinations in writing of Joseph Wilkinson and Joseph Chamberlain, both of H. aforesaid, two credible witnesses, taken upon their respective corporal oaths before me the said justice, being openly read, which said examinations set forth, that on the said 26th day of February, the said J. Wilkinson and J. Chamberlain went to the dwellinghouse of the said S. Hall, at H. aforesaid, and found a great number of people assembled at the dwellinghouse of the said S. Hall, and that one Joseph Merryweathers was preaching to the said assembly; that the said dwellinghouse at which the said meeting and assembly was holden, was not certified or registered as by law required, and that they also saw there Peter Jarvis, John Taylor, William Taylor, and Robert Bowles, all of the said parish of H. attending the said meeting. And the said S. Hall being now here required by me to answer the premises, he the said S. Hall pleadeth and confesseth the offence charged upon him in and by the said information. Wherefore, &c. he hath forfeited 20l.*

Several objections were taken to this conviction: 1st, The information is not in the *present* tense. It is stated that the informer *came* before the justice and *gave* him to understand, &c. 2dly, That the evidence was not given in the presence of the defendant, which it ought to have been; the defendant should have been called on to plead before the evidence was received; but the justice read over improper evidence, which should not have been given, and then called on the defendant to answer the premises, by which means he was confounded and induced to plead guilty. 3dly, Though this is charged as an offence against *statute* 22 *Car. II. only*, yet it concludes contrary to the *statutes*, which is fatal. 4thly, The information does not contain a charge within the stat. 22 Car. II. c. 1, upon which the justice professes to convict; and though it profess to set out an offence against that statute, yet it is not confined to that statute only, but negatives several exceptions in 1 Will. c. 18. Therefore, though it was not necessary to negative any of the exceptions under the latter act, yet having undertaken so to do, the omission of any one is fatal, and it is not stated, *that he did not take the oaths, &c.* which is required by the third section of that statute. The court said, that however inclined they were to listen to trivial objections to such prosecutions, yet none of the present were sufficient in point of law. As to the first, the words objected to were better in the *past* than *present* tense, because they referred to a time past, (*viz.*) the time of making the information. The second is cured by the defendant *pleading guilty*. As to the third and fourth, this is a conviction on 22 Car. II.; therefore the exceptions in 1 Will. c. 18, need not have been negatived, and may be rejected as surplusage; for if a subsequent statute make any exception to a former one, it is incumbent on the defendant to show by way of defence that he comes within such exception. And, besides, the 13th section of 22 Car. II. directs that that act shall be construed most largely and beneficially for the suppressing of conventicles, &c. and that no proceedings thereupon shall be impeached for want of form. Conviction affirmed.

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or barred, or otherwise fastened, so as to prevent any person entering therein during the time of any such meeting, &c. and the person teaching or preaching at any such meeting, assembly or congregation, shall forfeit for every time any such meeting, &c. shall be held with the doors locked, &c. as aforesaid, not exceeding 20*l.* nor less than 40*s.*, at the discretion of the justices convicting for such offence.

Disturbing the congregation.

By the 1 W. & M. c. 18, s. 18, any person who shall willingly, and of purpose maliciously or contemptuously, come into any cathedral, or parish church, chapel, or other congregation permitted by this act, and disquiet or disturb the same, or misuse any preacher or teacher, shall, on proof thereof before any justice by two witnesses, find two sureties in 50*l.*; and in default of such sureties shall be committed to prison till the next sessions; and upon conviction at such sessions shall forfeit 20*l.* to the King.

On an indictment on this act, it is no defence that the violence was committed in the defendant's asserting his right to the clerk's reading desk. *R.* v. *Hube, Peake*, 132; 5 *T. R.* 542.

It need not be proved that the minister has taken the toleration oaths. *Id.*

R. v. *Hube and others*, 5 *T. R.* 542, the defendants were indicted on stat. 1 W. & M. c. 18, and the indictment was by *certiorari* removed by the prosecutor into the King's Bench before verdict. And it was moved, that as the penalty of 20*l.* was to be paid *upon conviction of the said offence at the said general or quarter sessions*, the statute intended to confine the cognizance of the offence to the sessions, and that the power to remove by *certiorari* was therefore taken away by necessary implications. But the court held that the *certiorari* was not taken away by this statute, and that the indictment was therefore well removed.

Penalty on disturbing religious assemblies.

By stat. 52 Geo. III. c. 155, s. 12, "if any person or persons, at any time after the passing of this act, do and shall wilfully and maliciously or contemptuously disquiet or disturb any meeting, assembly, or congregation of persons assembled for religious worship, permitted or authorised by this act or any former act or acts of parliament, or shall in any way disturb, molest or misuse any preacher, teacher, or person officiating at such meeting, assembly or congregation, or any person or persons there assembled, such person or persons so offending, upon proof thereof before any justice of the peace, by two or more credible witnesses, shall find two sureties to be bound by recognizances in the penal sum of 50*l.* to answer for such offence, and in default of such sureties shall be committed to prison, there to remain till the next general or quarter sessions; and upon conviction of the said offence, at the said general or quarter sessions, shall suffer the pain and penalty of 40*l.*"

Certiorari.

In the case of *R.* v. *Wadley*, 4 *M. & S.* 508, it was held, that an indictment upon stat. 52 Geo. III. c. 155, s. 12, may be removed into the Court of King's Bench by *certiorari* before trial.

Common law not altered.

It seems that the 53 Geo. III. does not alter the common law with respect to impugning the doctrine of the Trinity, but only removes the penalties imposed on persons denying such doctrines by 9 & 10 Will. III. c. 32, and extends to such persons the benefits conferred on all other Protestant dissenters by 1 Will. & Mary, sess. 1, c. 18. *R.* v. *Waddington*, 1 *B. & Cres.* 26.

Dissenter being appointed to offices may appoint a deputy.

By stat. 1 Will. & Mary, c. 18, s. 7, if any person dissenting from the church of England as aforesaid shall be appointed to the office of high constable, petty constable, churchwarden, overseer of the poor, or any other parochial or ward office, and shall scruple to take upon him the office, in regard of the oaths or otherwise, he may execute the same by a sufficient deputy, that shall comply with the laws on this behalf: provided that the deputy be allowed and approved by such person, and in such manner, as such officer should by law have been allowed and approved.

But no congregation shall be permitted by this act until the place of the meeting shall be certified to the bishop or the archdeacon, or the justices at the sessions for the place in which, &c. and registered in the bishop's or archdeacon's court, or recorded at the session. Sect. 19.

The provisions contained in the act of Will. & Mary, and in the 9 & 10

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Will. III. respecting the denial of the Trinity, are repealed by the stat. 53 Geo. III. c. 160.

In the case of *Lewis* v. *Hammond*, 2 *B. & A.* 206, where a turnpike act exempted persons from toll "in going to and returning from their proper parochial church, chapel, or other place of religious worship on Sundays:" it was held that the word "parochial" extended over the whole clause; and therefore that a dissenter was not within the exemption in going to and returning from his proper place of religious worship, situate out of the parish in which he resided. And see *post*, Highways, Vol. III. p. 187, 188.

Exemptions from tolls.

II. Dissenting Ministers.

Protestant dissenting ministers who shall take the oaths, &c. required by the Toleration Act, &c. shall be entitled to all the benefit of that statute and 10 Ann. c. 2.

The three statutes, viz. 17 Car. II. c. 2, 22 Car. II. c. 1, and 13 & 14 Car. II. c. 1, relating to the disabilities of dissenting ministers before the revolution, are repealed by stat. 52 Geo. III. c. 155, s. 1.

By stat. 19 Geo. III. c. 44, s. 1, every person dissenting from the church of England, in holy orders, or pretended holy orders, or pretending to holy orders, being a preacher or teacher of any congregation of dissenting Protestants, who shall take the oaths and make and subscribe the declaration against popery required by the 1 Will. & Mary, c. 18, to be taken, made, and subscribed by Protestant dissenting ministers, and shall also make and subscribe the declaration in the words following; viz. *I, A. B., do solemnly declare, in the presence of Almighty God, that I am a Christian and a Protestant, and as such that I believe that the Scriptures of the Old and New Testament, as commonly received among Protestant churches, do contain the revealed will of God; and that I do receive the same as the rule of my doctrine and practice;* shall be entitled to all the benefits of the said act of 1 Will. & Mary, c. 18, and 10 Ann. c. 2. And the justices at the sessions where any Protestant dissenting minister shall live, are required to tender and administer the said last-mentioned declaration to such minister, upon his offering himself to make and subscribe the same, and thereof to keep a register; for the registering of which he shall pay 6*d.* to the officer of the court, and no more; and 6*d.* for a certificate thereof signed by such officer.

Being qualified may officiate in any county.

By stat. 10 Ann. c. 2, s. 9, any preacher or teacher of any congregation of dissenting Protestants, duly qualified according to the act of Will. & Mary, shall be allowed to officiate in any congregation, although the same be not in the county where he was so qualified, provided that the place of meeting hath been duly certified and registered; and such teacher or preacher shall, if required, produce a certificate of his having so qualified himself, under the hand of the clerk of the peace where he was qualified, and shall also, before any justice of such county or place where he shall so officiate, make and subscribe such declaration, and take such oaths as aforesaid, if required.

Exempted from offices.

And every such teacher and preacher, that is a minister, preacher, or teacher of a congregation, having taken the oaths and subscribed as aforesaid, shall from thenceforth be exempted from serving on any jury, or from being chosen or appointed to bear the office of churchwarden, overseer of the poor, or any other parochial or ward office, or other offices, in any hundred of any shire, city, town, parish, division, or wapentake, by stats. 1 Will. & Mary, c. 18, s. 11, and 19 Geo. III. c. 44, s. 1; and from serving in the militia, either personally or by substitute, if he be a licensed teacher of any separate congregation, and has been licensed twelve months previous to the yearly general meeting appointed to be held in October, &c. by stats. 42 Geo. III. c. 90, and 43 Geo. III. c. 10; and from serving under the Army of Reserve Act, "if he be a licensed teacher of any separate congregation in holy orders, or pretended holy orders, and not carrying on any other trade, or exercising any other occupation for his livelihood, except that of a schoolmaster," by 43 Geo. III. c. 96, s. 12.

Any other Parochial Office]—Stat. 1 Will. & Mary, c. 18, s. 11, extends to all parish offices, whether they existed at that time, or were created since

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that act. And therefore, in the case of *Kenward* v. *Knowles*, *C. P. Will.* 463. it was decided that a baptist preacher, qualified according to that act, was exempted from serving the office of one of the collectors of the rates for rebuilding St. Olave's church in Southwark, under stat. 10 Geo. III. c. 18. And it was also ruled that the party was equally entitled to his exemption, though he was engaged in trade.

R. v. Justices of Denbighshire.

R. v. *The Justices of Denbighshire*, 14 *East*, 285; and see 15 *East*, 576. 589. A motion was made upon stat. 1 Will. & Mary, c. 18, s. 8, (the Toleration Act,) for a *mandamus* to the justices of Denbigh at their next sessions, to admit David Lewis to take the oaths and make and subscribe the declaration required under that statute. The motion was made upon an affidavit of David Lewis, in which he described himself as "a Protestant dissenter," who "preaches to several congregations of Protestant dissenters;" stating the circumstances of his application to the justices at their last sessions, and of his tendering himself to take the oaths and make and subscribe the declaration mentioned in the statute; that the chairman of the court required of him a certificate of his having a separate congregation, and that upon his saying he had no separate congregation, the sessions refused to administer the oath to him, &c. After the words of the Toleration Act had been stated, Lord *Ellenborough*, C. J. inquired whether the person applying now swore to the fact of his being the teacher or preacher of any separate congregation of Protestant dissenters? and being answered in the negative, *Bayley*, J. asked if he were not the teacher or preacher of any certain congregation, under what description in the 8th clause he brought himself? To which it was answered, as a teacher or preacher of several congregations of Protestant dissenters, though not attached to any particular separate congregation of his own. Lord *Ellenborough*, C. J. The chairman of the sessions might have been wrong in asking this person for a certificate of his having a separate congregation; but still, to entitle himself to succeed in his application, he ought to show himself to be the acknowledged teacher or preacher of some particular congregation, or to bring himself within some other qualifying description in the act, in order to be entitled to the exemption which he seeks. *Grose*, J. agreed. *Le Blanc*, J. If the party be in holy orders, or pretend to holy orders, though he have no particular congregation of his own, he would come within the 8th section; but if he applied merely as a teacher or preacher, not pretending to holy orders, he must state himself to be the teacher or preacher of some particular congregation of Protestant dissenters by whom he is recognised in that character. *Bayley*, J. This clause of the Toleration Act meant to relieve persons who had Protestant dissenting congregations severally attached to them at the time they made the application to the sessions, from the penalties imposed by former acts, for officiating as preachers of such congregations. Rule refused.

This decision occasioned the passing of the following act.

52 Geo. 3, c. 155. Penalty on persons preaching without consent of occupiers.

By the 52 Geo. III. c. 155, s. 3, "every person who shall teach or preach in any congregation or assembly as in this act aforesaid, (*ante*, 964,) in any place, without the consent of the occupier thereof, shall forfeit for every such offence any sum not exceeding 30*l.* nor less than 40*s.* at the discretion of the justices who shall convict for such offence."

Exemptions in favour of preachers and persons resorting to religious assemblies duly certified, &c.

Sect. 4. "That from and after the passing of this act, every person who shall teach or preach at, or officiate in, or shall resort to any congregation or congregations, assembly or assemblies, for religious worship of Protestants, whose place of meeting shall be duly certified according to the provisions of this act, or any other act or acts of parliament relating to the certifying and registering of places of religious worship, shall be exempt from all such pains and penalties under any act or acts of parliament relating to religious worship, as any person who shall have taken the oaths and made declaration prescribed by or mentioned in an act made in the first year reign of King William and Queen Mary, intituled 'An Act for exg their Majesties' Protestant subjects dissenting from the church of d, from the penalties of certain laws,' or any act amending the said *e post*, tit. Oaths, Vol. III.) is by law exempt, as fully and effectually ll such pains and penalties, and [illegible] acts enforcing the same

were recited in this act, and such exemptions as aforesaid were severally and separately enacted in relation thereto."

52 Geo. 3, c. 155.

One justice to have power in certain cases to require the oath and declaration to be made and subscribed. 19 Geo. 3, c. 44.

Sect. 5. "That every person not having taken the oaths and subscribed the declaration hereinafter specified, who shall preach or teach at any place of religious worship certified in pursuance of the directions of this act, shall, when thereto required by any one justice of the peace, by any writing under his hand or signed by him, take, and make, and subscribe in the presence of such justice of the peace, the oaths and declarations specified and contained in an act passed in the nineteenth year of the reign of his Majesty King George the Third, intituled 'An Act for the further relief of Protestant dissenting ministers and schoolmasters,' (see *post*, **Oaths**, Vol. III.); and no such person who, upon being so required to take such oaths and make such declaration as aforesaid, shall refuse to attend the justice requiring the same, or to take and make and subscribe such oaths and declaration as aforesaid, shall be thereafter permitted or allowed to teach or preach in any such congregation or assembly for religious worship, until he shall have taken such oaths, and made such declaration as aforesaid, on pain of forfeiting, for every time he shall so teach or preach, any sum not exceeding ten pounds nor less than ten shillings, at the discretion of the justice convicting for such offence."

Persons so required not to go more than five miles from home.

Sect. 6. "That no person shall be required by any justice of the peace to go to any greater distance than five miles from his own home, or from the place where he shall be residing at the time of such requisition, for the purpose of taking such oaths as aforesaid."

Any Protestant person may require the justice to administer the oath and tender the declaration.

Sect. 7. "That it shall be lawful for any of his Majesty's Protestant subjects to appear before any one justice of the peace, and to produce to such justice of the peace a printed or written copy of the said oaths and declaration, and to require such justice to administer such oaths and to tender such declaration to be made, taken, and subscribed by such person; and thereupon it shall be lawful for such justice, and he is hereby authorised and required to administer such oaths, and to tender such declaration, to the person requiring to take and make and subscribe the same; and such person shall take and make and subscribe such oaths and declaration in the presence of such justice accordingly; and such justice shall attest the same to be sworn before him, and shall transmit or deliver the same to the clerk of the peace for the county, riding, division, city, town, or place for which he shall act as such justice of the peace, before or at the next general or quarter sessions of the peace for such county, riding, division, city, town, or place."

Certificate to be given by the justice.

Sect. 8. "That every justice of the peace before whom any person shall make and take and subscribe such oaths and declaration as aforesaid, shall forthwith give to the person having taken, made, and subscribed such oaths and declaration, a certificate thereof under the hand of such justice, in the form following; that is to say,

"*I A. B. one of his Majesty's justices of the peace for the county,* [*riding, division, city* or *town*, or *place*, as the case may be,] *of do hereby certify, that C. D. of, &c.* [describing the christian and surname and place of abode of the party,] *did this day appear before me, and did make and take and subscribe the several oaths and declaration specified in an act made in the fifty-second year of the reign of King George the Third, intituled,* [set forth the title of this act.(a)] *Witness my hand, this day of one thousand eight hundred and* ."

"And for the making and signing of which certificate, where the said oaths and declaration are taken and made on the requisition of the party taking and making the same, such justice shall be entitled to demand and have a fee of two shillings and sixpence, and no more: and such certificate shall be conclusive evidence that the party named therein has made and taken the oaths and subscribed the declaration in manner required by this act."

Exemption from civil and military offices and duties.

Sect. 9. "That every person who shall teach or preach in any such congregation or assembly, or congregations or assemblies as aforesaid, who shall employ himself solely in the duties of a teacher or preacher, and not follow

(a) "An Act to repeal certain acts, and amend other acts relating to religious worship and assemblies, and persons teaching or preaching therein."

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Exemptions in favour of preachers and persons resorting to religious assemblies duly certified, &c.

Sect. 4. "That from and after the passing of this act, every person who shall teach or preach at, or officiate in, or shall resort to any congregation or congregations, assembly or assemblies, for religious worship of Protestants, whose place of meeting shall be duly certified according to the provisions of this act, or any other act or acts of parliament relating to the certifying and registering of places of religious worship, shall be exempt from all such pains and penalties under any act or acts of parliament relating to religious worship, as any person who shall have taken the oaths and made the declaration prescribed by or mentioned in an act made in the first year of the reign of King William and Queen Mary, intituled 'An Act for exempting their Majesties' Protestant subjects dissenting from the church of England, from the penalties of certain laws,' or any act amending the said act, (see *post*, tit. Oaths, Vol. III.) is by law exempt, as fully and effectually as if all such pains and penalties, and the several acts enforcing the same,

were recited in this act, and such exemptions as aforesaid were severally and separately enacted in relation thereto."

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One justice to have power in certain cases to require the oath and declaration to be made and subscribed. 19 Geo. 3, c. 44.

Sect. 5. "That every person not having taken the oaths and subscribed the declaration hereinafter specified, who shall preach or teach at any place of religious worship certified in pursuance of the directions of this act, shall, when thereto required by any one justice of the peace, by any writing under his hand or signed by him, take, and make, and subscribe in the presence of such justice of the peace, the oaths and declarations specified and contained in an act passed in the nineteenth year of the reign of his Majesty King George the Third, intituled 'An Act for the further relief of Protestant dissenting ministers and schoolmasters,' (see *post*, Oaths, Vol. III.); and no such person who, upon being so required to take such oaths and make such declaration as aforesaid, shall refuse to attend the justice requiring the same, or to take and make and subscribe such oaths and declaration as aforesaid, shall be thereafter permitted or allowed to teach or preach in any such congregation or assembly for religious worship, until he shall have taken such oaths, and made such declaration as aforesaid, on pain of forfeiting, for every time he shall so teach or preach, any sum not exceeding ten pounds nor less than ten shillings, at the discretion of the justice convicting for such offence."

Persons so required not to go more than five miles from home.

Sect. 6. "That no person shall be required by any justice of the peace to go to any greater distance than five miles from his own home, or from the place where he shall be residing at the time of such requisition, for the purpose of taking such oaths as aforesaid."

Any Protestant person may require the justice to administer the oath and tender the declaration.

Sect. 7. "That it shall be lawful for any of his Majesty's Protestant subjects to appear before any one justice of the peace, and to produce to such justice of the peace a printed or written copy of the said oaths and declaration, and to require such justice to administer such oaths and to tender such declaration to be made, taken, and subscribed by such person; and thereupon it shall be lawful for such justice, and he is hereby authorised and required to administer such oaths, and to tender such declaration, to the person requiring to take and make and subscribe the same; and such person shall take and make and subscribe such oaths and declaration in the presence of such justice accordingly; and such justice shall attest the same to be sworn before him, and shall transmit or deliver the same to the clerk of the peace for the county, riding, division, city, town, or place for which he shall act as such justice of the peace, before or at the next general or quarter sessions of the peace for such county, riding, division, city, town, or place."

Certificate to be given by the justice.

Sect. 8. "That every justice of the peace before whom any person shall make and take and subscribe such oaths and declaration as aforesaid, shall forthwith give to the person having taken, made, and subscribed such oaths and declaration, a certificate thereof under the hand of such justice, in the form following; that is to say,

"*I A. B. one of his Majesty's justices of the peace for the county,* [*riding, division, city* or *town*, or *place*, as the case may be,] *of do hereby certify, that C. D. of, &c.* [describing the christian and surname and place of abode of the party,] *did this day appear before me, and did make and take and subscribe the several oaths and declaration specified in an act made in the fifty-second year of the reign of King George the Third, intituled,* [set forth the title of this act.(a)] *Witness my hand, this day of one thousand eight hundred and*"

"And for the making and signing of which certificate, where the said oaths and declaration are taken and made on the requisition of the party taking and making the same, such justice shall be entitled to demand and have a fee of two shillings and sixpence, and no more: and such certificate shall be conclusive evidence that the party named therein has made and taken the oaths and subscribed the declaration in manner required by this act."

Exemption from civil and military offices and duties.

Sect. 9. "That every person who shall teach or preach in any such congregation or assembly, or congregations or assemblies as aforesaid, who shall employ himself solely in the duties of a teacher or preacher, and not follow

(a) "An Act to repeal certain acts, and amend other acts relating to religious worship and assemblies, and persons teaching or preaching therein."

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or engage in any trade or business, or other profession, occupation, or employment, for his livelihood, except that of a schoolmaster, and who shall produce a certificate of some justice of the peace, of his having taken and made and subscribed the oaths and declaration aforesaid, shall be exempt from the civil services and offices specified in the said recited act passed in the first year of King William and Queen Mary, and from being balloted to serve and from serving in the militia or local militia of any county, town, parish, or place in any part of the United Kingdom."

52 Geo. 3, c. 155.

Penalty on producing a false certificate.

Sect. 10. "That every person who shall produce any false or untrue certificate or paper, as and for a true certificate of his having made and taken the oaths and subscribed the declaration by this act required, for the purpose of claiming any exemption from civil or military duties as aforesaid, under the provisions of this or any other act or acts of parliament, shall forfeit for every such offence the sum of 50*l.*; which penalty may be recovered by and to the use of any person who will sue for the same by any action of debt, bill, plaint, or information in any of his Majesty's courts of record at Westminster, or the courts of great sessions in Wales, (*a*) or the courts of counties palatine of Chester, Lancaster, and Durham, (as the case shall require) wherein no essoin, privilege, protection, or wager of law, or more than one imparlance shall be allowed."

This act not to affect the church.

Sect. 13. "That nothing in this act contained shall affect or be construed to affect the celebration of divine service according to the rites and ceremonies of the united church of England and Ireland, by ministers of the said church, in any place hitherto used for such purpose, or being now or hereafter duly consecrated or licensed by any archbishop or bishop, or other person lawfully authorised to consecrate or license the same, or to affect the jurisdiction of the archbishops or bishops, or other persons exercising lawful authority in the church of the United Kingdom over the said church, according to the rules and discipline of the same, and to the laws and statutes of the realm; but such jurisdiction shall remain and continue as if this act had not passed."

Nor Quakers.

Sect. 14. "That nothing in this act contained shall extend or be construed to extend to the people usually called Quakers, nor to any meetings or assemblies for religious worship held or convened by such persons; or in any manner to alter or repeal or affect any act, other than and except the acts passed in the reign of King Charles the Second hereinbefore repealed relating to the people called Quakers, or relating to any assemblies or meetings for religious worship held by them."

How conviction to be made and levied.

Sect. 15. "That every person guilty of any offence, for which any pecuniary penalty or forfeiture is imposed by this act, in respect of which no special provision is made, shall and may be convicted thereof by information upon the oath of any one or more credible witness or witnesses before any two or more justices of the peace acting in and for the county, riding, city, or place wherein such offence shall be committed; and that all and every the pecuniary penalties or forfeitures which shall be incurred or become payable for any offence or offences against this act, shall and may be levied by distress under the hand and seal, or hands and seals, of two justices of the peace for the county, riding, city, or place in which any such offence or offences was or were committed, or where the forfeiture or forfeitures was or were incurred, and shall when levied be paid one moiety to the informer, and the other moiety to the poor of the parish in which the offence was committed; and in case of no sufficient distress whereby to levy the penalties, or any or either of them imposed by this act, it shall and may be lawful for any such justices respectively, before whom the offender or offenders shall be convicted, to commit such offender to prison for such time, not exceeding three months, as the said justices in their discretion shall think fit."

Appeal.

Sect. 16. "That in case any person or persons who shall hereafter be convicted of any of the offences punishable by this act, shall conceive him, her, or themselves to be aggrieved by such conviction, then and in every such

(*a*) The Welch jurisdiction is abolished by 1 Will. IV. c. 76, *post*, Wales, Vol. V.

case it shall and may be lawful for such person or persons respectively, and he, she, or they shall or may appeal to the general or quarter sessions of the peace holden next after such conviction in and for the county, riding, city, or place, giving unto the justices before whom such conviction shall be made, notice in writing within eight days after any such conviction, of his, her, or their intention to prefer such appeal; and the said justices in their said general or quarter sessions shall and may, and they are hereby authorised and empowered to proceed to the hearing and determination of the matter of such appeal, and to make such order therein, and to award such costs to be paid by and to either party, not exceeding 40*s.* as they in their discretion shall think fit."

52 Geo. 3, c. 155.

Time for suing for penalties.

Sect. 17. "That no penalty or forfeiture shall be recoverable under this act, unless the same shall be sued for, or the offence in respect of which the same is imposed is prosecuted before the justices of the peace or quarter sessions, within six months after the offence shall have been committed; and no person who shall suffer any imprisonment for nonpayment of any penalty shall thereafter be liable to the payment of such penalty or forfeiture."

Limitation of actions.

Sect. 18. "That if any action or suit shall be brought or commenced against any person or persons for any thing done in pursuance of this act, that every such action or suit shall be commenced within three months next after the fact committed, and not afterwards, and shall be laid and brought in the county wherein the cause or alleged cause of action shall have accrued, and not elsewhere; and the defendant or defendants in such action or suit may plead the general issue, and give this act and the special matter in evidence on any trial to be had thereupon, and that the same was done in pursuance and by authority of this act; and if it shall appear so to be done, or if any such action or suit shall be brought after the time so limited for bringing the same, or shall be brought in any other county, city, or place, that then and in such case the jury shall find for such defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs shall become nonsuited, or discontinue his, her, or their action or actions, or if a verdict shall pass against the plaintiff or plantiffs, or if upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have and may recover treble costs, and have the like remedy for the same, as any defendant or defendants hath or have for costs of suit in other cases by law."

Describing property in larceny.

The goods in a dissenting chapel, vested in trustees, cannot be laid as the property of a servant who had the custody of the chapel, and of the things in it, to clean and keep in order, although he has the key of the chapel, and no one but the minister has another key. *R.* v. *Hutchinson & another*, *Ry. & M. C. C. R.* 412.

III. Dissenting Schoolmasters.

Penalty on schoolmasters not repairing to church.

By the 23 Eliz. c. 1, if any person shall keep a schoolmaster, who shall not repair to church, or be allowed by the bishop, he shall forfeit 10*l.* a month, and the schoolmaster shall be imprisoned for a year.

Schoolmasters to conform to the liturgy of the church of England.

By the 13 and 14 Car. II. c. 4, every schoolmaster keeping any public or private school, and every person instructing or teaching any youth in any house or private family as a tutor or schoolmaster, shall, before his admission, subscribe before the ordinary the declaration of conformity to the liturgy of the church of England, on pain of being disabled to hold the said school, and *ipso facto* deprived of the same. And every such school shall be void, as if such person so failing were naturally dead. And if any schoolmaster or other person instructing or teaching youth in any private house or family as tutor or schoolmaster, shall teach any youth as tutor or schoolmaster before license obtained from the bishop or ordinary of the diocese, and before such subscription as aforesaid, he shall for the first offence be imprisoned three months, and for the second and every other offence be imprisoned three months, and forfeit 5*l.* Sect. 8, 9, 11.

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19 Geo. 3, c. 44. To take the oaths prescribed by the Toleration Act.

But by stat. 19 Geo. III. c. 44, s. 2, no dissenting minister, nor any other Protestant dissenting from the church of England who shall take the aforesaid oaths, and make and subscribe the above-mentioned declaration against popery, and the declaration herein-before mentioned, shall be prosecuted in any court whatsoever for teaching and instructing youth as a a tutor or schoolmaster.

Not to hold the mastership of any college or school of royal foundation.

Sect. 3. Provided, that this shall not extend to the enabling of any person dissenting from the church of England to hold the mastership of any college or school of royal foundation, or of any other endowed college or school for the education of youth, unless the same shall have been founded since the first year of King William and Queen Mary, for the immediate use and benefit of Protestant dissenters.

Form of oaths.

The forms of the said oaths and declaration are inserted under title Oaths, Vol. III.

Forms.

(No. 1.)

Certificate of having taken the oaths before a justice, pursuant to 52 Geo. 3, c. 155.(a)

County of } I J. P. Esquire, one of his Majesty's justices of the peace for the said
} county of , do hereby certify that C. D. of , in the county of , did this day appear before me, and did make, and take, and subscribe, the several oaths and declaration contained and specified in an act made in the fifty-second year of the reign of King George the Third, intituled "An Act to repeal certain acts, and amend other acts, relating to religious worship and assemblies, and persons teaching or preaching therein." Witness my hand, this day of , in the year, &c. J. P.

(No. 2.)

Conviction.

See form of conviction for holding a meeting in unregistered house, &c. on 22 Car. II. c. 1, *ante*, 964, 965.

(No. 3.)

Commitment for disturbing a congregation of dissenters during divine service.

[Commencement as usual, as *ante*, p. 8, (No. 1.)] *on, &c. at, &c. in the said county, did willingly, and of purpose, maliciously and contemptuously come into a certain congregation of Protestant dissenters, then and there assembled for the worship of Almighty God, in a certain meeting-house there situate, then and long before certified, registered and recorded, according to the direction of the statute in that case made and provided, and did then and there wilfully, willingly, and of purpose, maliciously and contemptuously disquiet and disturb the said congregation, the doors of the said meeting-house, where the said congregation were so assembled, not being then locked, barred or bolted. And you the said keeper, &c.* [as *ante*, p. 8, (No. 1,) to the end].

(No. 4.)

Indictment for disturbing dissenting congregation, on statute 52 Geo. 3, c. 155.(b)

—— THE jurors for our Lord the King upon their oath present, that A. B., late of, &c. and C. D., late of, &c. on, &c. with force and arms, at, &c. did, during the time of divine worship, unlawfully, wilfully, maliciously, and contemptuously disquiet and disturb a certain congregation of Protestant dissenters from the church of England, being then and there lawfully assembled for the purpose of religious worship in a certain chapel and premises situated and being in the parish aforesaid, in the county aforesaid, the said chapel being then and there duly certified and registered pursuant to the statutes in such case made and provided, in contempt of public worship, against the form of the statute in such case made and provided, and against the peace of our Lord the King his crown and dignity.

Second count.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the

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(a) The act gives this form.

(b) See other forms, 2 Chit. C. L., 966. Archb. C. L. See *R.* v. *Cheere*, 4 *B.* & *Cres.* 902; 7 *D.* & *R.* 461, S. C. *ante*,

FORMS.

said A. B. and C. D. afterwards. (to wit) on the said, &c. with force and arms, at, &c. during the time of divine worship, unlawfully, wilfully, maliciously and contemptuously disquiet and disturb a certain other congregation of Protestant dissenters from the church of England, being then and there duly and lawfully assembled, for the purpose of religious worship, in a certain meeting-house and premises, situate and being in the parish aforesaid, in the county aforesaid, the said last mentioned meeting-house being then and there duly certified and registered pursuant to the statutes in such case made and provided, in contempt of public worship, against the form of the statute in such case made and provided, and against the peace of our Lord the King his crown and dignity.

Distress. (*a*)

A DISTRESS is the taking of a personal chattel out of the possession of the wrong-doer into the custody of the party injured, to procure satisfaction for the wrong committed, and is of two kinds, either for cattle trespassing and doing damage (*b*), or for non-payment of rent or other duties. What is.

(*a*) A very considerable portion of this title may not be applicable to a work of this nature: still a great portion of it is; and the rest being cursorily considered in prior editions, it is thought fit to enlarge thereon in the present one, especially on a subject of such general interest and importance. As to Distresses in general, see *Bradby on Distresses, Gilbert on Distresses, Com. Dig. Distress, Bac. Abr. Distress, Wilkinson on Replevin.*

(*b*) A man may distrain beasts *damage feasant*, that is, doing damage or trespassing upon his land; for all chattels whatever are distrainable *damage feasant*, it being but natural justice that whatever doth the injury should be a pledge to make compensation for it. *Gilb. Dist.* 24, 38; 3 *Blac. Com.* 6. If a man take cattle, and put them into the land of another man, the tenant of the land may take these cattle, damage feasant, though the owner was not privy to the cattle being damage feasant, and he may keep them against the true owner, till satisfaction of the damages. 1 *Roll. Abr.* 665; *Roll. Rep.* 449. If a man come to distrain, and see the beasts in his ground, and the owner chase them out on purpose before the distress taken, yet the owner of the soil cannot distrain them. *Co. Lit.* 161; 2 *Bac. Abr.* 354. For distress damage feasant is the strictest distress that is, and the thing distrained must be taken in the very act; for if the goods are once off, though on fresh pursuit, the owner of the ground cannot take them. 12 *Mod.* 661. If ten head of cattle were doing damage, a man cannot take one of them and keep it till he be satisfied for the whole damage, but for its own damage only; but he may bring an action of trespass for the rest. *Vasper* v. *Edwards*, 12 *Mod.* 660. If a man hath common for ten cattle, and he puts in more, the surplusage above ten may be taken damage-feasant. 1 *Roll. Abr.* 665. But this must be where the number is absolutely certain, as for ten, twenty, or thirty cattle, without any relation to the quantity of land, and not where he claims for so many cattle for such a number of acres; for in the former case the overcharge is clear and self-evident, but in the latter it depends upon the number of acres, and requires a medium to determine the number of cattle; that is, an admeasurement of the land. For where the question depends upon a collateral fact, or upon a matter of judgment, the party interested can never be a competent judge in his own cause. And the court said, the right of distraining seemed to turn upon this, that wherever there is a *colour of right* for putting in the cattle a commoner cannot distrain, because it would be judging for himself in a question that depends upon a more competent inquiry: but where cattle are put upon the common *without* any colour or pretence of right, the commoner may distrain them; and therefore he may distrain the cattle of a stranger. *Hall* v. *Harding*, 4 *Burr.* 2426; 1 *Blac. Rep.* 673. Where cattle have trespassed on a party's land, it is not advisable to distrain where his title to the *locus in quo* is doubtful; but the party should proceed by action. 1 *Saund.* 346 e, *n.*

DISTRESS FOR RENT.

Division of subject.

We shall under this title notice only the latter kind of distress; and under this, *First*, Of Distresses for Rent; and, *Secondly*, Of Distresses under Warrants of Justices.

I. DISTRESS FOR RENT.

Origin of distress for rent.

The remedy for recovering rent by way of distress seems first to have come over to us from the civil law: for anciently, in the feudal law, not paying attendance at the lord's courts, or not doing the feudal service, was a forfeiture of the estate. But these feudal forfeitures were afterwards turned into distresses, according to the pignorary method of the civil law; that is, the land that is let out to the tenant is hypothecated, as a *pledge* in his hands, to answer the rent agreed to be paid to the landlord, and the whole profits arising from the land are liable to the lord's seizure for the payment and satisfaction thereof. *Gilb.* 2. The distress, being a pledge, could not be sold till the 2 Will. & Mary, c. 5, *post*, 993.

Concerning which we will show—

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II. *What may be Distrained*, 977 to 981.
III. *At what Time the Distress shall be taken*, 981.
IV. *Where the Distress shall be made*, 982.
V. *Goods fraudulently conveyed off Premises*, 983 to 987.
VI. *Manner of taking the Distress, and what a taking*, 987.
VII. *When a Party may distrain Twice*, 988.
VIII. *Distress must be reasonable*, 989.
IX. *When taken how to be proceeded in till Sale*, 989 to 992.
X. *Replevying Distress*, 992.
XI. *Sale and Costs of Distress*, 993 to 997.
XII. *Irregularity of Proceedings and tender of Amends*, 997.
XIII. *Rent in case of Extent, or Execution, or Bankruptcy*, 997.
XIV. *Rent on Death of Tenant for Life*, 999.
XV. *Rent, how far Recoverable by Executors and Administrators*, 1000.
XVI. *Rescous or Pound Breach*, 1001.
XVII. *Tenant deserting Premises*, 1002.
XVIII. *Landlord re-entering on Non-payment of Rent*, 1003.
XIX. *Rent on Tenant holding over*, 1004 to 1007.
XX. *Attorning to Strangers*, 1007.
XXI. *Forms*, 1007.

I. When a Distress for Rent allowed, and who may Distrain.

Nature of rents.

It may now be laid down as an universal principle, that a distress may be taken for any kind of *rent* in arrear, the detention whereof beyond the day of payment is an injury to him that is entitled to receive it. *Woodf.* 356: 3 *Blac. Com.* 6.

By the common law a distress could not lie for rent-seck. However, by stat. 4 Geo. II. c. 28, s. 5, the like remedy may be had by distress, impounding, and sale, in cases of rent-seck, rents of assize, and chief rents, as in case of rents reserved upon lease.

No distress can be taken for a rent reserved on a letting of mere *personal* property; (5 *Co.* 17; 3 *Wils.* 27); and where land itself is not demised, but the mere *use* of it, a distress for rent thereon cannot be made under such a demise; (8 *B. & Cres.* 141); for a *rent* cannot issue out of a privilege or easement. *Id.* A distress may be made for rent of a ready-furnished house or lodging, because it is then considered that the rent issues out of the principal, the real property demised. 2 *New Rep.* 224; and see 6 *B. & Cres.* 251; 6 *Bingh.* 105.

Rent must be in arrear.

The distress for rent must be for rent in *arrear*; therefore it may not be made on the same day on which the rent becomes due; for if the rent be paid in any part of that day, whilst a man can see to count money, the payment is good.

Tender of payments.

It must not be after tender of payment of the entire rent due; for if the landlord come to distrain the goods of his tenant for rent behind, before the distress the tenant may upon the land tender the arrearages, and if after that a distress be taken it is wrongful; and if the landlord have distrained, if the tenant before the impounding thereof tender the arrearages, the landlord ought to deliver the distress, and if he do not, the detainer is unlawful. Even so it is, in case of a distress by damage feasant (or damage done by cattle trespassing); the tender of amends before the distress maketh the distress unlawful; and after the distress, and before the impounding, the detainer unlawful. 2 *Inst.* 107; 3 *Stark.* 171. But in this case, although the owner tender sufficient amends, yet he cannot take his beasts out of the pound, if the amends be refused; but he must replevy; and if it be found at the trial that the amends were not sufficient, the person on whom they trespassed shall have damages; if the amends tendered were sufficient, then the owner of the beasts shall have damages. *D. & St.* 112. Where a distress is made after a sufficient tender, and no subsequent demand, trespass or case lies. *Branscombe* v. *Bridges*, 1 *B. & C.* 145; 2 *D. & R.* 256, S. C.

Special agreement or custom.

By special agreement, or local custom, a distress may be made before the rent falls due. *Gilb.* 56; *Harg. Co. Lit.* 47 b, n. 6.

Taking less for long time.

Where a landlord takes a less rent than that agreed on for a length of time he cannot in general distrain for that not actually paid. Where a landlord's receiver allowed the tenant to make a deduction in respect of a payment for land tax every year for seventeen years greater than the landlord was liable to pay, the landlord knowing, or having the means of knowing, all the facts, it was held that he could not distrain for the amount erroneously allowed, though the receipt given every year showed the amount paid and the amount deducted. *Branston* v. *Robins*, 4 *Bing.* 11.

Taking security for rent.

The taking even of a bond, (3 *Price*, 572,) or a bill of exchange or note, and giving a receipt, (*B. N. P.* 82,) for the rent, does not, until payment, preclude the landlord from distraining. A judgment, however, thereon would so preclude him. *Id.* An agreement to take interest on rent in arrear does not so preclude him. 2 *Chit. Rep.* 245.

There must be actual demise.

A landlord has no right to distrain unless there be an *actual demise* to the tenant at a *fixed rent*. And therefore where a tenant was in possession under a memorandum of an agreement to let on lease with a purchasing clause for 21 years, at the clear net rent of 63*l.*, the tenant to enter at any time on or before a particular day, it was held, that this only amounted to an agreement for a future lease, and that no lease having been executed, and no rent subsequently paid, the landlord was not entitled to distrain. *Dunk* v. *Hunter*, 5 *B. & A.* 322. And so where a party is in possession under an agreement for a lease, and no implied tenancy can be raised from other circumstances, the owner cannot during the first year distrain for non-payment of rent. *Hegan* v. *Johnson*, 2 *Taunt.* 148. But, *per Bayley*, J. in the case of *Dunk* v. *Hunter*, the owner's remedy is by action for use and occupation.

Rent must be fixed and certain.

So as Lord *Coke* says, *Co. Lit.* 96 a, it is a maxim in law, that no distress can be taken for any services that are not put into certainty, nor can be re-

WHEN ALLOWED AND WHO MAY DISTRAIN.

duced to any certainty, for *id certum est quod certum reddi potest;* but yet, in many cases, there may be certainty in uncertainty. Therefore if a man hold land, paying so much per acre, although in the terms of the demise the number of acres be not fixed, the lord may distrain. *Vin. Ab. Distress*, (E).

Where plaintiff entered a farm under an oral agreement for a lease of ten years, though the *time* of paying the rent was settled, but it did not appear what was the *amount* to be paid, and the lease was never granted, but plaintiff occupied according to the terms of the proposed lease, and paid a certain rent for two years, it was held the lessor might distrain. *Knight* v. *Bennett*, 3 *Bingh.* 361.

Where an estate has been let without in any way fixing the amount of rent, the only remedy for such rent is by action.

Double rent or value.

There cannot be a distress for double *value* under the 4 Geo. II. c. 28, but there may be for double *rent* under the 11 Geo. II. c. 19, s. 18. See *Timmins* v. *Rowlinson*, 3 *Burr.* 1603, 1608; *Bla. Rep.* 533.

Landlord must be entitled to reversion.

The landlord must at the time of the distress be entitled to the *legal reversion* in the premises in respect of which the rent is due. The common law only allowed distresses when the relation of landlord and tenant subsisted, and when consequently feudal service could be performed. If therefore the landlord, before or after the rent become due, and before payment, either by his own conveyance to another or otherwise, has no longer the legal estate in the premises, he cannot distrain. *Gilb. Act. Debt*, 411; *Bro. Debt, pl.* 93; *Vaughan*, 40; *Bac. Ab. Distress*, (A). And where a landlord demises his *whole* interest to another, he cannot distrain. Therefore where an avowant, who had a term which expired on the 11th Nov. 1826, let the premises orally from the 11th Sept. to the 11th Nov. in that year for 270*l.*, payable immediately, it was held that this was a lease of which parol evidence might be given, and not an assignment requiring a writing, but that being a demise of the whole of the avowant's interest, he had no right to distrain. *Reece* v. *Corrie*, 5 *Bingh.* 24. When a lessor has not the legal estate or reversion, he should reserve a power to distrain, which will entitle him to do so. *Co. Lit.* 47 a; 5 *Co.* 3.

A tenancy must subsist.

When a lease or tenancy has expired, so that the party holding possession is no longer a tenant, the landlord cannot in general distrain, because of the want of a *subsisting tenancy*. It is prudent and not unusual therefore to provide that the last quarter's rent shall be paid at a day prior to the determination of the lease, so as to enable the landlord to distrain before the tenant's removal. *Co. Lit.* 47 b. This, however, is in many cases rendered superfluous by the 8 Ann. c. 14, (which we shall hereafter notice,) which provides that if a person retain possession of the estate after the expiration of his tenancy, the landlord, *if his interest continue*, may distrain within six months. See *post*, 1004. And besides this, the 11 Geo. II. c. 19, s. 18, (which we shall also hereafter notice,) enables a landlord to distrain for double rent if a tenant do not deliver up possession after the expiration of his own notice to quit. See *post*, 1005.

If also by agreement or custom the tenant has an away-going crop, and *right to hold over* to clear the same, the landlord may, during such *excrescence* of the term, distrain at common law. 1 *Hen. Bla.* 8; *Dougl.* 201; 3 *Bingh.* 364.

Inclosure acts.

By stat. 1 & 2 Geo. IV, c. 23, landlords, or persons acting under their orders, may enter upon land allotted to them under any inclosure act, and seize and distrain for rent, notwithstanding the commissioners' award shall not have been executed. See further, **Inclosure**, Vol. III. p. 314.

Devisee.

A devisee may distrain for rent devised to him out of lands if the land is charged with a distress, and not otherwise. *Shep. Touch.* 439.

Executors.

As to executors distraining, see *post*, 999.

Mortgagee.

A mortgagee, after notice given of the mortgage to the tenant in possession under a lease prior to the mortgage, may distrain for the rent in arrear at the time of the mortgage, (although he was not in actual seisin of the premises, or in receipt of the rents and profits, at the time it became due,) as well as for rent which may accrue after such notice, the legal title to the rent being in the mortgagee. *Moss* v. *Gallimore*, *Dougl.* 278.

A receiver appointed by the Court of Chancery may distrain for rent where he sees it necessary, and need not apply first to that court for a particular order for the purpose. He should distrain in the name of the person who had the right. *Pitt* v. *Snowden*, 1 *Atk.* 750.

Receiver.

One *joint tenant* may distrain alone, but then he must avow in his own right and as bailiff to the other. 5 *Mod.* 73. One *tenant in common* may distrain for his share of the rent upon the terre tenant holding under him and another tenant in common, and he may do so where such tenant has paid the whole rent to the other tenant in common after notice not to pay it. 5 *T. R.* 246. One joint tenant may, without the assent of his fellows, appoint a bailiff to distrain for rent due to all the joint tenants. 4 *Bingh.* 562. See 3 *Chit. P. L.* 5th ed. 1056, n.

Joint tenants, &c.

One of several coheirs in gavelkind may distrain for rent due to him and his companions without their actual authority. 2 *Brod. & B.* 465.

Coheirs in gavelkind.

The lessor or landlord himself may make the distress; in general, however, he employs some third person, called a "bailiff." The authority given on this employment may be parol, but in general it is in writing, (usually called a "warrant of distress,") and it is best it should be so. The authority should be given by all the parties entitled to distrain. 1 *Leon.* 50.

Bailiffs.

A man indeed may distrain for another person without any express authority; if he afterwards obtain the assent of such person, such assent will have relation to the time of the distress taken. *Gilb. Distress*, 32.

By stat. 2 W. & M. sess. 1, c. 5, s. 5, if any distress and sale shall be made for rent in arrear and due when none is in truth due, the owner shall recover double value with full costs. The owner may sue either in trespass or case, *post*, 997.

Distraining where no rent is due. 2 W. & M. sess. 1, c. 5.

And if the distress be taken of goods without cause, the owner may make *rescous:* but if they be distrained without cause and *impounded*, the owner cannot break the pound and take them out, because they are in the custody of the law. 1 *Inst.* 47; *post*, 1001.

Rescue.

II. What may be Distrained.

It may be laid down as a general rule, that all chattels personal the landlord finds on the premises, whether they in fact belong to the tenant, a lodger, or other stranger, are liable to be distrained, unless particularly protected or exempted.

All goods on premises.

But a distress for rent must be of a thing, whereof a valuable property is in somebody; and therefore dogs, bucks, does, conies, and the like, that are *feræ naturæ*, cannot be distrained. 1 *Inst.* 47. But deer in an inclosed ground may be distrained for rent. *Davies* v. *Powell*, *Willes*, 46. So may odgs: a man may have a valuable property in a dog. *Ib.* 48. See title Dog, *post*.

Valuable property.

Whatever is in a man's *present use or occupation*, is during that time privileged from distress; as a horse on which he is riding, or an axe with which he is cutting wood. *Co. Lit.* 47 a. This rule extends even to the case of a distress damage feasant; for although it is said to have been formerly held, that horses might be severed from the plough, or a horse taken damage feasant, and impounded, although a rider were upon him; such distress is now determined to be unlawful, as it would be liable to lead to a breach of the peace. *Vide Hargrave's note* (12) *on Co. Litt.* 47 a, & 6 *T. R.* 139. So nets or ferrets cannot be taken damage feasant in a warren, if they are in the hands of a person using them. And although it was formerly considered, that a cart and horses when carrying corn, or hay, might be distrained for rent-service, it *seems* now to be held, that such a distress would be illegal, as being made on things in immediate use. On the same ground it has been determined, that a loom cannot be distrained when in the hands of the weaver; nor wearing apparel, if in actual use; but if put off, though only for the purpose of repose, it is liable to be taken as a distress for rent. 1 *Esp.* 206; *Bradby*, 207, 206.

Things in use.

Valuable things in the way of trade are not liable to distress. As a horse

Goods of others in way of trade.

WHAT MAY BE DISTRAINED.

standing in a smith's shop to be shoed, or in a common inn; or cloth at a tailor's house, or corn sent to a mill or market. For all these are protected and privileged for the benefit of trade. *Bradby*, 207, 208. So goods of a principal in the hands of a factor for sale, are privileged from distress for rent due from such factor to his landlord, on the ground that the rule of public convenience, out of which the privilege arises, is within the exemption of a landlord's general right to distrain, and therefore that such goods are protected for the benefit of trade. *Gilman* v. *Elton*, 6 *Moore*, C. P. 245; 3 *B. & B.* 75, S. C. So goods landed at a wharf and consigned to a broker, as agent of the consignor, for sale, and placed by the broker in the wharfinger's warehouse for safe custody until an opportunity of selling them should occur, are not distrainable for rent due in respect of the wharf and warehouse, as they were brought to the wharf in the course of trade. 1 *Bing.* 283. Nor is a horse that has carried corn to a mill to be ground, and during the grinding is tied to the mill door, distrainable. *Cro. Eliz.* 511, 596. Goods in possession of an innkeeper, or carrier, though the carrier be not a public one, are exempt. 1 *Salk.* 249. Cattle driven to a distant market, and put into land to rest for one night, cannot be distrained for rent. 2 *Vern.* 130; 2 *Saund.* 290, n. 7; 3 *Bla. Com.* 8, *Christian's* note.

But these general rules must be understood with some limitations. For although the goods of a guest at a public inn are privileged from distress, because such a place is *publici juris*, and all men have a right to use it without molestation: yet this exemption was held not to extend to the case of a chariot standing in the coach-house of a livery-stable keeper; for that is not a common inn, and the hire of its standing may be considered as part of the profits of the premises. *Francis* v. *Wyatt*, 3 *Burr.* 1498; S. C. 1 *Bla. R.* 483. The goods to be exempted from distress must also be within the very precincts of the inn, and not on other premises at a distance belonging to it. And even within the inn itself the exemption does not extend to the goods of a person dwelling therein as a tenant rather than a guest. *Bradby*, 208, 209; *ante*, 102, 103; *post*, 980.

With respect to the remedy over by an undertenant or lodger, or other party, against the person owing the rent, see cases cited 3 *B. & Cres.* 789. It may be laid down as a general rule, he has such remedy by action for not indemnifying. In 3 *B. & Cres.* 789, it was held that where the tenant of premises had underlet a part by *deed*, and the original landlord distrained for rent upon the undertenant, the landlord could not support *assumpsit* against his immediate lessor for an *implied promise* to indemnify him against the rent payable to the superior landlord.

Tools of trade.

By the ancient common law of England, no man shall be distrained by the utensils or instruments of his trade or profession, as the axe of the carpenter, or the book of a scholar, a stocking-frame or a loom, implements of husbandry, beasts of the plough and sheep, which are all privileged from distress, not only while in actual use, but whilst any any other sufficient distress can be found on the premises. *Co. Lit.* 47 a; *Simpson* v. *Hartopp*, *Willes*, 512; *Gorton* v. *Falkner*, 4 *T. R.* 565; and *vide* 1 *Selw. N. P.* 643. It should seem, that if there be a reasonable ground for presuming there are not sufficient other goods, the landlord may distrain implements of trade, and is not bound to sell the other goods first. 2 *Chit. Rep.* 167; 6 *Price*, 8. And this rule holds only in distresses for rent arrear, amerciaments, and the like; but doth not extend to cases where a distress is given in the nature of an execution by any particular statute, as for poor rates, and the like. 3 *Salk.* 136. So in *Hutchins* v. *Chambers*, on a special verdict, several geldings were distrained for the poor rate, which were stated to be beasts of the plough and cart, when there were other goods more than sufficient to answer the value of the demand. It was objected that by stat. 51 *Hen. III.* st. 4, (which was also in affirmance of the common law,) none shall be distrained by his beasts that gaigne his land. The court were unanimously of opinion, that beasts of the plough are distrainable under stat. 43 *Eliz.* c. 2, and such like acts of parliament. 1 *Burr.* 579.

Beasts of plough.

Things fixed to the freehold.

Furnaces, cauldrons, or other things fixed to the freehold, or the doors or windows of a house, or the like, cannot be distrained. *Co. Lit.* 47 b. And

WHAT MAY BE DISTRAINED.

this rule extends to such things as are essentially parts of the freehold, although for a time removed: therefore, a mill-stone is not distrainable, though it be removed out of its proper place in order to be picked; because such removal is out of necessity, and the stone still continues part of the mill; so it is of a smith's anvil on which he works, for this is accounted part of the forge, though it be not actually fixed by nails to the shop. *Bro. Abr. Distress*, pl. 23.

On the subject of "fixtures," we refer to Mr. *Amos's* excellent book, the only one, we believe, which has been exclusively devoted to that complicated and difficult subject.

Growing crops, trees, &c. 11 Geo. 2, c. 19.

And by stat. 11 Geo. II. c. 19, s. 8, the landlord or his steward, or other person empowered by him, may take and seize any cattle or stock feeding on any common appendant or appurtenant, or belonging to the premises, corn, grass, hops, roots, fruits, pulse, or other product growing on the estate, as a distress for rent; and the same may cut, gather, make, cure, carry and lay up when ripe in the barns or other proper place on the premises; and if there shall be no barn or proper place on the premises demised, then in any other barn or proper place which he shall procure as near as may be to the premises; the appraisement whereof shall be taken when cut, gathered, cured and made, and not before.

Sect. 9. And notice of the place where the goods so distrained shall be lodged, shall in one week after the lodging thereof be given to the tenant, or left at the last place of his abode.

A tenant whose standing corn and growing crops have been seized as a distress for rent before they were ripe, cannot maintain an action upon the case under 2 W. & M. c. 5, s. 28, against the landlord or his bailiff for selling the same before five days, or a reasonable time have elapsed after the seizure, such sale being wholly void. *Owen* v. *Legh and another*, 3 *B. & A.* 470.

The word "product" in the statute, does not extend to trees and shrubs growing in a nurseryman's ground, but it is confined to products of a similar nature with those specified in that section, to all of which the process of becoming ripe, and of being cut, gathered, made, and laid up when ripe was incidental. *Clark* v. *Gaskarth*, 8 *Taunt.* 431; 2 *Moore*, 491, S.C.

Trees, shrubs, and plants, growing in a nursery-ground, cannot be distrained for rent. *Id.* see also *Clark* v. *Calvert*, 3 *Moore*, 96.

When corn, grass, &c. growing, is distrained, it may, when ripe, be laid up in barns or other proper places on the premises, and shall not be appraised or sold until it shall have been ripe, cut, gathered, cured, and made. *Peacock* v. *Purvis*, 2 *B. & B.* 362: 5 *Moore*, 79, S.C. Growing crops taken under a *fi. fa.* in the hands of the sheriff's vendee, are protected from the landlord's distress for rent subsequently accruing, unless perhaps allowed to remain uncut for an unreasonable time. *Id.*

56 Geo. 3, c. 50. No sheriff or other officer shall sell or carry off from any lands any straw, chaff, or turnips in any case, nor any hay or other produce, contrary to the covenant.

For the protection of landlords, the stat. 56 Geo. III. c. 50, s. 1, enacts, that no sheriff or other officer, in England or Wales, shall, by virtue of any process of any court of law, carry off or sell, or dispose of for the purpose of being carried off from any lands let to farm, any straw thrashed or unthrashed, or any straw of crops growing, or any chaff, colder, or any turnips, or any manure, compost, ashes, or sea-weed in any case whatsoever, nor any hay, grass or vetches, nor any roots or vegetables, being the produce of such lands, in any case where, according to any covenant or written agreement entered into and made for the benefit of the owner or landlord of any farm, such hay, grass or grasses, tares and vetches, roots or vegetables, ought not to be taken off or withholden from such lands, or which by the tenor or effect of such covenants or agreements ought to be used or expended thereon; and of which covenants or agreements such sheriff or other officer shall have received a written notice before he shall have proceeded to sale.

Notice.

Sect. 2 enacts, that the tenant shall give notice to the sheriff of the existence of covenants, and the sheriff to the landlord.

Agreements.

Sect 3 empowers such sheriff or other officer to dispose of the produce, subject to an agreement to expend it on the land.

WHAT MAY BE DISTRAINED.

56 Geo. 3, c. 50. Landlords not to distrain for rent on purchasers of corn severed from the soil, or other things sold subject to agreement.

Sect. 6. In all cases where any purchaser or purchasers of any crop or produce hereinbefore mentioned shall have entered into any agreement with such sheriff or other officer, touching the use and expenditure thereof on lands let to farm, it shall not be lawful for the owner or landlord of such lands to distrain for any rent on any corn, hay, straw, or other produce thereof, which at the time of such sale and the execution of such agreement entered into under the provisions of this act, shall have been severed from the soil and sold, subject to such agreement by such sheriff or other officer nor on any turnips, whether drawn or growing, if sold according to the provisions of this act; nor on any horses, sheep, or other cattle, nor on any beasts whatsoever, nor on any waggons, carts, or other implements of husbandry, which any person or persons shall employ, keep, or use on such lands for the purpose of thrashing out, carrying, or consuming any such corn, hay, straw, turnips, or other produce under the provisions of the act and the agreement or agreements directed to be entered into between the sheriff or other officer, and the purchaser or purchasers of such crops and produce as hereinbefore are mentioned. See 2 *B. & B.* 362; *ante*, 979.

The crown, or its process, not being in any way alluded to in this statute is not affected by the provisions it contains for preserving covenants between the tenants and landlords of lands, &c. let to farm; the Court of Exchequer therefore held, that the sheriff, on a writ of *venditioni exponas* issued after an extent, could not sell the crops, &c. taken under it, subject to any condition that the same should be used and expended according to the covenants of the lease. *R.* v. *Osbourne*, 6 *Price*, 94.

Things not restorable in as good a plight. 2 W. & M. sess. 1, c. 5. Corn or hay cut.

At common law such things only can be distrained as may be restored to the owner in the same plight as they were in at the time of taking them, and for this reason sheaves and shocks of corn were not distrainable; but by stat. 2 W. & M. sess. 1, c. 5, s. 3, persons having rent-arrear on any demise, lease, or contract, may seize and secure any sheaves or cocks of corn, or corn loose or in the straw, or hay, being in any barn or granary, or upon any hovel, stack, or rick, or otherwise upon any part of the land charged with rent, and may lock up or detain the same in the place where found, in the nature of a distress, so as the same be not removed to the damage of the owner out of the place where found and seized, but be kept there (as impounded) till replevied or sold. This provision extends to corn in whatever state it may be, whether thrashed or not. *Lutw.* 214. If standing corn be sold under an execution, and afterwards cut by the vendee, it cannot be distrained before it is fit to be carried. *Gilb. Distr.* 50; *Peacock* v. *Purvis*. 2 *B. & B.* 362; 5 *Moore*, 97, S. C.; 1 *Price*, 277; *ante*, 979, *post*, 981. *Secus* where it is permitted to remain an unreasonable time. *Id. Com. Rep.* 203.

Milk, fruit, and the like, cannot be distrained, as they cannot be restored in as good a plight as when taken. 3 *Bla. Com.* 9. *Query*, whether now as the distress may be sold, such things as will not injure in the five days, cannot be distrained.

Strangers or lodgers' goods.

Generally, whatever goods and chattels the landlord finds upon the premises, whether they in fact belong to the tenant or a lodger or a stranger, are distrainable by him for rent; for otherwise a door would be opened to infinite frauds upon the landlord; and the lodger or stranger hath his remedy over by action on the case against the tenant, if by the tenant's fault the goods are distrained, so that he cannot render them when called upon. See 3 *Bla. Com.* 8; *ante*, 978.

Cattle depastured.

But on particular circumstances perhaps a court of equity may relieve. As in *Fowkes* v. *Joyce*, 3 *Lev.* 260; 2 *Ventr.* 50, a person driving sheep to London to sell, by agreement with the master of an inn put them into the ground at so much a score for the night. The landlord seeing them, asked whose they were, but consented to their staying there, and afterwards distrained them for rent due to him from the master of the inn: and it was adjudged for the landlord. But in the same case, upon a bill for relief in equity, the lords commissioners seemed to think that the grounds lying to the inn and used therewith, ought to have the same privileges the inn hath, and

WHAT MAY BE DISTRAINED.

that a passenger's cattle ought not to be distrainable there. 2 *Vern.* 129. And on the ground of a fraudulent consent by the landlord it was decreed that he should answer for the value of the sheep, and pay costs both in law and equity. *Prac. Ch.* 7. And a court of law in the present day would, it seems, be of opinion, that cattle belonging to a drover, being put into a ground with the consent of the occupier to graze only one night in their way to a fair or market, would not be liable to the distress of the landlord for rent. 2 *Saund.* 290, n. (7); *ante*, 978.

Cattle escaped on the premises.

Where a stranger's beasts escape into the land, they may be distrained for rent, though they have not been levant and couchant, (that is, not having so long remained upon the ground as to have lain down and risen up again to feed,) provided they are trespassers; but if the tenant of the land is in default in not repairing his fences, whereby the beast came into the land, the landlord cannot distrain such beasts, though they have been levant and couchant, unless he have caused notice to be given to the owner, and the owner suffers them to remain there afterwards. *Lutw.* 364; see *Jones* v. *Powell*, 5 *B. & Cres.* 647. But such notice, it is said, is not necessary where the distress is by the lord of the fee for an ancient rent, or by the grantee of a rent-charge. *Woodf.* 301. Where the cattle escape accidentally, there they are not distrainable until they have been levant and couchant; but if they escape by default of their owner, they are distrainable the first minute. *Per Treby*, C. J. 1 *Ld. Raym.* 169. "And if the cattle of one man escape into the land of another, it is no excuse that the fences were out of repair if they were trespassers in the place from whence they came. If it be a close, the owner of the cattle must show an interest or right to put them there. If it be a way, he must show that he was lawfully using the way; for the property is in the owner of the soil, subject to an easement for the benefit of the public." *Per Heath*, J., *Dovaston* v. *Payne*, 2 *H. Bla.* 531.

Things for which a replevin will not lie.

Money.

Things for which a replevin will not lie, so as to be known again, as money out of a bag, cannot be distrained. 2 *Bac. Abr.* 109; *Moore*, 394.. But money in a bag sealed may be distrained, for the bag sealed may be known again.

Goods in custody of the law.

Goods in the custody of the law are not distrainable; therefore goods distrained for damage feasant cannot be taken for rent, nor goods in a bailiff's hands on an execution, nor goods seized by process at the suit of the King, because they are in the custody of the law. *Co. Lit.* 47; *Park.* 120. But the goods so in custody must be removed from the premises within a reasonable time, or they will not be protected. 1 *Price*, 277; 1 *M. & S.* 711; 2 *B. & B.* 362; 5 *Moore*, 97, S.C.; *ante*, 980. Goods taken under a void outlawry are liable to a distress for rent. 7 *T. R.* 259. We have already noticed the provisions of the 56 Geo. III. c. 50, *ante*, 979, as to distraining growing crops seized in execution, and see further as to distresses on goods under an execution, or in cases of bankruptcy, *post*, 997, 998.

Goods of ambassadors.

7 Anne, c. 12, s. 3.

By the 7 Anne, c. 12, s. 3, it is enacted, that process of distress against the goods of any ambassador or other public minister, &c. of a foreign state, or of their domestic servants, shall be void. But the goods, to entitle them to protection, must be for the necessary convenience of the ambassador or other public minister; and in the late war, where a British-born subject, employed as first chorister at the Portugueze ambassador's chapel with a salary, rented and occupied a house, and let part of it in lodgings, and a distress was levied on his goods for a poor's rate; it was held, that they were not protected by the statute, even assuming him to be a domestic servant of the ambassador. 2 *D. & R.* 833; 1 *B. & Cres.* 554, S.C.

III. At what Time the Distress shall be taken.

Time of distress.

For a rent or service the lord cannot distrain in the night, but in the daytime; and so it is of a rent-charge; but for *damage feasant*, one may distrain in the night; otherwise it may be, the beasts may be gone before he can take them. 1 *Inst.* 142, (*a*).

WHERE DISTRESS MAY BE TAKEN.

For before sunrising, or after sunset, no man can distrain but for *damage feasant*. *Mirrour*, c. 2, s. 26; see also 7 *Rep.* 7 (*a*).

In general the distress cannot be on the day the rent falls due; when otherwise, see *ante*, p. 975. It cannot be made in general after the expiration of the tenancy, when otherwise, *ante*. 976.

IV. Where the Distress shall be made.

Church lands.

The King's officers, as sheriffs and others, shall not take distresses in the fees wherewith churches in times past have been endowed: but distresses may be taken in possessions of the church newly purchased. 9 Edw. II. c. 9.

On the premises.

A man may distrain in places or lands within the fee, or premises demised liable to distress, and not elsewhere. 52 Hen. III. c. 51; 2 *Inst.* 131; *Mir.* c. 2, s. 26.

On common and ways.

And by the 11 Geo. II. c. 19, s. 8, the landlord may distrain any *cattle or stock* of the tenant, depasturing on any common appendant or appurtenant, or any ways belonging to the premises demised. The right given by this act is confined to cattle and live stock, so that a distress could not be made on a cart standing on a common, unless fraudulently removed. 4 *Campb.* 136.

On highways.

No person (except the King's officers) shall take distresses in the King's highway. 52 Hen. III. c. 51. And the reason is, because the King's subjects ought to have free passage as well to fairs and markets as about their other affairs. But this rule is confined to the first taking of the distress; for if the lord coming to distrain see the beasts within his fee, and before he can distrain them they are chased into the highway, he may distrain them therein. 2 *Inst.* 131, 132. And this statute, though passed for a remedy to the party distrained on does not avoid the distress. *Id. F. N. B.* 90; 4 *Bingh.* 140.

A barge attached by a rope to a wharf in the river Thames, in the space between high and low water mark, cannot be distrained on for rent in arrear, in respect of the wharf and premises attached to it. *Buszard* v. *Capel*, 8 *B. & Cres.* 141, overruling 4 *Bingh.* 137, S.C.

V. Goods fraudulently conveyed off the Premises.

Goods fraudulently removed.

If the lessor did not find sufficient or any goods on the premises demised, he could formerly resort to no where else to distrain, and therefore tenants who were knavish made a practice to convey away their goods and stock fraudulently from the premises demised, in order to cheat their landlords.

11 Geo. 2, c. 19.

But now, by stat. 11 Geo. II. c. 19, s. 1, it is enacted, "that from and after the 24th day of June, in the year of our Lord, 1738, in case any tenant or tenants, lessee or lessees, for life or lives, term of years, at will, sufferance or otherwise, of any messuages, lands, tenements, or hereditaments, upon the demise or holding whereof any rent is or shall be reserved, due, or made payable, shall fraudulently or clandestinely convey away, or carry off or from such premises, his, her, or their goods or chattels, to prevent the landlord or lessor, landlords or lessors, from distraining the same for arrears of rent so reserved, due, or made payable; it shall and may be lawful to and for every landlord or lessor, landlords or lessors, within that part of Great Britain called England, dominion of Wales, or the town of Berwick upon Tweed, or any person or persons by him, her, or them for that purpose lawfully empowered, within the space of thirty days next ensuing such conveying away or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels, wherever the same shall be found, as a distress for the said arrears of rent; and the same to sell, or otherwise dispose of, in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord, lessors or landlords, in and upon such premises for such arrears of rent; any law, custom, or usage to the contrary in anywise notwithstanding."

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11 Geo. 2, c. 39.

Except when bonâ fide sold.

Aid of the constables and justices.

Sect. 2. "That no landlord or lessor, or other person entitled to such arrears of rent, shall take or seize any such goods or chattels as a distress for the same, which shall be sold *bonâ fide*, and for a valuable consideration, before such seizure made, to any person or persons not privy to such fraud as aforesaid; anything herein contained to the contrary notwithstanding."

Sect. 7. "Where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant or tenants, lessee or lessees, his, her, or their servant or servants, agent or agents, or other person or persons aiding or assisting therein, shall be put, placed, or kept in any house, barn, stable, outhouse, yard, close, or place locked up, fastened, or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent; it shall and may be lawful for the landlord or landlords, lessor or lessors, his, her, or their steward, bailiff, receiver, or other person or persons empowered to take and seize, as a distress for rent, such goods and chattels (first calling to his, her, or their assistance the constable, headborough, borsholder, or other peace officer of the hundred, borough, parish, district, or place, where the same shall be suspected to be concealed, who are hereby required to aid and assist therein; and in case of a dwellinghouse, oath being also first made (*a*) before some justice of the peace of a reasonable ground to suspect that such goods or chattels are therein) in the day time, to break open (*b*) and enter into such house, barn, stable, outhouse, yard, close, and place, and to take and seize such goods and chattels for the said arrears of rent, as he, she, or they might have done by virtue of this or any former act, if such goods and chattels had been put in any open field or place."

Person assisting, to forfeit double the value.

Sect. 3. "And to deter tenants from such fraudulent conveying away their goods and chattels, and others from wilfully aiding or assisting therein, or concealing the same, it is enacted, that from and after the said 24th day of June, if any such tenant or lessee shall fraudulently remove and convey away his or her goods or chattels as aforesaid, or if any person or persons shall wilfully and knowingly aid or assist any such tenant or lessee in such fraudulent conveying away or carrying off of any part of his or her goods or chattels, or in concealing the same; all and every person and persons so offending shall forfeit and pay to the landlord or landlords, lessor or lessors, from whose estate such goods and chattels were fraudulently carried off as aforesaid, double the value of the goods by him, her, or them respectively carried off or concealed as aforesaid; to be recovered by action of debt in any of his Majesty's courts of records at Westminster, or in the courts of session in the counties palatine of Chester, Lancaster, or Durham, respectively, or in the courts of grand sessions in Wales;(*c*) wherein no essoin, protection, or wager of law shall be allowed, nor more than one imparlance."

Where goods not exceeding 50*l.* in value are concealed, &c. complaint may be made to two justices.

Sect 4. "That where the goods and chattels so fraudulently carried off or concealed shall not exceed the value of 50*l.* it shall and may be lawful for the landlord or landlords, from whose estate such goods or chattels were removed, his, her, or their bailiff, servant, or agent, in his, her, or their behalf, to exhibit a complaint in writing (*d*) against such offender or offenders, before two or more justices of the peace of the same county, riding, or division of such county, residing near the place whence such goods and chattels were removed, or near the places where the same were found, not being interested in the lands or tenements whence such goods were removed; who may summon (*e*) the parties concerned, examine the fact, and all proper witnesses, upon oath, or if any such witness be one of the people called Quakers, upon affirmation required by law; and in a summary way determine, whether such person or persons be guilty of the offence with which he or they are charged; and to inquire in like manner of the value of the goods and chattels by him, her, or them respectively so fraudulently carried off or concealed as

(*a*) See form, (No. 15), *post*.
(*b*) See form, (No. 16), *post*.
(*c*) The Welch jurisdiction is abolished by 1 Will. IV. c. 70. See *post*, Wales, Vol. V.
(*d*) See form, (No. 7), *post*.
(*e*) See form, (No. 8), *post*.

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aforesaid; and, upon full proof of the offence, by order (*a*) under their hands and seals, the said justices of peace may and shall adjudge the offender or offenders to pay double the value of the goods and chattels to such landlord or landlords, his, her, or their bailiff, servant, or agent, at such time as the said justices shall appoint: and in case the offender or offenders having notice of such order, shall refuse or neglect so to do, may and shall by warrant (*b*) under their hands and seals, levy the same by distress and sale of the goods and chattels of the offender or offenders; and for want of such distress (*c*) may commit the offender or offenders to the house of correction (*d*), there to be kept to hard labour without bail or mainprize for the space of six months, unless the money so ordered to be paid as aforesaid shall be sooner satisfied."

11 Geo. 2, c. 19. Offender to pay double value.

Appeal.

Sect. 5. "That it shall and may be lawful for any person who thinks himself aggrieved by such order of the said two justices, to appeal to the justices of peace at their next general or quarter sessions to be held for the same county, riding, or division of such county, who may and shall hear and determine such appeal, and give such costs to either party as they shall think reasonable, whose determination therein shall be final."

The two justices' order, if such appeal, not to be executed.

Sect. 6. "That where the party appealing shall enter into a recognizance (*e*) with one or two sufficient surety or sureties in double the sum so ordered to be paid, with condition to appear at such general or quarter sessions, the order of the said two justices shall not be executed against him in the mean time."

Observations and decisions on the act.

Cases and Decisions on the Act]—The *first* and *second* sections of this act are remedial, and not penal, and should be construed liberally. See *Stanley* v. *Wharton*, 9 *Price*, 301.

The act applies to the goods of the *tenant* only, which are fraudulently removed, and not those of a stranger; (*Thornton* v. *Adams*, 5 *M. & S.* 38); and it does not apply to an undertenant removing to avoid the distress of a landlord on his immediate tenant. (*Id.* 2 *Stra.* 787). A creditor may, with the assent of the debtor, remove goods from the premises for the payment of a *bonâ fide* debt, without incurring the penalty of stat. 11 Geo. II. c. 19, s. 3, against persons assisting in removing goods. *Bach* v. *Meats*, 5 *M. & S.* 200.

In order to justify the landlord in seizing, under this statute, within thirty days, goods removed off the premises, as a distress for rent, wherever found, it has been considered that the removal must have taken place *after the rent became due*, and must have been clandestine; (*Watson* v. *Main*, 3 *Esp.* 15; see also, 2 *Saund.* 284, *n.* 2); but this is questionable, and with good reason; see 4 *Campb.* 136, *per Lord Ellenborough*, C. J.

The first and second sections apply to all cases where a landlord is, by the conduct of his tenant in removing goods from premises for which the rent is due, turned over to the barren right of bringing an action for his rent. Where, therefore, a tenant openly and in the face of day and with notice to his landlord, removed his goods without leaving sufficient on the premises to satisfy the rent then due, and the landlord followed and distrained the goods, it was held, that although the removal might not be clandestine, yet, as it was fraudulent, (which was a question for a jury,) the landlord was justified under the act in seizing the goods. 4 *D. & R.* 33. The removal need not be clandestine as well as fraudulent; (*Id.*); and it is immaterial whether the concealment took place by night or with any concealment. *Id.* 1 *C. & P.* 121. It has been held under the third section, as we have seen *supra*, that a creditor, with the assent of his debtor, may take possession of the goods of the latter, and remove them from the premises for the purpose of satisfying a *bona fide* debt, without incurring the penalty inflicted by that section,

(*a*) See forms, (No. 9 and 10), *post*.
(*b*) See form, (No. 11), *post*.
(*c*) See form, (No. 12), *post*.
(*d*) See form, (No. 13), *post*.
(*e*) See form, (No. 14), *post*.

although such creditor takes possession knowing the debtor to be in distressed circumstances and under an apprehension that the landlord will distrain. 5 *M. & S.* 200. It is not necessary to show, in proof of concealment of cattle, that they were withdrawn from sight; if they have been removed to a neighbour's field so as to cause the landlord difficulty in finding them, it is sufficient. *Stanley* v. *Wharton*, 9 *Price*, 301.

And in an action on the *third* section of the statute against the tenant, which section is remedial as well as penal, (8 *B. & Cres.* 537,) it is not necessary to show an actual participation in the act if the removal was with his privity; (*Lyster* v. *Brown*, 3 *D. & R.* 501; 1 *C. & P.* 121, S. C.); nor is it necessary that it should be proved that a distress was in progress or about to be put in execution, or even contemplated, it is enough that the rent be shown to be in arrear, and that the goods were removed afterwards. *Stanley* v. *Wharton*, 10 *Price*, 138. To make a *third party* liable, it must be proved he assisted in the removal, and was also privy to the fraudulent intent. 8 *B. & Cres.* 537. In such action against a third person, the acts and orders of a tenant are admissible evidence of his own fraud, and of knowledge on the part of the defendant, if by other evidence he is proved to have contributed to the facility of it; and circumstances of suspicion may be laid before the jury to prove such fraudulent co-operation as the legislature contemplated. *Stanley* v. *Wharton*, 10 *Price*, 138; 9 *Price*, 301.

Justices either of the county from which the tenants fraudulently remove goods, or of that in which they are concealed, may convict the offenders within their respective counties. *R.* v. *Morgan*, *Cald.* 156.

The value of the goods being under 50*l.* does not render it compulsory on the party to have recourse to the summary remedy before two justices under the *fourth* section. *Stanley* v. *Wharton*, 9 *Price*, 301; *Horsefall* v. *Davy*, *Holt*, *C. N. P.* 147; *M. & M.* 175.

The fact of the landlord's having in the first instance made his complaint under the act before a magistrate, will not prevent him from afterwards bringing an action. *Horsefall* v. *Davy*, 1 *Stark.* 169. *Holt*, *C. N. P.* 147, S. C.

As to orders in general see *post*, Order, Vol. III. An order of magistrate, under the act, need not enumerate or specify the particular goods alleged to have been removed. *R.* v. *Rabbits*, 6 *D. & R.* 341.

It is not necessary to set out the evidence in an order made by one or more of the justices. *R.* v. *Bissex*, *Sayer*, 304; 29 & 30 Geo. II.; *MS.* (*Burn,*) S. C. (*a*)

(*a*) *R.* v. *Bissex*, T. 29 & 30 Geo. II. MS. (*Burn,*) S.C. *Sayer*, 304. Order made by two justices, reciting that a complaint had been made to them in writing by A. Clavey against J. Bissex, that he the said Clavey demised his estate in the parish of Shelley, in the county of Somerset, to William Thatcher, at the yearly rent of 44*l.*, and that there was due in arrear from Thatcher to him for rent of the said estate, on the 5th day of April last, 24*l.* 15*s.* 8½*d.*; and that he the said Clavey would have distrained the goods and chattels of the said W. Thatcher upon the said estate, in order to obtain satisfaction of the said rent; but to prevent him from so doing, the said Bissex, on or about the 27th, 28th, and 29th days of August last, did knowingly and wilfully aid and assist the said Thatcher in fraudulently conveying and carrying off from the said estate his the said Thatcher's goods and chattels, and also in concealing the same, being under the value of 50*l.*; that is to say, two cows, one heifer, and ten hundred weight of cheese, of the value of 20*l.*; whereby the said Clavey was prevented from distraining the same in order to obtain satisfaction for the said rent, and contrary to the statute 11 Geo. II., and therefore praying us to grant him our warrant of summons, requiring you the said J. Bissex to appear before us, and that we would examine the fact, and thereupon make such order therein for his relief as the said statute directs and requires, and as should be agreeable to justice; whereupon we the said justices, residing near the said estate from whence the said goods and cattle were removed, and neither of us any way interested in the said estate, did issue our warrant of summons, requiring you the said J. Bissex to attend us thereon to answer the said complaint; and you having attended accordingly, and we in your presence having examined the witnesses produced

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The charge though set out in the order in the alternative will be good,

by the said A. Clavey upon oath, and heard what was alleged by you in your defence, do adjudge that the said complaint is true; and that the said goods and cattle of the said W. Thatcher, which you so aided and assisted in conveying and carrying off from the said estate, and also in concealing the same, were of the value of 20*l.*, and that you have thereby forfeited double the value of the said goods and cattle, being the sum of 40*l.*, to the said complainant A. Clavey, by virtue of the said statute: we, therefore, in pursuance of the said statute, do adjudge, order, and require you the said J. Bissex, within the space of three days from the date hereof, to pay to the said A. Clavey the sum of 40*l.*, which if you shall neglect to do, such further proceedings will be then had against you to enforce the payment thereof as the said statute directs and requires. Given under our hands and seals this 5th day of January, 1756. This order was affirmed by the sessions upon appeal. Both the orders were removed by *certiorari* into the King's Bench. It was moved to quash the same. Objections taken: 1. The complaint is said to be taken in writing, but not upon oath. 2. It is only said, that he demised to W. Thatcher; but not said for what estate or term. 3. It is stated, so much was due for rent, but not said for what term; it might be due twenty years ago: it is not stated to be due when Thatcher removed his goods. 4. The words of the order are, goods and *cattle;* of the statute, goods and *chattels.* 5. No certain time is alleged when the defendant aided and assisted; only said, on or about the 26th, 27th, or 28th of August. 6. Not stated that Thatcher did carry off his goods; only that Bissex did aid and assist him in carrying them off. 7. They adjudge the complaint true, but do not state the evidence; and this is a conviction, not an order; and for any thing that appears, it might be upon Clavey's evidence alone. 8. It is not stated that the goods were under the value of 50*l.*, which is the ground of the justices' jurisdiction. 9. The words of the statute are, if any person shall be a tenant of any lands, tenements, or hereditaments: the word used in the order is *estate;* which may be a thing incorporeal, or may mean the interest in the land, and so not within the statute. 10. It should appear whether the landlord has a right to distrain: by stat. 8 Ann. c. 14, the landlord may distrain at any time within six months after the expiration of the term; it does not appear that these six months were not expired; and if they were, this is no offence. After consideration, Mr. J. *Denison* delivered the resolution of the court: I think the most material objection is, whether this is an order or a conviction. If a conviction, the evidence ought to have been set out. And there has been no doubt, (notwithstanding the case of *R.* v. *Pulleine*, 1 *Salk.* 369,) that in a conviction the evidence must be set out, that the court may judge upon it. So it was held by Lord *Hardwicke*, in the case of *R.* v. *Lloyd*, *Stra.* 996; and in that case it was objected that as it subjected the party to a penalty, though in the statute it was called an order, yet it should be construed as a conviction; but the court said, every act of the justices, which subjects the party to a penalty, shall not be construed as a conviction; *R.* v. *Venables*, *Stra.* 630; 2 *Ld. Raym.* 1406; upon the statute for licensing alehouses, considered as an order; *R.* v. *Blackwell*, M. 4 G. II.; which the court said was a strong case, and must be considered as an order. I understood from Lord *Hardwicke*, in the case of *R.* v. *Lloyd*, that his ground of the difference was founded upon the expressions of the statute, and not upon the penalty; as where the words of the statute are, 'of which he shall be convicted,' it is to be construed as a conviction. Here it is extremely strong; the statute calls it an order: and in the nature of it, it is the examination upon a complaint. If the party were never summoned, this court, upon affidavit, will grant an information against the justices; but the summons need not be set out; and the court will intend that the justices have done right, in case the contrary does not appear upon the face of the order. As to the 1st objection: this is not an information, but a complaint; when the party is summoned, the witnesses are to be examined upon oath, but the complaint need not be upon oath. In answer to the 2d objection: as the order has followed the words of the statute, we will not intend it a case wherein the justices had not a jurisdiction. The court will not, in case of an order, intend that the justices have done wrong. As to the 3d objection: it is sufficiently alleged in an order; his assisting the tenant to carry away the goods, as it is here alleged, is sufficient to show the rent continued then to be in arrear; and the rather, as the defendant might have availed himself of the rent paid, by proving it before the

there being a difference between an indictment or conviction and an order in this respect. *R.* v. *Middlehurst*, 1 *Burr.* 399. (*a*)

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VI. Manner of taking Distress and what is a taking.

This has already been partially considered as far as respects the time and place of taking and the goods that may be taken, *ante*, 977 to 982.

Breaking gates and outer doors.

Gates or inclosures may not be broken open, nor thrown down, to make a distress. 1 *Inst.* 161. Nor may the lessor enter into the tenant's house, unless the doors are open. 2 *Bac. Abr.* tit. *Distress*, 347. Upon a question about taking a distress, it was holden by the Lord Chief Justice *Hardwicke*, (Exeter Sum. Ass. 1736,) that a padlock put on a barn door could not be opened by force, to take the corn by way of distress. 9 *Vin. Abr.* 128, pl. 6. But if the outer door of a house be open, one may break an inner door to take a distress. *Cases Temp. Hardw.* 168; *Bull. N. P.* 7th edit. 81 c. But except it be in this case where the goods are clandestinely conveyed, it may seem from what hath been said that the landlord hath no means to come at the goods in order to make distress, if the tenant shall think fit to lock up his gates, and shut the doors. *Vide* stat. 11 Geo. II. c. 19, s. 7,

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justices. I much doubt whether in a declaration it would not be sufficient to say, the rent was in arrear at such a day; and I think it would lie upon the defendant to prove that the rent does not remain in arrear. As to its not being said for what time the rent was due, this is mere matter of form. As to the 5th objection: *about*, in common parlance, means in this case three days, or near it. They might be three days in carrying the goods away. The days are not material, even in legal proceedings. 1 *Lord Raym.* 581. And in the case of *R.* v. *Simpson*, H. 3 Geo. II. *Stra.* 46, the day and hour in a conviction are not material. By this statute no time is limited when the complaint shall be made; it may be made at any time. Suppose that the defendant had paid the penalty on a different complaint made, he might easily have shown it. As to the 6th, the answer is obvious: if Thatcher had not carried his goods away, the defendant could not have aided in carrying them. The statute makes two offences; one, carrying the goods away, the other, aiding in carrying them away. It is only necessary here to state the offence which the defendant had been guilty of, which this order does in the words of the statute. In the case of *R.* v. *Monk*, M. 13 G. II. there was a conviction for aiding and assisting in killing a buck. It was objected, that it was not charged the buck was killed. But the court held, that as the conviction was in the words of the statute, it was sufficient. And the court held they were all principals, as well those that killed the buck as those that assisted. And this was the case of a conviction. All the other objections may have this general answer; that in case of orders, where the justices have jurisdiction, we will intend they have acted right; and if they have done wrong, they may be punished by an information. Let the orders be confirmed."

(*a*) So in *R.* v. *Middlehurst*, 1 *Burr.* 399. Two justices made an order against one T. M. for wilfully and knowingly aiding and assisting J. C. the tenant of Sir T. F. in fraudulently removing and conveying away five cows and other goods, or in concealing the same. Which order, on appeal to the sessions, was confirmed. It was moved to quash these orders, upon two objections: 1. That it is not described sufficiently what the offence is. 2. That the charge was in the disjunctive, that he assisted the tenant in removing *or* concealing the goods. By *Lord Mansfield*, C. J. Upon indictments it hath been determined that an alternative charge is not good (as, forged *or* caused to be forged); though one only need be proved, if laid conjunctively (as, forged *and* caused to be forged); but I do not see the reason of it: the substance is exactly the same; the defendant must come prepared against both; and it makes no difference to him in any respect. But this is an order; and being good in substance, needs not be literally so strict. And by the court, the rule to show cause was discharged, and consequently both orders affirmed.

DISTRAINING TWICE.

ante, p. 983; and see further as to breaking open doors, *post*, Warrant, Vol. V.

What a taking.

With respect to what is a good taking, if a landlord come into a house and seize upon some goods as a distress, in the name of all the goods of the house, that will be a good seizure of all. 6 *Mod.* 215. Where a landlord's agent went upon the tenant's premises, walked round them, and gave a written notice that he had distrained certain goods lying there for an arrear of rent, and that unless the rent was paid or the goods replevied within five days, they would be appraised and sold, and then went away not leaving any person in possession; it was held, that this was a sufficient taking to give the tenant a right of action for an excessive distress, (there being one,) and that quitting the premises without leaving any one in possession was not an abandonment of the distress, the 11 Geo. II. c. 19, s. 10, giving the landlord power to impound or otherwise secure the goods on the premises distrained. *Swann* v. *Earl Falmouth*, 8 *B. & Cres.* 456. A landlord, to whom rent was in arrear, hearing his tenant and a stranger disputing about the property of an article on the premises early in the morning, entered and said, "the article shall not be removed till my rent is paid." The stranger nevertheless removed the article on the same day, after such removal the landlord sent his broker to distrain for the rent; it was held, that the distress was sufficiently commenced by the landlord to entitle him to the article in question. *Wood* v. *Nunn*, 5 *Bing.* 10.

VII. When a party may Distrain twice.

Distraining twice.

When a man is entitled to distrain for an entire duty, he ought to distrain for the whole at once, and not for part at one time, and part at another; as in the case of *Wallis* v. *Savill*, *Lutw.* 1532, a second distress was held unjustifiable, because both distresses were taken for one and the same rent, and it was the lessor's folly that he had not taken a sufficient distress at first. But if he distrains for the whole, and there is not sufficient on the premises, or he happens to mistake the value of the thing distrained, and so takes an insufficient distress, he may take a second distress to complete his remedy. For if a man seize for the whole sum that is due to him, and only mistake the value of the goods seized, (which may be of very uncertain, or even imaginary value, as pictures, jewels, race-horses, and the like,) there is no reason why he should not afterwards complete his execution by making a further seizure, provided it be for the same sum due. 1 *Burr.* 589.

The restriction which existed on this subject at the common law was removed by stat. 17 Car. II. c. 7, which enables the lessor, or his executors or administrators, to make a second distress, in case there be not sufficient goods found on the premises at the time of the first distress, or that the party mistake the value of the things distrained, a provision which is calculated as much for the benefit of the tenant as that of his landlord; for as it was observed by Lord *Mansfield*, in the case of *Hutchins* v. *Chambers*, (1 *Burr.* 579,) if a person were not permitted to distrain a second time, in case he at first makes an insufficient distress, it might induce him to a necessity of taking effects of very great value; which, in things of an *uncertain* or *imaginary* value, he might do without being guilty of an excessive distress; and this would be far more prejudicial to the tenant, than to allow a second distress to be made. *Bradby*, 130.

Thus by the statute, in all cases where the value of the cattle distrained shall not be found to be to the full value of the arrears distrained for, the party to whom such arrears were due, his executors or administrators, may distrain again for the residue of the said arrears. So in like manner, where the distress is made by virtue of the warrant of a justice of the peace, in nature of an execution. And the distinction seemeth to be this; where a person hath an entire duty, he shall not split the entire sum, and distrain for part of it at one time, and for part of it at another time, and so *toties quoties*

for several times; for that is great oppression. *Hutchins* v. *Chambers*, 1 *Burr.* 579. REASONABLE DISTRESS.

VIII. Distress shall be reasonable.

By stat. 52 Hen. III. c. 4, distresses shall be reasonable and not too great; and he that taketh great and unreasonable distresses shall be grievously amerced. For example, if the lord distrain two or three oxen for 12*d.* or the like small sum, and the owner replevy the oxen, and the lord avow the taking of them for the 12*d.* of his own showing, he shall make fine; or the party may have his action upon this statute. 2 *Inst.* 107. If the lord distrain an ox, or horse, for a penny, if there were no other distress upon the land holden, the distress is not excessive; but if there were a sheep, or a swine, or the like, then the taking of the ox or horse is excessive, because he might have taken a beast of less value. 2 *Inst.* 107. Distress to be reasonable.

If the distress be unreasonable the owner may sustain a special action on the case against all or any of the parties concerned in making it; (1 *Burr.* 379; 2 *Stra.* 851; 3 *Lev.* 48; 2 *Keny.* 204); he cannot sue in trespass; (*Id.*); unless the distress was of gold or silver of certain known value. 1 *Burr.* 590. In such action express malice need not be proved. 6 *Esp.* 71. It is no bar to such action that the tenant tendered the rent before the distress; (1 *B. & Cres.* 145); or that between the distress and sale the parties came to an arrangement respecting the sale. 1 *Bing.* 401; 8 *Moore*, 451, S. C.; 2 *B. & Cres.* 821; 4 *D. & R.* 539, S. C. When unreasonable.

IX. Distress when taken, how to be proceeded in till Sale.

After having taken the distress, the party distraining proceeds to take an inventory of the goods and chattels he may deem sufficient to cover the amount of the rent distrained for, and the costs and charges of the distress and sale. Though usual and always advisable, there is no absolute necessity to make out this inventory. By the 55 Geo. III. c. 184, the inventory is subject to a stamp of 2*s.* 6*d.* Inventory.

After or before this inventory is made, it is necessary to give the tenant or owner of the goods distrained on, notice of the distress, with the cause of the taking, the amount of the rent distrained for, and informing the party that unless the rent and costs be paid in five days the same will be sold. Notice of distress.

The statute 2 W. & M. ss. 1, c. 5, s. 1, directs that this notice should be of the cause of the distress, and left at the chief mansion house or other most notorious place on the premises charged with the rent distrained for. In the notice it is not necessary to mention when the rent became due for which the distress was made; (*Moss* v. *Gallimore*, *Dougl.* 279); and if mentioned, a mistake therein is immaterial. *Id.* 7 *T. R.* 654. A personal service on the owner of the goods will dispense with the necessity of leaving such notice at the dwellinghouse, as directed by the act. *Walter* v. *Rumbal*, 1 *Ld. Raym.* 53. Though the notice under this act should it seems be in writing, unless it be a personal one on the owner of the goods, when it may be by parol. See 12 *Mod.* 76.

The party distraining next proceeds to impound the goods taken. By the common law a distress might in general be impounded, in a proper pound, where the party pleased. 2 *Inst.* 106. *Cattle* may be impounded in a pound *overt* (*a*) or public pound, or on the premises, where the owner may Impounding distress.

(*a*) By pound *overt* is meant an open pound, as a public penfold made for that purpose, or an open field where the owner may go to his goods at pleasure

HOW TO PROCEED AFTER SEIZURE AND BEFORE SALE.

give them meat and drink without trespass to any other. But if they are put in a pound *covert*, as in a house or private pound, the distrainer must keep them with meat and drink at his peril, and for which he shall have no satisfaction. 1 *Inst.* 47.

But if the distress be of utensils of household, or such like *dead goods*, which may take harm by wet or weather, or be stolen away, there he must impound them in a house, or other pound *covert*, within three miles in the said county; for if he impound them in a pound *overt* he must answer for them. 1 *Inst.* 47.

By the 11 Geo. II. c. 19, s. 10, any person distraining for rent may impound or otherwise secure the distress, of what kind soever it be, in such place, or on such part of the premises chargeable with the rent, as shall be most convenient; and may appraise and sell the same upon the premises, as any person before might have done off the premises, by virtue of statutes 2 W. & M. c. 5, and 4 Geo. II. c. 28.

In *Washborn* v. *Black*, 11 *East*, 405, the law was admitted to be that without consent the distrainer ought either to have put the goods all into one room and kept possession of that only, or to have removed the goods out of the house; but very slight evidence of consent was admitted.

Impounding out of the county.

By the 52 Hen. III. c. 4, none shall cause any distress that he hath taken to be driven out of the county where it was taken; and if one neighbour do so to another of his own authority, (as for damage feasant, or rent-charge, 2 *Inst.* 206,) he shall make fine as for a thing done against the peace; and if the lord so presume to do against the tenant, he shall be grievously punished by amerciament. Before this act, at the common law, a man might have driven the distress to what county he pleased; which was mischievous for two causes: 1, Because the tenant was bound to give the beasts being impounded in an open pound sustenance, and being carried into another county by common intendment, he could have no knowledge where they were. 2, He could not know where to have a replevy; but the party was, before this statute, driven to his action upon the case. 2 *Inst.* 106. And albeit this statute be in the negative, yet if the tenancy be in one county, and the manor in another county, the lord may drive the distress which he taketh in the tenancy to his manor in the other county; for the tenant is out of both the said mischiefs; for the tenant, by doing suit and service to the manor by common intendment, may know what is done there, and therefore may give his beast sustenance. And to know where to have his replevy, the bailiff of the manor usually drives the cattle distrained to the pound of the manor. And hereby it is to be noted, that a case out of the mischief is out of the meaning of the law, though it be within the latter. 2 *Inst.* 106.

Impounding out of the hundred, &c.

And by the 1 & 2 P. & M. c. 12, s. 1, it is further enacted, that no distress of cattle shall be driven out of the hundred, rape, wapentake, or lathe, where such distress shall be taken, except it be to a pound *overt* within the same shire, not above three miles distant from the place where the said distress was taken; and no cattle nor other goods distrained for any cause at one time shall be impounded in several places, whereby the owner may be constrained to sue several replevies; on pain of 100s. to the party grieved, and treble damages.

In several places.

In *Gimbart* v. *Pelah*, 2 *Stra.* 1272, the defendant justified impounding cattle damage feasant. It appeared that the impounding was in another county. And *Lee*, C. J. held, it did not make him a trespasser, though it subjected him to the penalty of stat. 1 & 2 P. & M. c. 12; and the action should have been on the statute.

Corn or hay not removable.

By the 2 W. & M. ss. 1, c. 5, s. 9, corn or hay, loose, &c. shall not be removed, &c. from the place where seized, but kept there till replevied or sold. See *Com. Dig. Distress*, (D. 1.)

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without trespass. And by pound *covert* is meant a place covered, or close, as a house, or place where the goods are locked up or secured, where he cannot go to them at his pleasure.

HOW TO PROCEED AFTER SEIZURE AND BEFORE SALE.

By the 11 Geo. II. c. 19, s. 8, *ante*, 979, growing corn crops and product seized for rent, when ripe and cut, are to be impounded on the premises demised; and in case there be no proper place to impound them on the premises, then they are to be impounded in another place "as near as may be to the premises."

Growing corn, &c. 11 G. 2, c. 19, s. 8.

As to rescous and pound breach, see *post*, 1001.

Pound breach.

Using the goods distrained.

Cattle distrained may not be worked or used. And the principle has been carried so far, that it seems to be the better opinion, that even milch kine cannot be milked by the distrainer, in order to prevent them from being damaged; because the owner would perhaps have come to milk his cattle before they had sustained any material injury, and it is not necessary for the security of the distrainer, who, if the cattle die without his default, may make another distress. *Bradby*, 241, *and the authorities there cited.*

Distress dying.

So if the distress be lost by the act of God, as if the distress die in the pound, without any default in the distrainer, in such case he who made the distress may distrain again. 1 *Salk.* 248.

Killed.

It is the distrainer's own fault, if he put the distress in a pound which will not hold it; but he cannot justify the tying of cattle in the pound; and if he tie a beast, and it is strangled, he must pay damages. S. C.

Time of removal.

By the common law it seems the goods when distrained on for rent, ought to have been removed off the premises immediately, or at all events in a reasonable time after the taking. *Mod. Ca.* 215. But now by the 11 Geo. II. c. 19, s. 10, *ante*, 990, they need not be so. By operation of that act, and the 2 W. & M. ss. 1, c. 5, s. 1, the removal ought to take place a reasonable time after the expiration of five days from the time of the taking, exclusive of the day of taking. *Griffin* v. *Scott*, 2 *Ld. Raym.* 1424; 1 *Stra.* 717; *Pitt* v. *Show*, 4 *B. & A.* 208; 1 *H. Bla.* 15. In 2 *Ld. Raym.* 1424, it was considered three days after the fifth day was an unreasonable time; but in 4 *B. & A.* 208, eight days after was considered reasonable: this reasonable time however being a question for a jury, no fixed rule can be laid down, each case depending on its own peculiar facts.

By consent, which is not unusual, the party distraining may keep in possession on the premises after the expiration of the time allowed for that purpose; otherwise he would become a trespasser. 11 *East*, 395. Slight evidence of such consent will suffice. 11 *East*, 405, n. a. The request of the tenant will not it seems justify the landlord in detaining the goods of a lodger upon the premises beyond the proper time of settling. See *Fisher* v. *Algar*, 2 *C. & P.* 374. By the request not to remove, the tenant or owner of the goods does not waive any right of action he may have. 1 *Bing.* 401; 4 *D. & R.* 539; 2 *B. & C.* 821, S. C.

Notice of removal.

Generally speaking there does not appear to be any notice of removal requisite; where, however, the distress is on growing corn, hay, or product, as allowed by the 11 Geo. II. c. 19, s. 8, *ante*, 979; the tenant must in pursuance of the 9th section (*ante*, 979,) of that act, have notice of the place where the goods are lodged given within a week after such lodging.

Appraisement.

After the expiration of five days, exclusive of the day of taking, it is necessary before selling that "the person distraining," shall, with the sheriff or undersheriff of the county, or with the constable of the hundred, parish, or place where such distress shall be taken, (who are required to be aiding or assisting therein,) cause the goods distrained to be appraised by two sworn appraisers, (whom such sheriff, undersheriff, or constable, are empowered to swear,) who are to appraise the same truly according to the best of their understandings. 2 W. & M. ss. 1, c. 5, s. 1, *post*, 993.

The person distraining must not be one of the appraisers. *B. N. P.* 81; 1 *Stark.* 172; 2 *Bing.* 337. The appraiser must not be sworn before the constable of another parish. *M. & M. C. N. P.* 172; 1 *H. Bla.* 13. Where the premises partly lay in the hundred of Andover, and partly in the hundred of Kinalsey, the constable of Kinalsey was held the proper officer to

REPLEVYING THE DISTRESS.

administer the oath for the appraisement of the whole distress. *Weller* v. *Rumbal*, 1 *Ld. Raym.* 53. The appraisement must be stamped. 55 Geo. III. c. 184.

The true construction of stat. 2 W. & M. ss. 1, c. 5, *post*, 993, in requiring an appraisement, is, that the value of the goods might be ascertained by a fair estimate made at the time of the distress; and that, if on such valuation there should not be thought sufficient without them, the landlord might distrain beasts of the plough. Where, therefore, there had been such an appraisement on oath, and no evidence was offered to show that there was a sufficient distress without taking the beasts of the plough, the Court of Exchequer held, that it was not necessary that the other goods should all have been first disposed of before the latter were sold; unless they were wrongfully taken in the first instance, such sale was not a sufficient ground to support an action on stat. 51 Hen. III. stat. 4. *Jenner* v. *Yolland*, 6 *Price*, 3.

X. Replevying the Distress. (*a*)

Replevy.

It is worthy of observation how provident the law is, that men's beasts, cattle, or other goods be not unjustly or excessively distrained; and if they be, that deliverance be speedily made of them by replevy (or taking back the pledge); otherwise the husbandry of the realm, and men's other trades, might be overthrown or hindered. 2 *Inst.* 137.

1 & 2 P. & M.

To which purpose it is enacted by stat. 1 & 2 P. & M. c. 12, s. 3, that the sheriff of every county shall, at his first county day, or in two months after he hath received his patent of office, appoint and proclaim in the shire town four deputies at the least, dwelling not above twelve miles one distant from another, to make replevies; on pain of 5*l.* for every month that he shall lack such deputy or deputies, half to the king, and half to him that shall sue in any court of record.

11 Geo. 2, c. 19.

The sheriff or other officer, having authority to grant replevins, shall, in every replevin of distress for rent, take in his own name from the plaintiff and two sureties, a bond in double the value of the goods distrained, to be ascertained on the oath of one witness not interested in the goods, and conditioned for prosecuting the suit with effect, and without delay, and for duly returning the goods distrained, in case a return shall be awarded, before any deliverance be made of the distress; and the sheriff shall assign such bond *to the avowant, or person making conusance.* 11 Geo. II. c. 19, s. 23. In *Richards* v. *Acton*, a rule was made on J. G. the replevin clerk, R. J. the undersheriff, and E. P. the clerk of the county court, to discover the names of the pledges taken upon granting the replevin in this cause, and to show cause why they should not pay the defendant 57*l.* 15*s.*, being the damages and costs recovered by him in this cause, together with the costs of the application. The distress was for rent; and on replevin brought the defendant had a verdict with the damages and costs above-mentioned. On cause being shown, the court held that as well the high sheriff and undersheriff as the replevin clerk (who is their deputy) are answerable to the defendant in replevin for the sufficiency of the pledges; they therefore discharged the rule against the county court clerk, but with regard to the high and undersheriff, and the replevin clerk, they made the rule absolute. 2 *Bla. Rep.* 1220.

Avowry.

To the avowant or person making conusance]—*Avowry* is where one takes a distress, and the person distrained sues a replevin; then he that took the distress must *avow* and justify in his plea, for what cause he took it, if he took it in his own right; and this is called an *avowry;* if he took it in the right of another, then, when he hath showed the cause, he must make *cog-*

(*a*) As to replevins and the action of replevin in general, see Wilkinson on Replevin, Bradby on Distresses.

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sance of the taking, as bailiff or servant to him in whose right he took it. *Termes de la Ley.*

And the sheriff having taken bond from the plaintiff in replevin as aforesaid, he ought forthwith to make deliverance of the goods or cattle distrained; and if the distress be drawn into a house or other strong-hold, the sheriff or his bailiff, after demand made for deliverance of the distress, may break open the house to replevy them; for though a man's house is privileged by common law for himself, his family, and his own goods, so that the sheriff cannot break it open to attach any of them, in a civil action at the suit of a private person, yet a man's house could not privilege or protect the goods of another person unjustly taken, so as to prevent the officer to make replevin; because the privilege and security of a man's house could but protect his own goods. 2 *Inst.* 140.

The owner may replevy at any time before the goods are actually sold, though after the five days. See *Jacob* v. *King*, 1 *Marsh.* 135; 5 *Taunt.* 457.

There is no eventual benefit to be derived from replevying the goods and bringing an action of replevin, if ever so small a sum was due for rent, and the entry was lawful; replevin may certainly be brought to try the legality of the distress for rent; but if any sum were due, and the distress were for a greater sum, or excessive, or otherwise irregular, the remedy should be by action on the case. See 1 *Chit. Plead.* 130; *post*, 997.

Insufficient sureties.

The sheriff is responsible to the landlord for the sufficiency of the sureties in the replevin bond, as also for the sufficiency of the pledges, under the stat. *Westm.* 2, c. 2; and an action on the case may be maintained against him if they or either be not sufficient sureties. See *B. N. P.* 60. But the sheriff is not liable if the sureties were to all appearances, and after his using reasonable diligence and inquiry, sufficient at the time, though it turn out afterwards otherwise. 5 *Taunt.* 225; 1 *Marsh.* 27, S. C.; 8 *Moore*, 27; 3 *Stark.* 168. In such action the sheriff is liable to that amount only for which the sureties could have been liable, if sufficient. 4 *T. R.* 433; 2 *H. Blac.* 547. If notice were previously given to the sheriff, it seems the costs of an ineffectual action against the sureties might be recovered. See *Baker* v. *Garratt*, 3 *Bing.* 56.

As to the liability of the sureties and the action against them on the bond, see cases and law, 1 *Chit. Col. Civ. Stat.* 676, notes.

XI. Sale and Costs of the Distress.

Distress in nature of a pledge.

When impounded, the goods were formerly only in the nature of a pledge or security to compel the performance of satisfaction; and upon this account it hath been held, that the distrainer is not at liberty to work or use a distrained beast. And thus the law still continues with regard to beasts taken *damage feasant*, and distresses for suit or services, which must remain impounded till the owner makes satisfaction, or contests the right of distraining, by replevying the chattels. 3 *Bla. Com.* 13; *ante*, 973.

Sale of distress for offence presented in leet.

Distress taken for an offence presented in the leet may of common right be sold, because it is a court of record; but otherwise it is of distresses in courts that are not of record. 12 *Mod.* 330.

For amercement in court-baron.

A distress for an amercement in a court-baron cannot be sold; but in such a case a distress infinite shall go. 1 *Bulst.* 52, 53.

2 W. & M. sess. 1, c. 5, authorising a sale on distress for rent.

In like manner, before stat. 2 W. & M. sess. 1, c. 5, distress for rent in arrear could not be sold, but only detained till payment of the rent: but by the said statute, sect. 1, it is enacted, that "whereas the most ordinary and ready way for recovery of arrears of rent is by distress, yet such distresses not being to be sold, but only detained as pledges for enforcing the payment of such rent, the persons distraining have little benefit thereby;" therefore from thenceforth, "where any goods or chattels shall be distrained (*a*) for any rent

(*a*) See forms, *post*, (No. 1 to 6.)

SALE AND COSTS.

reserved and due upon any demise, lease, or contract whatsoever, and the tenant or owner of the goods so distrained shall not, within five days next after such distress taken, and notice thereof (with cause of such taking) left at the chief mansion-house, or other most notorious place on the premises charged with the rent distrained for, replevy the same, with sufficient security to be given to the sheriff according to law, that then in such case, after such distress and notice as aforesaid, and expiration of the said five days, the person distraining shall and may, with the sheriff or undersheriff of the county, or with the constable of the hundred, parish, or place where such distress shall be taken (who are hereby required to be aiding and assisting therein) cause the goods and chattels so distrained to be appraised by two sworn appraisers (whom such sheriff, undersheriff, or constable are hereby empowered to swear) to appraise the same truly, according to the best of their understandings; and after such appraisement shall and may lawfully sell the goods and chattels so distrained for the best price that can be gotten for the same, towards the satisfaction of the rent for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisement, and sale, leaving the overplus (if any) in the hands of the said sheriff, under-sheriff, or constable, for the owner's use."

Sect. 3 of the same act empowers the sale of corn and hay, &c. distrained loose on the premises.

11 Geo. 2, c. 19

By stat. 11 Geo. II. c. 19, s. 8, the landlord may, in convenient time, appraise, sell, or otherwise dispose of the cattle, &c. (in this section allowed to be distrained) towards satisfaction of the rent and charges of distress and sale; the appraisement to be taken thereof when cut, gathered, cured, and made, and not before. *Vide ante*, 979.

After complying with the requisites pointed out by those statutes, and which we have already noticed, the landlord may proceed to a sale.

Place of sale.

By the 11 Geo. II. c. 19, s. 10, the sale may take place on the premises, or it may so elsewhere.

Time of sale.

The sale must not take place within the five days, otherwise an action might be maintained, on the equity of the 2 W. & M., against the parties selling. 1 *H. Blac.* 13; 4 *B. & A.* 208. The five days are to be reckoned exclusive of the first; *Pitt* v. *Shaw*, 4 *B. & A.* 208; 1 *H. Blac.* 13; therefore the sale must not take place until the sixth day, exclusive of the day of taking. A reasonable time after the expiration of the five days is allowed to the landlord for appraising and selling the goods distrained, for he cannot appraise or sell until after the five days have elapsed, and the act directs he shall sell for the best price; the making the appraisement, and notifying the intended sale and selling for the best price, must take some time after the expiration of the five days, and it is for a jury to say, in each case, whether more than reasonable time has been taken. *Pitt* v. *Shaw*, 4 *B. & A.* 208. Sometimes the tenant or owner requests the landlord not to sell, and in such case he need not. The request must proceed from the owner of the goods. *Fisher* v. *Algar*, 2 *C. & P.* 374. See *ante*, 991.

The sale need not be by auction, though it is usually so. The landlord and in general, any person may be a purchaser.

Price on sale.

Upon the equity of the 2 W. & M. sess. 1, c. 5, s. 1, the distrainer must sell for the *best price* that can be obtained for the goods, and an action lies if he do not. The price at which the goods were appraised will be presumed to be the best, until the contrary is proved. *Walter* v. *Rumbal*, 4 *Mod.* 390. *Com. Dig.* (D. 8).

Order of sale.

It appears that there is no order required by law to be observed in the sale of the goods, as that the beasts of the plough should be postponed to the other goods; and therefore it is not a cause of action that the beasts of the plough have been sold before the other goods were disposed of, where the distress itself was not wrongful. *Jenner* v. *Holland*, 6 *Price*, 5; 2 *Chit. Rep.* 167. S. C.

It is not necessary that the sheriff or constable should be present at the sale, but the appraisers being regularly sworn, may with the distrainer proceed to sell. 4 *Mod.* 391; *Com. Dig. Distress*, (D. 8).

SALE AND COSTS.

We have already seen how growing crops should be sold, *ante*, 979. A sale of growing corn before it is ripe is void. See *Owen* v. *Legh*, 3 *B. & A.* 470.

Costs of distress.

Costs of Distress]—By the words of the 2 W. & M. sess. 1, c. 5, s. 1, the distrainer for rent may deduct from the amount of the produce of the goods on sale, besides the rent, all reasonable charges attending the distress.

The man in possession of the goods, where the rent does not exceed 20*l.*, is in general to be paid 2*s.* 6*d.* per day, if the tenant keeps him, and 3*s.* 6*d.* if he keeps himself.

How much to be taken for poundage. 1 & 2 P. & M. c. 12.

By the 1 & 2 P. & M. c. 12, s. 2, "no person or persons shall take for keeping in pound, impounding or poundage of any manner of distress, above the sum of 4*d.* for any one whole distress, that shall be so impounded; and where less hath been used, there to take less; upon the pain of 5*l.*, to be paid to the party grieved, over and beside such money as he shall take above the sum of 4*d.*; any usage or prescription to the contrary in anywise notwithstanding."

57 Geo 3, c. 93.

No person making distress for rent, where the sum due shall not exceed 20*l.* to take other charges than mentioned in the schedule annexed; nor to charge for any act not done.

By stat. 57 Geo. III. c. 93, intituled "An Act to regulate the costs of distresses levied for payment of small rents," after reciting that "whereas divers persons acting as brokers, and distraining on the goods and chattels of others, or employed in the course of such distresses, have of late made excessive charges, to the great oppression of poor tenants and others; and it is expedient to check such practices," enacts, that "no person whatsoever making any distress for rent, where the sum demanded and due shall not exceed the sum of 20*l.* for and in respect of such rent, nor any person whatsoever employed in any manner in making such distress, or doing any act whatsoever in the course of such distress, or for carrying the same into effect, shall have, take or receive out of the produce of the goods or chattels distrained upon and sold, or from the tenant distrained on, or from the landlord, or from any other person whatsoever, any other or more costs and charges for and in respect of such distress, or any matter or thing done therein, than such as are fixed and set forth in the schedule hereunto annexed (*a*) and appropriated to each act which shall have been done in the course of such distress; and no person or persons whatsoever shall make any charge whatsoever for any act, matter, or thing mentioned in the said schedule, unless such act shall have been really done."

Party aggrieved by any such practice may apply to a justice of the peace.

Sect. 2. "That if any person or persons whatsoever shall in any manner levy, take, or receive from any person or persons whatsoever, or retain or take from the produce of any goods sold for the payment of such rent, any other or greater costs and charges than are mentioned and set down in the said schedule, or make any charge whatsoever for any act, matter, or thing mentioned in the said schedule and not really done, it shall be lawful for the party or parties aggrieved by such practices to apply to any one justice of the peace for the county, city, or town, and acting for the divison where such distress shall have been made, or in any manner proceeded in, for the redress of his, her, or their grievance so occasioned; whereupon such justice shall summon the person or persons complained of to appear before him at a reasonable time to be fixed in such summons; and such justice shall examine into the matter of such complaint by all legal ways and means, and also hear in like manner the defence of the person or persons complained of; and if it shall appear to such justice that the person or persons complained of shall have levied, taken, received, or had other and greater costs and charges than are mentioned or fixed in the schedule hereunto annexed, or made any charge for any matter or thing mentioned in the said schedule, such act, matter, or thing not having been really done, such justice shall order and adjudge treble the amount of the monies so unlawfully taken, to be paid by the person or persons so having acted to the party or parties who shall thus have preferred his, her, or their complaint thereof, together with full costs; and in case of

Justice may adjudge treble the amount of the monies unlawfully taken to be paid with costs, which may be levied by distress. If no distress, imprisonment.

(*a*) See the schedule, *post*, 996.

SALE AND COSTS.

57 Geo. 3, c. 93.

non-payment of any monies or costs so ordered and adjudged to be paid, such justice shall forthwith issue his warrant to levy the same by distress and sale of the goods and chattels of the party or parties ordered to pay such monies or costs, rendering the overplus (if any) to the owner or owners, after the payment of the charges of such distress and sale; and in case no sufficient distress can be had, such justice shall by warrant under his hand commit the party or parties to the common gaol or prison within the limits of the jurisdiction of such justice, there to remain until such order or judgment shall be satisfied."

Justices may summon witnesses.

Refusing to attend or be examined,

Penalty.

Sect. 3. "That it shall be lawful for such justice, at the request of the party complaining or complained against, to summon all persons as witnesses, and to administer an oath to them, touching the matter of such complaint or defence against it; and if any person or persons so summoned shall not obey such summons, without any reasonable or lawful excuse, or refuse to be examined upon oath, or if a Quaker, upon solemn affirmation, then every such person so offending shall forfeit and pay a sum not exceeding 40*s.*, to be ordered, levied, and paid in such manner and by such means, and with such power of commitment, as is hereinbefore directed as to such order and judgment to be given between the party or parties in the original complaint, excepting so far as regards the form of the order, and hereinafter provided for."

If complaint unfounded, justice may give costs to the party complained against.

No judgment to be given against any landlord, unless he personally levies the distress.

Sect. 4. "That it shall be lawful for such justice, if he shall find that the complaint of the party or parties aggrieved is not well founded, to order and adjudge costs, not exceeding 20*s.*, to be paid to the party or parties complained against, which order shall be carried into effect, and levied and paid in such manner, and with like power of commitment, as is hereinbefore directed as to the order and judgment founded on such original complaint: provided always, that nothing herein contained shall empower such justice to make any order or judgment against the landlord, for whose benefit any such distress shall have been made, unless such landlord shall have personally levied such distress: provided always, that no person or persons who shall be aggrieved by any distress for rent, or by any proceedings had in the course thereof, or by any costs and charges levied upon them in respect of the same, shall be barred from any legal or other suit or remedy which he, she, or they might have had before the passing of this act, excepting so far as any complaint to be preferred by virtue of this act shall have been determined by the order and judgment of the justice before whom it shall have been heard and determined; and which order and judgment shall and may be given in evidence, under the plea of the general issue, in all cases where the matter of such complaint shall be made the subject of any action."

Parties not barred of other legal remedies.

Order of justice may be given in evidence.

Signature of justice proof of judgment.

Sect. 5. "That such orders and judgments on such complaints shall be made in the form in the schedule hereunto annexed, and may be proved before any court by proof of the signature of the justice to such order and judgment; and such orders as regard persons who may have been summoned as witnesses shall be made in such form as to such justice shall seem most fit and convenient."

Brokers to give copies of their charges to persons distrained.

Sect. 6. "That every broker or other person who shall make and levy any distress whatsoever shall give a copy of his charges, and of all the costs and charges of any distress whatsoever, signed by him, to the person or persons on whose goods and chattels any distress shall be levied, although the amount of the rent demanded shall exceed the sum of 20*l.*"

Printed copy of act to be hung up in sessions house.

Sect. 7. "That a fair printed copy of this act shall be hung up in some convenient place in such halls or rooms where the justices of each and every county in England and Wales shall hold either their quarter or other sessions."

SCHEDULE of the Limitation of Costs and Charges on Distresses for Small Rents.

	£.	s.	d.
Levying distress	0	3	0
Man in possession, per day	0	2	6

SALE AND COSTS.

57 Geo. 3, c. 93.

Appraisement, whether by one broker or more, 6*d.* in the 1*l.* on the value of the goods.
Stamp, the lawful amount thereof.
All expenses of advertisements, if any such 0 10 0
Catalogues, sale and commission, and delivery of goods, 1*s.* in the 1*l.* on the net produce of the sale.

The 6th section of this act, compelling brokers to give copies of their charges of distress, applies only to cases where the goods have been sold. See 5 *Bingh.* 39.

7 & 8 Geo. 4, c. 17.

The 7 & 8 Geo. IV. c. 17, extends the provisions of this act of 57 Geo. III. to distresses for rates, taxes, impositions, and assessments, *ante*, 630.

Overplus.

Overplus]—After complying with all the foregoing requisites, if there be any overplus, after paying the rent and charges of the distress, appraisement and sale, the same should be immediately left in the hands of the sheriff, undersheriff, or constable of the hundred, parish, or place where the distress was taken, for the owner's use; see 2 W. & M. sess. 1, c. 5, s. 1, *ante*, 993, 994; otherwise a special action on the case will lie.

XII. Irregularity in the Proceedings and Tender of Amends.

Irregularity. 11 Geo. 2. c. 19.

The 11 Geo. II. c. 19, s. 19, declares, that where any distress shall be made for any kind of rent justly due, and any irregularity shall be *afterwards* done by the party distraining, or his agent, the distress itself shall not be therefore deemed unlawful, nor the distrainer a trespasser *ab initio*, but the party aggrieved may recover satisfaction for the special damage in an action of trespass or on the case, at the election of the plaintiff; and if he recover, he shall have full costs.

Tender of amends.

Sect. 20. But no tenant shall recover on such action, if tender of amends hath been made before the action brought.

Decisions on enactment.

If the first entry be illegal and unjustifiable, as if the party distraining should break open the outer door or the like, his subsequent proceedings would not be protected, it should seem, under this act, and he would be a wrong-doer in every respect. See *M. & M.* 173. Trespass may be maintained if the distrainer keep too long in possession; 11 *East*, 395; or if he expel the tenant the premises. 1 *East*, 139. Where a distress is made after a sufficient tender, and there has been no subsequent demand, trespass or case lies. 1 *B. & Cres.* 145; 2 *D. & R.* 256, S. C. For any subsequent irregularity, the remedy is by special action on the case. See various precedents of declarations, 2 *Chit. Pleading*, 717, &c.

If the judge certify under the 43 Eliz. c. 6, it will deprive the plaintiff of costs, notwithstanding the enactments as to them in the above act of 11 Geo. II. 5 *B. & A.* 796.

XIII. Rent in case of an Extent, or Execution, or Bankruptcy, &c.

Extent or execution.

In *R.* v. *Cotton*, T. 1755, it was determined by the barons of the exchequer, and affirmed on a writ of error, that if a distress be made for rent, and before the five days given by act of parliament have expired, an extent is issued, though it be not levied, for a debt due to the crown, the extent shall take place of the distress, because the distrainer neither gains a general nor a special property, nor even the possession of the cattle or things distrained. The distress is only a pledge in his hands for the rent. But the extent binds the property of the goods of the king's debtor from the teste of it. *Park*, 112.

Arrears of rent to be first paid out

But by stat. 8 Ann. c. 14, s. 1, no goods being on any messuage, lands,

RENT WHERE AN EXTENT OR EXECUTION.

exceeding one year's rent. 8 Ann. c. 14.

or tenements, leased for life, term of years, at will, or otherwise, shall be liable to be taken by execution, unless the party, at whose suit the execution is sued out, shall, before the removal of such goods from off the premises, pay to the landlord or his bailiff all such rent as shall be then due for the premises, provided that it amount not to more than one year's rent; and if the said arrears shall exceed one year's rent, then the party paying such landlord one year's rent may proceed to execute his judgment.

If the sheriff does not comply with this act, he will be liable to an action at suit of the landlord. 1 *Stra.* 212. But he will not be so liable, unless there be a demand for the rent before the removal by the party entitled to it. The sheriff is not bound to find out what rent is due to the landlord and pay it him, but the landlord must give him notice. *Smith* v. *Taunton*, 3 *Taunt.* 400; *Arnitt* v. *Garnitt*, 3 *B. & A.* 440. No particular form of notice is requisite. *Andrews* v. *Dixon*, 3 *B. & A.* 645; 4 *Moore*, 473. In 3 *B. & A.* 440, the court on motion ordered a year's rent out of the proceeds, while in the sheriff's hands, to be paid to the landlord, though the sheriff had no notice of the rent being due till after the removal. But an action for money had and received could not be sustained against him. *Green* v. *Austen*, 3 *Camp.* 260.

A demand on the sheriff by a person to whom administration is afterwards granted will not operate by relation. 2 *Stra.* 97; 3 *Taunt.* 400.

There must be a *subsisting tenancy* to entitle the landlord to the rent. *Hodgson* v. *Gascoigne*, 5 *B. & A.* 88. In an agreement for assigning a lease for a sum of money, to be paid on or before a distant day, the lessee agreed to make some alterations on the premises, which his assignee was to occupy, paying until the completion of the assignment "at the rate of 100*l.* per year, in half yearly payments." The lessee afterwards agreed to allow 12*l.* for some of the alterations he ought to have made, the rest were never completed, and the assignee paid in advance 10*l.* It was held that the sheriff levying on the goods of the assignee under a *fi. fa.* was bound to pay over to lessee half a year's rent due, and that the 12*l.* and 10*l.* were in part payment of rent, as they were intended to be allowed out of the *first* payment due by the assignee to the lessee. *Saunders* v. *Musgrave*, 6 *B. & Cres.* 524; 2 *C. & P.* 294, S. C.

The landlord, to be entitled to the rent, must also be the immediate one and not the ground landlord. 2 *Stra.* 787.

An executor or administrator is entitled to arrears accrued in the testator's lifetime; 1 *Stra.* 212; and so is a trustee of an outstanding satisfied term in trust for mortgagees. 4 *Moore*, 473; 2 *B. & B.* 67.

The statute extends to an execution at the suit of the defendant for costs. 2 *Wils.* 140. But a commission of bankruptcy is not an execution within the statute. 15 *East*, 230. Goods taken on a *capias utlagatum* are within it. *Bunb.* 5, 194, 269; 7 *T. R.* 284. So are goods taken on a *pone per vadios* issuing out of the court of pleas of Durham; in which case the goods are forfeited to the bishop, who afterwards assigns them over to the party. *Brandling* v. *Barrington*, 6 *B. & Cres.* 467.

The sheriff must satisfy the landlord in the first instance; 4 *Moore*, 473; and before the removal of any part of the goods. *Id.*; 2 *B. & C.* 67. A bill of sale is a removal. *Barnes*, 211.

No deduction for poundage can be made from the rent. *Stra.* 643.

In case of two executions, there shall not be two years' rent paid to the landlord; for the intent of the act was to reserve to the landlord only the rent for one year, and it was his own fault if he let more run in arrear. Therefore one year's rent to the landlord being paid to him on the first execution, the sheriff is not to levey for him again any thing on a subsequent execution; 2 *Stra.* 1024; 2 *B. & B.* 362, 366; 5 *Moore*, 97, S. C.; unless perhaps the goods be not removed in a reasonable time. 1 *Price*, 277; 1 *M. & S.* 711.

The landlord's claim under the statute may be supported for forehand rent. 7 *Price*, 690. So for rent that falls due on the day of the levy. *Tidd*, 8 ed. 1054. But rent arising after the seizure under the execution is not within the act, and cannot be deducted. *Hoskins* v. *Knight*, 1 *M. & S.* 245. A

sheriff taking corn in the blade under a *fi. fa.*, and selling it before rent due, is not liable to account to the landlord of the defendant under this act of Anne, for rent accruing subsequently to the levy and sale, although he has given notice, and though the corn be not removed from the premises until long afterwards, when a considerable portion of rent has become due; the landlord's remedy in such case is by distress. *Gwilliam* v. *Barker*, 1 *Price*, 274. And the landlord of premises on which goods have been seized under an extent in aid is not entitled under the act to call on the sheriff to pay twelve months rent due before the teste of the writ. *R.* v. *Decaux*, 2 *Price*, 17.

RENT WHERE AN EXTENT, EXECUTION, OR BANKRUPTCY.

Bankruptcy and Insolvency]—The landlord may distrain before an act of bankruptcy by his tenant for the whole amount due. After an act of bankruptcy also he may distrain, even although the messenger be actually in possession of the goods on the premises; 1 *Atk.* 103; 2 *T. R.* 600; and formerly he might have distrained for the whole rent due, but now by the 6 Geo. IV. c. 16, s. 74, the distress shall not be available for more than one year's rent, and the landlord must prove under the commission for the residue. The 31st section of the General Insolvent Act, 7 Geo. IV. c. 57, contains a similar provision.

Bankruptcy and insolvency.

Though in the case of the tenant's becoming bankrupt a landlord may distrain for his rent upon the bankrupt's goods, either before or after the assignment under the commission, yet if he neglect to do so, and suffer the goods to be sold by the assignees, he can only come in for his rent *pro ratâ* with the other creditors. *Anon.* 1 *Atk.* 102; and *Ex parte Descharmes*, *ib.* 103; and see *Arch. B. L.* 83.

So in the case *Ex parte Devismes*, Jan. 1776, where the question was, whether the landlord was entitled to have a year's rent paid to him out of the effects of a bankrupt (his tenant), such effects having been seized under the commission, and removed by the messenger from the demised premises in respect of which the rent was in arrear, Lord Chancellor *Bathurst* was clearly of opinion, upon the authority of the two cases from 1 *Atk. (supra)*, that the landlord could only come in as a common creditor. And he added, that if the legislature had intended to prefer the landlord, they would have done so under the statute of Anne, as they did in the insolvent debtor's act. MS. *Vide Cooke's B. L.* 191, 6 ed.

In *Bradyll* v. *Ball*, 1 *Bro.* 427, it was decided that the landlord has no lien upon the goods after they are removed from the premises.

XIV. Rent on Death of Tenant for Life.

Rent on the death of tenant for life. 11 Geo. 2, c. 19.

The stat. 11 Geo. II. c. 19, s. 15, declares, whereas where any lessor or landlord, having only an estate for life in the lands, tenements, or hereditaments demised, happens to die before or on the day on which any rent is reserved or made payable, such rent or any part thereof is not by law recoverable by the executors or administrators of such lessor or landlord; nor is the person in reversion entitled thereto, other than for the use and occupation from the death of the tenant for life; of which advantage hath often been taken by the under-tenants, who thereby avoid paying any thing for the same; for remedy thereof, it is enacted, that where any tenant for life shall happen to die before or on the day on which any rent was reserved or made payable, upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant for life, the executors or administrators of such tenant for life may, in an action on the case, recover of such under-tenant, if such tenant for life die on the day on which the same was made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived of the last year, or quarter of a year, or other time in which the said rent was growing due.

Upon the death of tenant in tail, the rent shall be apportioned. In

RENT ON DEATH OF TENANT FOR LIFE.

Pagett v. *Gee*, Dec. 4, 1753, *MS.* (Burn), and *Amb.* 198. Tenant in tail, remainder to the defendant in fee, leases for years, and dies without issue a week before the day of payment of the half year's rent. The lessee, at the day, pays all the half year's rent to the defendant. The executor of the tenant in tail brings his bill for apportionment of the rent.—By the Lord Chancellor *Hardwicke*: This point has never been determined; but this is so strong a case, that I shall make it a precedent. There are in it two grounds for relief in equity. The first arises on the statute of the 11 Geo. II. The second arises on the tenant's having submitted to pay the rent to the defendant.—The relief arising upon the statute is either from the strict legal construction or equity formed upon the reason of it. And here it is proper to consider what the mischief was before the act, and what remedy is provided at common law. If tenant for life, or any who had a determinable estate, died but a day before the rent reserved on a lease of his became due, the rent was lost. For no one was entitled to recover it. His representatives could not, because they could only bring an action for use and occupation; and that would not lie where there was a lease, but debt or covenant. Nor could the remainder-man; because it did not accrue in his time. Now this act appoints the apportioning the rent, and gives the remedy. But there are two descriptions of the persons to whose executors the remedy is given. In the preamble, it is one having only an estate for life. In the enacting part, it is tenant for life. Now tenant in tail comes expressly within the mischief. I do not know how the judges at common law would construe it, but I should be inclined in this court to extend it to them. I should make no doubt were this the case of tenant in tail after possibility of issue extinct; for he is considered in many respects as tenant for life only. He cannot suffer a recovery. He may be enjoined from committing waste of trees growing for ornament or shelter, though not from committing common waste. Were it the case of tenant for years determinable on lives, he certainly must be included within the act, though it says only tenant for life: it would be playing with the words to say otherwise. These cases show the necessity of construing this act beyond the words. Tenant in tail has certainly a larger estate than a mere tenant for life; for he has the inheritance in him, and may when he pleases turn it into a fee: but if he does not, at the instant of his death he has but an interest for life. Such too is the case of a wife tenant in tail *ex provisione mariti*. Upon this point I give no absolute opinion. As to the equity arising from this statute, I know no better rule than this, *equitas sequitur legem*.—But I ground my opinion in this case upon the tenant's having submitted to pay the rent. He has held himself bound in conscience to pay it, for the use and occupation of the land the last half year. He paid it to the defendant, which he was not bound to do in law. And in such a case the persons he pays it too shall be accountable, and considered as receiving it for those who are in equity entitled to it. The division must be that prescribed by the statute; and then the plaintiff is entitled to such a proportion of the rent as accrued during the testator's life. And accordingly it was decreed.

Sir W. D. Evans, in his Collection of Statutes, has strongly impugned the authority of this case, as also Mr. Swanston in his notes to *Ex parte Smyth*, 1 *Swanst. R.* 341, where the law relative to this section of the above act is collected. See also 2 *Saund. Rep.* by *Patteson & Williams*, 288 e, n. 2.

Where a tenant for life, in pursuance of a leasing power, has in due form granted a lease, which continues after his death, the whole rent goes to the remainder-man, who may sue for it. 1 *Swanst.* 337; 8 *Ves.* 311; 2 *Ves. & B.* 334.

XV. Rent how far Recoverable by Executors or Administrators.

Rent recoverable by executors or administrators. 32 Hen. 8, c. 37.

By the the 32 Hen. VIII. c. 37, s. 1, forasmuch as by the order of the common law the executors or administrators of tenants in fee simple, fee tail,

and for term of life, of rent services, rent charges, rent secks, and fee farms, have no remedy to recover such arrearages of the said rents or fee farms as were due to their testators in their lives, nor yet the heirs of such testator, nor any person having the reversion of his estate after his decease, may distrain or have action to levy the same, it is enacted, that the executors and administrators of every such person to whom any such rent or fee farm shall be due and not paid at the time of his death, may have an action of debt for the same against the tenant who ought to have paid the same, or against his executors or administrators; or may *distrain* upon the premises, so long as they continue in the possession of such tenant in demesne, who ought immediately to have paid the same to the testator in his life, or of any other person claiming the same only by and from such tenant by purchase, gift, or descent.

RENT RECOVERABLE BY EXECUTORS.

32 Hen. 8, c. 37.

By action.

Or distress.

In like manner the husband may have action, or distrain for arrears due in the life-time and in the right of his wife. Sect. 3.

And if any person shall have any rents or fee farms for the life of any other person, which shall be behind and unpaid at the death of such other person, he, his executors or administrators, may have action of debt against the tenant in demesne that ought to have paid the same when it was first due, his executors or administrators, or may distrain for the same upon the premises in such like manner as he might have done if the person by whose death the estate was determined had been in full life. Sect. 4.

Fee farm is, when the lord upon the creation of the tenancy reserves to himself and his heirs either the rent for which it was before let to farm, or at least a fourth part of the value; without homage, fealty, or other services, beyond what are especially comprised in the feoffment; and it is called a fee farm rent, because a farm rent is reserved upon a grant in fee. 2 *Inst.* 44.

Fee farm, what is.

The recital of the above act is explained in *Co. Lit.* 162 a, b. Lord Coke there recommends the remedy by distress as most plain and certain.

The act is a remedial law, and extends to *all* tenants for life. *Co. Lit.* 162 a, b.

A creditor by *elegit* of tenant for life of a rent charge is not within the act; *B. N. P.* 56; nor the executors of a grantee of a rent charge for years, if he so long live. *Id.*

It seems an unsettled question whether the executor of a person seised in fee of land, who had demised it to a tenant for years, can, after the death of the lessor, distrain for arrears of rent. See *Selw. N. P.* 5 ed. 664; *B. N. P.* 57; 2 *Moore*, 48; 1 *B. & B.* 279; 8 *Taunt.* 159, S. C.

If a tenant for years underlet for years and die, it is clear that his executor may distrain for arrearages at common law; for such arrears were never separated from the reversion, and both belong to the executor. *Latch.* 211.

The act does not extend to copyhold rents. *Yelv.* 135.

XVI. Of Rescous and Pound Breach.

By the common law, if a man break the pound or the lock of it, or part of it, he greatly offendeth against the peace, and doth trespass to the king, and to the lord of the fee, and to the sheriff, and hundredors, in breach of the peace, and to the party, and to the delaying of justice; and therefore hue and cry is to be levied against him, as against those who break the peace. *Mir.* c. 2, s. 26. And the party who distrained may take the goods again, wheresoever he shall find them, and impound them again. 1 *Inst.* 47.

Rescous and pound breach.

The forcibly rescuing goods distrained, and the rescuing cattle by the breach of the pound in which they have been placed, have been considered as offences at common law, and made the subject of indictment. 1 *Russ.* 363. (*a*)

An indictment will lie for taking goods forcibly, if such taking be proved

(*a*) See form, (No. 17), *post.*

RESCOUS OR POUND BREACH.

to be a breach of the peace; but as a mere trespass, without circumstances of violence, is not indictable, it has been doubted whether even a pound breach, which has been considered a greater offence at common law than a rescue, is an indictable offence, if unaccompanied by a breach of the peace. But, on the other hand, it has been submitted, that as pound breach is an injury and insult to public justice, it is indictable *as such* at common law. 2 *Chit. C. L.* 204, note (B.); 1 *Russ.* 363.

The civil remedy, however, given by stat. 2 W. & M. sess. 1, c. 5, s. 4, will, in most cases of a pound breach, or a rescue of goods distrained for rent, be found the most desirable mode of proceeding where the offenders are responsible persons. That statute enacts, that, upon pound breach or rescous of goods distrained for rent, the person grieved shall, in a special action of the case, recover treble damages and costs against the offenders or against the owner of the goods if they come to his use.

Treble damages.

Treble Damages]—In *Firth* v. *Purvis*, 5 *T. R.* 432, it was held to be no answer to an action on this statute, that the rent in demand was tendered after the distress and impounding.

Treble costs, &c.

Treble Damages and Costs]—In *Lawson* v. *Storey*, 1 *Ld. Raym.* 20, it was adjudged that the costs shall be trebled as well as the damages.

In the case of *Deacon* v. *Morris*, 2 *B. & A.* 393, it was decided that in an action on a statute which gives treble damages, the plaintiff is entitled to treble costs as well as treble damages.

What shall be a rescous.

Where a man hath taken distress, and the cattle distrained, as he is driving them to the pound, go into the owner's house, if he that took the distress demand them of the owner, and he deliver them not, this is a rescous in law. 1 *Inst.* 161; 6 *Bac. Abr.* tit. *Rescue*, (A.)

There can, however, be no rescous but where the party has had the actual possession of the cattle or other things whereof the rescous is supposed to be made; for if a man come to arrest another or to distrain, and be disturbed regularly, his remedy is by action on the case. 1 *Inst.* 161; 6 *Bac. Abr.* 87; and the authorities there cited.

If a distress be taken without cause before it is impounded, the party may make a rescous, but if it be impounded he cannot justify the breach of the pound to take it out of the pound, because the distress is then in the custody of the law; if, however, the pound be unlocked, it seems he may take them. See *B. N. P.* 61.

As to the punishment, &c. of persons guilty of a pound breach on a distress made under a Turnpike Act, see *post*, Highways, Vol. III. p. 203, 204.

XVII. Deserting the Premises.

Provision for landlords where tenants desert the premises.

By stat. 11 Geo. II. c. 19, s. 16, after reciting that "whereas landlords are often great sufferers by tenants running away in arrear, and not only suffering the demised premises to lie uncultivated without any distress thereon, whereby their landlords or lessors might be satisfied for their rent-arrears, but also refusing to deliver up the possession of the demised premises, whereby the landlords are put to the expense and delay of recovering in ejectment;" it is enacted, "that from and after the said 24th day of June, 1738, if any tenant holding any lands, tenements or hereditaments, at a rack-rent, or where the rent reserved shall be full three-fourths of the yearly value of the demised premises, who shall be in arrear for one year's rent, shall desert the demised premises, and leave the same uncultivated or unoccupied, so as no sufficient distress can be had to countervail the arrears of rent; it shall and may be lawful to and for two or more justices of the peace of the county, riding, division or place, (having no interest in the demised

11 Geo. 2, c. 19, s. 16.

(*a*) See form, (No. 21), *post*.

premises,) at the request (*a*) of the lessor or landlord, lessors or landlords, or his, her or their bailiff or receiver, to go upon and view the same, and to affix, or cause to be affixed, on the most notorious part of the premises, notice (*a*) in writing, what day (at the distance of fourteen days at least) they will return to take a second view thereof; and if upon such second view the tenant, or some person on his or her behalf, shall not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premises; then the said justices may put the landlord or landlords, lessor or lessors, into the possession of the said demised premises; and the lease thereof to such tenant, as to any demise therein contained only, shall from thenceforth become void."

TENANT DESERTING PREMISES.

11 Geo. 2, c. 19.

Sect. 17. "That such proceedings of the said justices shall be examinable in a summary way by the next justice or justices of assize of the respective counties in which such lands or premises lie; and if they lie in the city of London or county of Middlesex, by the judges of the Courts of King's Bench or Common Pleas; and if in the counties palatine of Chester, Lancaster, or Durham, then before the judges thereof; and if in Wales, then before the courts of grand sessions (*b*) respectively; who are hereby respectively empowered to order restitution to be made to such tenant, together with his or her expenses and costs, to be paid by the lessor or landlord, lessors or landlords, if they shall see cause for the same; and in case they shall affirm the act of the said justices, to award costs not exceeding 5*l.* for the frivolous appeal."

Appeal.

In this and similar cases, justices ought to make a record of the whole proceedings. In the case of *Basten* v. *Carew*, in trespass against two magistrates for giving plaintiff's landlord possession of a farm as a deserted farm, they produced in evidence a record of their proceedings under that act, which set forth all such circumstances as were necessary to give them jurisdiction, and by which it appeared that they had pursued the directions of the statute; it was held that this record was conclusive as an answer to the action. "It is a general rule and principle of law," said *Abbott*, C. J. in delivering his opinion on this case, "that where justices of the peace have an authority given to them by an act of parliament, and they appear to have acted within the jurisdiction so given, and to have done all that they are required by the act to do in order to originate their jurisdiction, a conviction drawn up in due form and remaining in force, is a protection in any action brought against them for the act so done." See *Basten* v. *Carew*, 5 *D. & R.* 558; 3 *B. & C.* 649, S. C. *infra*.

Record of proceedings.

The provisions of the above statute are extended, by stat. 57 Geo. III. c. 52, to tenants who shall be in arrear one half year's rent, and who shall hold the lands under any demise or agreement, whether written or verbal, and although no right or power of re-entry be reserved or given to the landlord in case of non-payment of rent.

Provisions extended by 57 Geo. 3, c. 52, to half-year's rent in arrear, and although no express right of re-entry.

In the case of *Exparte Pilton*, 1 *B. & A.* 369, where a tenant ceased to reside on the premises for several months, and left them without any furniture or sufficient other property to answer the year's rent, it was held that the landlord might properly proceed under stat. 11 Geo. II. c. 19, s. 16, to recover the possession, although he knew where the tenant then was, and although the justices found a servant of the tenant on the premises, when they first went to view the same.

It is not necessary that any information or complaint *on oath* should be made in order to justify the interference of magistrates under the above act. *Basten* v. *Carew*, 5 *D. & R.* 558; 3 *B. & Cres.* 649, S. C.

XVIII. Landlord Re-entering on Non-payment.

In case where an half year's rent shall be in arrear, and the landlord or lessor hath right by law to re-enter for non-payment thereof, he may, without

Re-entering on non-payment of rent.

(*a*) See form, (No. 22), *post*.

(*b*) The Welch jurisdiction is now abolished by the 1 Will. IV. c. 70, *post*, Wales, Vol. V.

TENANT HOLDING OVER.

4 Geo. 2, c. 28.

Mortgage.

any formal demand or re-entry, serve a declaration in ejectment (the statute here contains a direction as to the mode of proceeding in certain particular cases): and on recovering judgment and execution without payment of rent and arrears together with full costs, and without bill filed within six months after execution, shall hold the premises discharged from the lease. But this not to bar the right of any mortgagee, provided the mortgagee, within six months after judgment and execution executed, pay all rent in arrear, and costs and damages, and perform the lessee's covenants. And if the defendant file a bill in equity, he shall not have an injunction against the proceedings at law, unless he shall bring the arrears into court, and also the costs taxed in the said suit. Provided, that if the tenant shall before the trial in ejectment pay or tender to the lessor, or pay into court all the arrears and costs, the proceedings on the ejectment shall thenceforth cease. 4 Geo. II. c. 28, s. 2, 3, 4.

The law and decisions on this provision will be found fully collected in 1 *Chit. Col. Civ. Stat.* 666, 7, n.

XIX. Tenant Holding Over.

Tenant holding over after the term is expired.

Distress when allowed.

We have already seen that there can be no distress where there is no tenancy, *ante*, 706, 7. But by stat. 8 Ann. c. 14, s. 6, 7, whereas tenants *pur autre vie* (that is, holding during the life of another person), and lessees for years, or at will, frequently hold over after the determination of the lease: and whereas after the determination of such or any other leases no distress can be made for arrears of rent that grew due on such leases before the determination thereof; it is therefore enacted that it shall be lawful to distrain after the determination of such lease, in the same manner as if it had not been determined: provided that the distress be made within six calendar months after the determination of the lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due.

This act is not confined to a tortious holding over or to a holding over of the whole, and therefore a landlord who permits his tenant to retain possession of part of a farm after the tenancy has expired, may distrain under this act on that part within six months after the expiration of the tenancy. *Nuttall* v. *Staunton*, 6 *D. & R.* 155; 4 *B. & Cress.* 51, S. C.

A distress may be made after the expiration of six months, during the time that the tenant, according to the custom of the county, has the away-going crops on the premises. *Beavan* v. *Delahay*, 1 *H. Black.* 5. So where by agreement as well as custom of the county a tenant was to have the use of the barns and gate rooms to thresh out his corn and fodder his cattle till the May-day after the expiration of his term; his term expired at Michaelmas, 1824, and he was restrained by injunction, at the instance of his landlord, from carrying off the premises corn in the straw, and in January, 1825, his landlord distrained a rick of corn on the premises; it was held the distress was valid. *Knight* v. *Bennett*, 3 *Bing.* 364. But a termor, who lets to an under-tenant, cannot, after his term expired, enforce the continuance of the under-tenancy by distress, if the under-tenant refuse to acknowledge him as landlord, or to pay him under threat of distress, although the under-tenant still retains the possession. *Burne* v. *Richardson*, 4 *Taunt.* 720.

After having received notice to quit, tenant to pay double value.

And by stat. 4 Geo. II. c. 28, s. 1, if any tenant for life or years or other person who shall come into possession by, from, or under or by collusion with him shall wilfully hold over any lands, after the determination of such term, and after demand made, and notice in writing given for delivering the possession thereof, he shall, for the time that he shall so hold over, pay at the rate of *double the yearly value* thereof, to be recovered by action of debt in any court of record.

This act is a remedial law. 5 *Burr.* 2694.

TENANT HOLDING OVER.

Notwithstanding the order in which the words are placed in this act, it is evident that the notice should be previous, otherwise it would be absurd and impossible to be complied with, to require *after* the expiration of the term that the tenant should quit *at* the expiration. The notice to quit, therefore, may be given *before* the expiration of the lease or time of demise, or *after*. *Cutting* v. *Derby*, 2 *Bla. Rep.* 1075; 5 *Burr.* 2694.

The right to recover on the notice is not waived by giving a second notice after the expiration of the first. *Messenger* v. *Armstrong*, 1 *T. R.* 53. The notice must be in writing; *Timmins* v. *Rowlinson*, 3 *Burr.* 1607; and be a valid notice. 4 *B. & C.* 922; 7 *D. & R.* 411, S. C. A notice to quit, "or I shall insist upon double rent," does not give the tenant an option to continue the possession paying double rent. *Doe d. Matthews* v. *Jackson*, *Dougl.* 175. A receiver in chancery, duly appointed, is a sufficient person to give the notice. 5 *Burr.* 2694; 1 *B. & P.* 385.

A weekly tenant is not within the act. *Loyd* v. *Rosbee*, 2 *Camp.* 453; *sed vid. Co. Lit.* 54 b. A tenant holding over under a fair claim of right, is not within the act, although it be decided eventually that he has no right; 5 *Esp.* 203; 9 *East*, 313; but this seems questionable.

After a landlord has recovered in ejectment against his tenant, he may maintain debt on this act for double the yearly value of the premises during the time of the holding over after the landlord's notice to quit. 9 *East*, 310.

The only remedy for the double value is by action as pointed out by the act: a distress for it is not sustainable, *ante*, 976.

But after all, this remedy by action seemeth not altogether adequate to the evil: for three reasons, 1, Because such action is certainly tedious and expensive. 2, It is uncertain, when the action is over, whether the tenant will be able to pay. 3, What is chiefly wanted, namely putting the landlord into possession, is not obtained by such action, but for that he shall be still to seek. A more short and easy method of ousting the tenant of his possession seemeth more eligible in the like cases.

Tenant holding over after having given notice to quit, to pay double rent.

The stat. 11 Geo. II. c. 19, recites, whereas great inconveniences have happened to landlords, whose tenants have power to determine their leases by giving notice to quit the premises, and yet refusing to deliver up the possession when the landlord hath agreed with another tenant for the same; it is therefore enacted, that if any tenant shall give notice of his intention to quit the premises at a time mentioned in such notice, and shall not accordingly deliver up the possession at the time in such notice contained, he, his executors or administrators, shall from thenceforward pay *double rent*, during all the time he shall so continue in possession, to be recovered in like manner as the single rent. Sect. 18.

A question arose in the case of *Timmins* v. *Rowlinson*, 1 *Bla. Rep.* 533; 3 *Burr.* 1603; whether the tenant was liable to pay double rent for not quitting after a parol notice; and further, as he held under a parol demise as tenant from year to year, whether this was a holding under the above statute, so as to subject the tenant to double rent for not quitting after notice. And it was held immaterial whether the tenant held under a lease or a parol demise, whether the tenant's notice be in writing or by parol.

But the statute applies only to cases where the tenant has the power of determining the tenancy by a notice, and where he has actually given a *valid* notice, sufficient to determine his tenancy, or the bad notice has been assented to by the landlord in writing. *Johnson* v. *Huddlestone*, 7 *D. & R.* 411; 4 *B. & C.* 922, S. C.

If the landlord accept the single rent after the tenant has given notice, and hold over, it is a waiver of his claim to the double rent given by the statute. *Doe* v. *Batten*, 1 *Cowp.* 243.

It has been decided that a notice to quit *as soon as he can get another situation*, is too vague to entitle the landlord to double rent under the above statute. Although the tenant quit the premises and underlet them. *Farrance* v. *Elkington*, 2 *Campb.* 593.

TENANT HOLDING OVER.

But this remedy, in like manner as the former, seemeth not apposite to the main purpose. The statute proceeds upon a supposition that the tenant is a man of substance: which probably may not be the case. It is most likely that if he were able to live elsewhere, he would not chuse to hold over under such circumstances, nor perhaps would the landlord want to be rid of him. The putting him out of possession, by some expeditious and easy method, seemeth the more adequate remedy in this case also, in like manner as is provided in the case where the tenant deserteth the premises, as hereafter followeth.

Notice to quit.

In the case of *Right* v. *Darby & another*, 1 *T. R.* 159, Lord *Mansfield* said, that when a lease is determinable on a certain event, or at a particular period, no notice to quit is necessary, because both parties are equally apprised of the determination of the term. But if there be a lease for a year, and by consent of both parties the tenant continue in possession afterwards, the law implies a tacit renovation of the contract. They are supposed to have renewed the old contract which was to hold for a year; and in that case it is necessary, for the sake of convenience, that if either party should be inclined to change his mind, he should give the other half a year's notice before the expiration of the next, or any following year (*a*). See 2 *Bla. Rep.* 1124.

It must be half a year's notice, that is, reckoning from one feast day to another; six month's notice (*i. e.* a notice on the 26th of March to quit on the 29th of September), is insufficient. *Id.*

And when rent is reserved quarterly, it does not dispense with the regular notice to quit required by law, but is merely a collateral matter; and such notice is half a year's, and not six months' notice. 1 *Esp.* 266.

Whatever doubts may have been entertained, it is now settled that in the case of a tenancy from year to year as long as both parties please, if the tenant die intestate, his administrator has the same interest in the land which his intestate had; for such tenancy is a chattel interest, and whatever chattel the intestate had must vest in his administrator, as his legal representative, therefore, half a year's notice must be given to the representative, whether executor or administrator, of a yearly tenant deceased, or an ejectment will not lie. 3 *T. R.* 13; 6 *T. R.* 298.

And there is no distinction between houses and lands as to the time of giving notice to quit. 3 *T. R.* 16; 3 *Wils.* 25. Though the rule does not apply as to lodgings. 3 *B. & C.* 88; 4 *D. & R.* 693, S. C.

Notice to quit ought to be in writing; and it should be certain and clear, and not optional or ambiguous. 1 *Dougl.* 176.

It has been held that if a tenant from year to year hold from Old *Michaelmas*, a notice to quit *at Michaelmas generally*, is good. *Doe* d. *Hindt* v. *Vince*, 2 *Campb.* 256.

Lord *Kenyon*, C. J. in *Doe* d. *Matthewson* v. *Wrightman*, 4 *Esp.* 5, held that a notice to quit on the 25th of *March* or the 8th of *April* was sufficient.

And where there is any doubt as to the precise commencement of a tenancy, the most eligible seems to be "*to quit at the expiration of the current year of the tenancy which shall expire next after the end of one half-year from the service of the notice.*" 2 *Camp.* 258, (n).

An irregular notice may be waived by the landlord or tenant on whom it is served not dissenting thereto. See 1 *Esp.* 266; *Chit. jun. Cont.* 103.

As the tenant is entitled to notice, so also is the landlord, if the tenant be desirous to quit.

A tenant from year to year may quit sometimes without notice, if the premises be so out of repair that he cannot live therein. *R. & M. C. N. P.* 268.

On holding over after the expiration of an agreement for a lease, no notice to quit is necessary. 1 *M. & P.* 183.

In the case of *Goodright* v. *Cordwent*, 6 *T. R.* 219, it was determined,

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(*a*) As to notices to quit in general, see *Chit. jun. Contracts*, 100; and the more recent cases in 2 *R. & M.* 268; 6 *B. & C.* 126; 4 *D. & R.* 248.

ATTORNING TO STRANGERS.

that if a landlord receive rent due after the expiration of the notice to quit, it is a waiver of that notice. In this case, the landlord gave the tenant notice to quit at Old *Michaelmas*, 1792, and afterwards received a half-year's rent due on 5th *April*, 1793.

Such mere acceptance of rent, however, is not absolutely a waiver, but is matter of evidence only as to the meaning of the parties at the time, to be left to the jury under the circumstances of the case. 1 *Comp.* 295.

But a distress taken for rent accrued after the expiration of a notice to quit, is a waver of that notice; for though in the mere acceptance of rent the *quo animo* is to be left to the jury (for the acceptance of money is equivocal, it may be in satisfaction for a trespass, or it may be for rent,) yet a distress is an act not to be qualified, and amounts to a confirmation of the tenancy. 1 *H. Black.* 311.

1 Geo. 4, c. 87.

See the 1 Geo. IV. c. 87, for enabling landlords more speedily to recover possession of lands and tenements unlawfully held over by tenants, and for the cases decided on this act, see 1 *Chit. Col. Civ. Stat.* 680; *Tidd*, 9th edit. 1221.

XX. Attorning to Strangers.

Attorning to strangers.

The stat. 11 Geo. II. c. 19, s. 11, declaring that whereas the possession of estates is rendered precarious by tenants attorning to strangers, enacts, that all such attornment shall be void, unless the same be made pursuant to some judgment at law or decree in equity, or be with the consent of the landlord, or be to a mortgagee after the mortgage is become forfeited.

Tenants to whom any declaration in ejectment shall be delivered shall forthwith give notice thereof to the landlord, on pain of forfeiting to him the value of three years' improved or rack rent; and the landlord may make himself defendant by joining with the tenant, or may appear by himself. Sect. 12, 13.

And if the tenant shall not give notice to the landlord, and the plaintiff shall obtain judgment against him by default, the court, on application, will set aside the judgment, and order the tenant to pay the costs. 3 *Burr.* 1996.

XXI. Forms, *List of.*

Warrant of Distress, (No. 1.)
Inventory of Goods, (No. 2.)
Notice of Distress, (No. 3.)
Appraisers' Oath, (No. 4.)
Form of the Appraisement, (No. 5.)
Consent for Distrainor to continue in Possession, (No. 6.)
Complaint on stat. 11 Geo. II. c. 19, s. 4, before a Justice where Goods clandestinely removed, in order to commit the offenders, (No. 7.)
Warrant thereon to summon the Parties concerned, (No. 8.)
Order of Justices thereon, (No. 9.)
The like in another form, (No. 10.)
Warrant of Distress in case the Offenders having notice neglect or refuse to pay pursuant to the preceding Order, (No. 11.)
Constable's Return thereon of Want of Distress, (No. 12.)
Commitment thereon to House of Correction, (No. 13.)
Recognizance on Appeal against a Conviction by two Justices for fraudulently assisting to convey Goods off the Premises to avoid a Distress, (No. 14.)
Complaint on 11 Geo. II. c. 19, s. 3, before a Justice where Goods being fraudulently removed and secured in a dwellinghouse, to prevent them from being taken as a Distress for Rent, (No. 15.)
Warrant thereon to follow and search for Goods fraudulently removed to prevent a Distress, (No. 16.)
Information for a Rescous and Pound Breach at Common Law, (No. 17.)

FORMS.

INFORMATION and Complaint to recover possession of Deserted Premises upon view of two Justices, where no sufficient Distress can be made to countervail Arrears of Rent, (No. 18.)

NOTICE to be affixed on Premises being Deserted, (No. 19.)

RECORD of putting the Landlord in Possession, (No. 20.)

The practical directions which were inserted in this part of the work in prior editions will be found, *ante*, 989 to 992.

(No. 1.)

Warrant of distress.

I DO hereby authorise you, A. B. of in the county of to distrain the cattle, goods, and chattels of A. T. of in the said county, in the premises [or as the case may be] *which he holds of me, situate in the parish aforesaid, in the county aforesaid, for arrear of rent due to me for the said premises at last past; and for your so doing this shall be a sufficient warrant. Witness my hand the day of .*

(No. 2.)

Inventory of goods.

AN inventory of the several cattle, goods, and chattels distrained by us whose names are underwritten, the day of in the year in the premises of A. T. in by the authority and on the behalf of A. L. of for pounds arrear of rent due to him the said A. L.

In the dwellinghouse:
One table,
Six chairs, &c.
In the cow-house:
Six cows,
Two calves, &c. [and so on as the case may be.]

A. T. (No. 3.)

Notice. (a)

TAKE notice, that by the authority and on the behalf of your landlord, A. L. I have this day of in the year of our Lord distrained the several [cattle,] *goods, and chattels specified in the schedule hereunto annexed in your premises at for pounds arrear of rent due to him the said A. L.; and if you shall not pay the said rent so due and in arrear as aforesaid, or replevy the said* [cattle,] *goods, and chattels, I shall after the expiration of five days from the date hereof cause the said* [cattle,] *goods, and chattels to be appraised and sold according to the statute in that case made and provided. Given under my hand the day and year first above written.*

A. D.

Witness that a copy hereof was this day delivered to the said A. T. [or *left at the chief mansion-house of the said A. T.*] *A. W.* (b).

(No. 4.)

Appraisers' oath. (b)

YOU and each of you shall well and truly appraise the goods and chattels mentioned in this inventory, according to the best of your understanding: So help you God.

(No. 5.)

Form of the appraisement. (b)

The appraisement may be in the form of the inventory, specifying the particulars and their respective valuation: and then add at the end, *appraised by us this day of in the year .*

A. P. } *Sworn Appraisers.*
B. P. }

(No. 6.)

But if the tenant request the landlord to give further time for selling the goods

(a) If the landlord himself distrain, the forms may be readily altered.
(b) *Ante*, 991.

distrained, and the landlord consent, it is best for the tenant to sign a memorandum thereof to the following effect:

FORMS.

I A. T. do hereby request that A. L. my landlord, who on the day of last, distrained my [cattle,] goods, and chattels on my premises at in the county of will forbear the sale thereof until the day of next, in order to enable me to discharge my said rent; and I do consent that the said [cattle,] goods, and chattels so distrained may remain at my proper cost and in his possession upon the premises where they now are until that time, and I undertake not to replevy the said [cattle,] goods, and chattels. In witness whereof I have hereunto set my hand the day of . Witness, A. W. *A. T.*

Consent for distrainer to continue in possession.(a)

(No. 7.)

——} *BE it remembered, that this day of A. B. of complaineth that A. T. of hath fraudulently and clandestinely removed and conveyed away certain goods and chattels of the said A. T. not exceeding the value of 50l. from certain premises at to prevent the said A. B. from distraining the said goods and chattels for arrears of rent due to the said A. B. for the said premises. And that A. O. of [yeoman,] and B. O. of [yeoman,] wilfully and knowingly aided and assisted the said A. T. in so fraudulently and clandestinely removing and conveying away the said goods and chattels and in concealing the same; contrary to the form of the statute in such case made and provided.* *A. B.*

Exhibited at the day of before me Esquire, a justice of the peace of residing near the place whence the said goods and chattels were removed, and not being interested in the said premises whence such goods and chattels were removed.(c)

Complaint on stat. 11 Geo. 2, c. 19, s. 4, (b) before a justice where goods clandestinely removed, in order to summon the offenders.

(No. 8.)

——} *To the Constable of and others whom this may concern.*

WHEREAS a complaint in writing hath been this day of exhibited before me J. P. Esquire, a justice of the peace for the said county, (residing near the place whence the goods and chattels hereafter mentioned were removed, [or, near the place where the goods and chattels hereafter mentioned were found,] not being interested in the premises whence the same were removed) by A. B. of [gentleman,] setting forth that A. T. of [yeoman,] hath fraudulently and clandestinely removed and conveyed away certain goods and chattels of the said A. T. not exceeding the value of 50l. from the premises at, &c. to prevent the said A. B. from distraining the said goods and chattels for arrears of rent due to the said A. B. for the said premises. And that A. O. of [yeoman,] and B. O. of [yeoman,] wilfully and knowingly aided and assisted the said A. T. in so fraudulently and clandestinely removing and conveying away the said goods and chattels, and in concealing the same; against the form of the statute in such case made and provided. These are therefore to command you forthwith to summon the said A. T., A. O., and B. O. to appear before two or more justices of the peace at on the day of at the hour of to answer the matter of the said complaint. Given under my hand and seal at the day of . *J. P.* (L. S.)

Warrant thereon to summon the parties concerned.

(No. 9.)

——} *WHEREAS A. T. of, &c. was on, &c. at, &c. upon a complaint in writing to wit. duly made and exhibited before J. P. Esquire, one of his Majesty's justices of the peace for the said county (residing near the place whence the goods and chattels hereafter mentioned were removed, and not being interested in the premises whence the same were removed,) with having fraudulently and clandestinely removed and conveyed away his goods and chattels, not exceeding the value of 50l. from certain premises at to prevent A. B. from distraining the said goods and chattels for arrears of rent due to A. B. for the said premises.*

And whereas A. O. and B. O. were on the day and year aforesaid, upon the said complaint duly made, charged before the said J. P. Esquire, with having wilfully and knowingly aided and assisted the said A. T. in so fraudulently and clandestinely removing and conveying away the said goods and chattels, and in concealing the same: And the said J. P. Esquire, as such justice, having summoned the parties con-

Order of Justices thereon. (d)

(a) *Ante*, 991.
(b) *Ante*, 983.
(c) By the 3 Geo. IV. c. 23, *ante*, 817, the information may be laid before one justice only.
(d) *Ante*, 984.

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cerned, and we the said undersigned justices having heard the said charge and examined the fact and all proper witnesses upon oath, and it appearing and being fully proved before us that the said A. B. did so fraudulently and clandestinely remove and convey away the said goods and chattels as aforesaid, being of the value of a sum under 50l. and it also appearing and being fully proved before us that the said A. O. and B. O. wilfully and knowingly aided and assisted the said A. T. in so removing and conveying away the said goods, and chattels as aforesaid, and in concealing the same: We the said justices, being respectively justices of the peace residing near the place whence the said goods and chattels were removed, and neither of us being interested in the premises whence the same were so removed as aforesaid, do therefore, this day of, &c. determine and adjudge that the said A. T., A. O., B. O. are guilty of the offences with which they are charged as aforesaid, and that they are hereby convicted thereof: And we do hereby order and adjudge them to pay the sum of [20l.] *being double the value of the said goods and chattels, to A. B. on or before the day of . Given under our hands and seals at the day of one thousand eight hundred and .* T. R.
R. S.

(No. 10.)

The like in a fuller form.(a)

} *BE it remembered, that on the day of in the year of our Lord* —— { *at in the county of A. L. of, &c.* [*gentleman,*] [if the complaint is exhibited by the bailiff, servant, or agent of the landlord, say, *bailiff, servant,* or *agent,* as the case may be, *of A. L. of in the county of gentleman,*] *in his own person came before me,* [or *us,*] *J. P. Esquire, one,* [or *two,*] *of his Majesty's justices of the peace in and for the said county, and residing near the place whence the goods and chattels hereinafter mentioned were removed,* [or if the proceedings are before justices residing near the place where the goods and chattels were found, say, *residing near the place where the goods and chattels hereinafter mentioned were found,*] *we or either of us not being interested in the* [here describe the place whence such goods and chattels were removed, as *messuage, dwelling-house, cottage, close,* &c. as the case may be, or say, *in the premises whence the goods and chattels were removed as hereafter mentioned,*] *and* [if the complaint is exhibited by the bailiff, servant, or agent of the landlord, say, *at the instance and on the behalf of the said A. L.*] *and informed me,* [or *us,*] *that A. O. of the parish of in the county of* [*yeoman,*] [or *one A. T.* naming the tenant,] *for* [*the half of*] *a year next before and ending at and upon the* [*25th day of December,*] *in the year of our Lord held and enjoyed a certain* [here shortly describe the demised premises,] *and premises with the appurtenances, situate and being in the parish of in the county of as tenant thereof to the said A. L. under a demise thereof theretofore made, at the yearly rent of payable to the said A. L.* [*half-yearly,*] *to wit, on the* [*24th day of June and the 25th day of December,*] *by even and equal portions; and that on the said* [*25th day of December,*] *in the said year of our Lord the sum of of the rent aforesaid,* [*for the half of a year,*] *ending on the said* [*25th day of December,*] *in the said year of our Lord on that day in that year became and was, and still is due, in arrear, and unpaid from the said A. T. to the said A. L. and that* [*the said sum of of the rent aforesaid so being due, in arrear, and unpaid from the said A. T. to the said A. L.* (*b*)] *the said A. T. that is to say, on the day of in the year of our Lord fraudulently and clandestinely conveyed away and carried off and from the said demised premises, one, &c.* [describe the goods removed and conveyed away,] *being the goods and chattels of the said A. T. and the same not exceeding the value of 50l. but being of less value, to wit, of the value of of lawful money of Great Britain, to prevent the said A. L. from distraining the same for the said arrears of rent,* [if the complaint be against a third person for assisting the tenant in such fraudulent carrying off his goods, say, *and that the said A. O. on the same day and year aforesaid, did wilfully and knowingly aid and assist the said A. T. in such fraudulent conveying away and carrying off and from the said demised premises the said goods and chattels and every part thereof,* or if the complaint against such third person is for concealing the goods so fraudulently carried off the premises, say, *and that the said A. O. afterwards, and after the said goods and chattels were so fraudulently and clandestinely conveyed away and carried off and from the said demised premises as aforesaid, to wit, on the same day and year aforesaid, at the parish of in the county of did wilfully and knowingly aid and assist the said A. T. in concealing the said goods and chattels and every part thereof,*] *contrary to the form of the statute in such case made and provided; whereby and by force of the said statute, the said A. O. hath*

(a) See *ante*, 983, 984.

(b) If the rent was not due at the time of the removal, omit these words in brackets.

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forfeited to the said A. L. from whose estate the said goods and chattels were so fraudulently carried off as aforesaid, double the value of the said goods so by him carried off and concealed as aforesaid. Whereupon, &c. [here proceed as directed in the form prescribed by the 3 Geo. IV. c. 23, s. 1, *ante*, 836, (*a*) stating the adjudication thus]: *Therefore it manifestly appearing to us that the said A. O. is guilty of the said offence, charged upon him in the said information, we do hereby convict him of the offence aforesaid, and do declare and adjudge, that he the said A. O. hath forfeited the sum of of lawful money of Great Britain, (being double the value of the said goods and chattels in the said information mentioned,) for the offence aforesaid, to be paid according to the form of the statute in that case made and provided. Given under our hands and seals the day of in the year of our Lord*

J. P. (L. S.)
K. P. (L. S.)

(No. 11.)

Warrant of distress in case the offenders having notice refuse or neglect to pay pursuant to the preceding order. (*b*)

To the Constable of and others whom this may concern.

WHEREAS A. T. of [yeoman,] *A. O. of* [yeoman,] *and B. O. of* [yeoman,] *were by an order dated the day of under the hands and seals of us and justices of the peace of (residing near, &c. not being interested in, &c.* [as in the order]), *ordered to pay the sum of to on or before the day of being double the value of certain goods and chattels of the said A. T. which the said A. T. was before us duly convicted of having fraudulently and clandestinely removed and conveyed away, from* [as in the order] *to prevent one A. L from distraining the said goods and chattels for arrears of rent due to the said A. L. for the said premises, and which the said A. O. and B. O. were also duly convicted before us of having wilfully and knowingly aided and assisted the said A. T. in so fraudulently and clandestinely removing and conveying away, and in concealing the same: and whereas the said A. T., A. O., and B. O. having notice of our said order, have refused or neglected to pay, and have not paid, the said sum of pursuant thereunto, and the same hath been fully proved before us: these are therefore to command you to levy the said sum of by distress and sale of the goods and chattels of the said A. T., A. O., and B. O. and we do hereby order and direct the goods and chattels so to be distrained to be sold and disposed of within days, unless the said sum of for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid:* (*c*) *and you are also hereby commanded to certify to us what you shall do by virtue of this our warrant. Given under our hands and seals at the day of*

(No. 12.)

Constable's return thereon of want of distress.

I A. C. constable of do hereby certify and justices of the peace of that I have made diligent search for, but do not know of nor can find any goods and chattels of and and or of any of them, by distress and sale whereof I may levy the sum of pursuant to their warrant for that purpose. Dated the day of Given under my hand this day of

(No. 13.)

Commitment thereon to house of correction. (*c*)

To the Constable of and also to the Keeper of the House of Correction at in the county of

WHEREAS A. T. and J. O. and L. O. were by an order dated the day of under the hands and seals of us justices of the peace of

(*a*) State the evidence, and as nearly as possible in the words used by the witness; it will be necessary to have proof of the particulars of the demise; the amount of the rent in arrear; the fact of removing the goods, and the circumstances of privacy or fraud attending it; and if the complaint is against a third person for assisting, the fact of such assistance and its particular manner; or if the complaint against such third person is for concealing the goods or chattels so fraudulently conveyed away by the tenant, the fact of concealing such goods and chattels, and which of them in particular, and the place where they were found so concealed; and, lastly, the value of the goods so removed and carried away or concealed.

(*b*) See *ante*, 984.

(*c*) 27 Geo. II. c. 20, *post*, 1017; and 5 Geo. IV. c. 18, *post*, 1018.

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(residing near, &c. not being interested in, &c. as in the order,) ordered to pay the sum of to on or before the day of being double the value of certain goods and chattels of the said which the said A. T. was before us duly convicted of having fraudulently and clandestinely removed and conveyed away from [as in the order], *to prevent the said A. L. from distraining the said goods and chattels, for arrears of rent due to the said A. L. for the said premises, and which the said J. O. and L. O. were also duly convicted before us of having wilfully and knowingly aided and assisted the said A. T. in so fraudulently and clandestinely removing and conveying away, and in concealing the same: and whereas the said A. T. and J. O. and L. O. having notice of our said order, have refused or neglected to pay and have not paid the sum of pursuant thereunto, and the same hath been duly proved before us; and whereas it appears to us by the return of constable of dated the day of that he hath made diligent search for, but doth not know of nor can find any goods and chattels of the said A. T. and J. O. and L. O. or any or either of them, by distress and sale whereof the said sum of may be levied, pursuant to our warrant duly made and issued for the levying the said sum of by distress and sale of the goods and chattels of the said A. T. and J. O. and L. O. These are therefore to command you the said constable of to apprehend the said A. T. and J. O. and L. O. and convey them to the said house of correction at aforesaid, and deliver them there to the said keeper of the said house of correction: and these are also to command you the said keeper of the said house of correction to receive them the said A. T. and J. O. and into the said house of correction, and there keep them to hard labour, without bail or mainprize, for the space of six months, unless the said sum of so ordered to be paid as aforesaid, shall be sooner satisfied. Given under our hands and seals at the day of*

(No. 14.)

Recognizance on appeal against a conviction by two justices, for fraudulently assisting to convey goods off the premises to avoid a distress. (a)

BE it remembered, that on, &c. in the year of the reign of our sovereign lord William the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, C. D. of in the said county, [farmer,] and E. F. of in the said county [farmer,] personally came before us, J. P. and K. P. Esquires, two of his Majesty's justices of the peace in and for the said county, and acknowledged themselves to owe to our said lord the King, the sum of (b), to be levied of their goods and chattels, lands and tenements, to the use of our said lord the King, his heirs and successors, if the said C. D. shall make default in the condition following:

The condition of this recognizance is such, that whereas the said C. D. is this day duly convicted before us, the above-named justices of the peace, of having wilfully and knowingly aided and assisted G. H. of, &c. [farmer,] on the day of last, in fraudulently and clandestinely removing and conveying away the goods and chattels of the said B. O. from [describing the place, house, tenement, &c. and the parish where situate, &c.] *not exceeding the value of fifty pounds, and in concealing the same, so as to prevent A. B. of, &c. from taking and seizing the same for arrears of rent due to the said A. B. from the said G. H. for certain premises, situate at , aforesaid; for which offence the said C. D. has been adjudged to forfeit to the said A. B. the sum of , being double the value of the said goods and chattels by the said C. D. so carried off and concealed: Now if the said C. D. shall personally appear at the next [quarter sessions] of the peace to be held at , for the said county of , and commence and prosecute an appeal against the said conviction, and pay such costs as shall be then and there awarded by the said court against the said C. D., and not depart without leave of the court, then this recognizance to be void.*

Acknowledged before us, J. P.
K. P.

(No. 15.)

Complaint on 11 Geo. 2, c. 19, s. 7, before a justice where goods being

BE it remembered, that this day of A. I. of [yeoman,] complaineth and maketh oath that certain goods and chattels of A. O. of [yeoman,] hath within thirty days last past been fraudulently and

(a) See stat. 11 Geo. II. c. 19, s. 5 & 6, *ante*, 984.

(b) The amount must be double the sum ordered to be paid by the conviction. See the 11 Geo. II. c. 19, s. 6, *ante*, 984.

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clandestinely conveyed and carried away from by the said A. O. his servant or servants, agent or agents, or other person or persons, aiding or assisting therein to prevent A. B. from distraining the said goods and chattels for arrears of rent due to the said for the said and that the said goods and chattels are put, placed, or kept in the house, [barn, stable, outhouse, yard, close, or other place,] of at locked up, fastened, or otherwise secured so as to prevent the said goods and chattels from being taken and seized as a distress for arrears of rent: and that the said A. I. hath a reasonable ground to suspect, and doth suspect, that the said goods and chattels are in the [dwellinghouse] of the said at

fraudulently removed are secured in a dwelling-house, to prevent them from being taken as a distress for rent.(a)

Taken and sworn at the day of before A. I.

(No. 16.)

—— } *To all Constables, and other his Majesty's Officers of the Peace, whom these*
to wit. } *may concern.*

Warrant thereon to follow and search for goods fraudulently removed to prevent adistress.(a)

WHEREAS A. B. of, &c. hath this day of exhibited his complaint and made oath before me, J. P. one of his Majesty's justices of the peace for the said county of that certain goods and chattels of E. F. have been within thirty days last past fraudulently and clandestinely conveyed and carried away from a certain [house] and premises, situate, &c., by the said E. F., his servant or servants, agent or agents, or other person or persons aiding or assisting therein, to prevent the said A. B. from distraining the said goods and chattels for arrears of rent due from the said E. F. to the said A. B. for the said house and premises. And that the said goods and chattels are put, placed, and kept in the house, [barn, stable, outhouse, yard, close] or other place of the said E. F. [or of J. H.] situate and being in, &c. in the parish of, &c. within the said county, locked, fastened, or otherwise secured, so as to prevent the said goods and chattels from being taken and seized as a distress for arrears of rent; and that the said A. B. hath a reasonable ground to suspect, and doth suspect, that the said goods and chattels are in the said house, [barn, &c.] of, &c. These are therefore to command you, and each and every of you, to aid and assist the said A. B., his steward, bailiff, receiver, or other person or persons empowered to take and seize as a distress for rent the said goods and chattels, in the day time, to break open and enter into the said house, [barn, stable, outhouse, yard, close,] or other place of the said, &c. at, &c. aforesaid, and to take and seize the said goods and chattels for the said arrears of rent according to law. Given under my hand and seal, at, &c. the day of, &c.

J. P. (L.S.)

(No. 17.)

} *THE information and complaint of A. I., constable of* [as the case
—— } may be,] *in the said county, taken and made upon oath before me, J. P. Esquire, one of his Majesty's justices of the peace in and for the said county, the day of , in the year of our Lord one thousand eight hundred and : who says, that as constable of the said parish of* [or, *bailiff*, &c. or as the case may be,] *he received a warrant under the hand and seal of E. E. Esquire* [or, *me*, as the case may be,] *one of his Majesty's justices of the peace in and for the said county of , bearing date the day of , instant, by which he, the said constable, was commanded to sell such and so much of the goods and chattels of A. O. late of , in the said county, yeoman, as should satisfy and pay T. K. constable of the aforesaid parish of , the sum of , being the charges of conveying the said A. O. to the house of correction* [or as the case may be] *of the said county, at , in the said county, to which house of correction* [or as the case may be] *he the said A. O. was committed for a misdemeanor* [or *felony*, as the case may be,] *by a warrant under the hand and seal of the said E. E.; that under the said warrant first before mentioned, he the said informant yesterday morning, being the day of , instant, took a distress on a quantity of potatoes* [or as the case may be,] *belonging to the said A. O., in a house in the village of , in the parish of , in the county aforesaid, and put a lock on the door; but that last evening the said lock so placed on the said distress was wilfully broken by B. O.* [or, *the said A. O.* as the case may be,] *of , in the said county,* [*labourer*,] *and that the said potatoes, so taken as a distress, were rescued by the said B. O.* [or, *A. O.*, as the case may be,] *in breach of the peace, and to the delaying of justice. He therefore prays that hue and cry may*

Information for a rescous and pound breach, at common law.(b)

(a) See the act, *ante*, 983. (b) *Ante*, 1001.

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be levied against the said B. O. [or, A. O. as the case may be,] for the said rescue and pound breach, as against those who break the peace.

Before me,
J. P.

A. I.

(No. 18.)

Order and judgment of the justice before whom complaint is preferred on 57 Geo. 3, c. 93, for taking too much costs, where the order and judgment is for the complainant.(a)

IN the matter of the complaint of A. B. against C. D. for a breach of the provisions of an act of the fifty-seventh year of his late Majesty King George the Third, intituled An Act [here insert the title of this act, ante, 995] I, E. F. a justice of the peace for the county of , and acting within the division of , do order and adjudge that the said C. D. shall pay to A. B. the sum of , as a compensation and satisfaction for unlawful charges and costs levied and taken from the said A. B. under a distress for rent; and the further sum of for costs on this complaint.

(Signed) E. F.

(No. 19.)

Order and judgment of the justice on like statute, where he dismisses the complaint as unfounded, and with or without costs.(a)

IN the matter of the complaint of A. B. against C. D. for the breach of the provisions of an act of the fifty-seventh year of his late Majesty King George the Third, intituled An Act [here insert the title of this act, ante, 995] I, E. F. a justice of the peace for the county of , and acting within the division of , do order and adjudge that the complaint of the said A. B. is unfounded, [if costs are given,] and I do further order and adjudge, that the said A. B. shall pay unto the said C. D. the sum of for costs.

(Signed) E. F.

(No. 20.)

Information and complaint to recover possession of deserted premises, upon view of two justices, where no sufficient distress can be made to countervail arrears of rent.(b)

County of } THE information and complaint of , of , in the county of
to wit. } , taken this day of , one thousand eight hundred and , who saith, that he, the said , did demise at rack rent the messuage, lands, or tenement, lately called , situate at or near , in the parish of , in the county of , and that , of , in the county of , is the tenant holding the same at rack rent: and that on the day of last past, there was in arrear, and due unto h , the said , from h , the said , tenant of the said demised premises, one year's rent thereof, and that he, the said , hath deserted the said demised premises, and left the same unoccupied, so as no sufficient distress can be had to countervail the said arrears of rent, whereupon I the said do request A. I. and I. P., two of his Majesty's justices of the peace for the said county, to go and view the said premises, and affix on the most notorious part thereof notice in writing, what day they will return to take a second view, and that a due remedy may be provided me, according to the form of the statute in that case made.

Taken before us this said day of , one thousand eight hundred and .

(No. 21.)

Mr. C. D.

Notice to be affixed on the premises being deserted.(b)

TAKE notice, that upon the complaint of E. A. of , in the county of , made unto us A. P. and B. P. Esquires, two of his Majesty's justices of the peace for the said county, that you the said A. S. have deserted the messuage and tenement called , consisting of , situate, lying, and being at aforesaid, in the county aforesaid, unto you demised at rack rent by the said E. A., and that there is in arrear and due from you the said A. S. unto the said E. A. one year's rent for the said demised premises, and that you have left the said premises uncultivated and unoccupied, so that no sufficient distress can be had to countervail the said arrears of rent; we the said justices, (having no interest, nor either of us having any interest in the said demised premises,) on the said complaint as aforesaid, and at the request of the said E. A., have this day come upon and viewed the said demised premises, and do find the said complaint to be true; and on the day of this present month of , we will return to take a second view thereof, and if upon such second view you, or some person on your behalf, shall not appear and pay the said rent in arrear, or there shall not be sufficient distress on the said premises, then we the said justices will put the said E. A. into the possession of the said demised premises, according to the form of the

(a) The form is prescribed by the act, ante, 995, 996.
(b) Ante, 1002.

statute in such case made and provided. In witness whereof we have hereunto set our hands and seals, and have caused this notice to be affixed on the outer door of the [mansion-house,] the same being the most notorious part of the said premises, this day of , in the year of the reign of our sovereign lord William the Fourth, of the United Kingdom of Great Britain and Ireland King.

(No. 22.)

Record of putting the landlord in possession. (a)

County of } BE it remembered, that on the day of , in the year of the reign of our soverign lord George the Fourth, of the United to wit. } Kingdom of Great Britain and Ireland King, Defender of the Faith, at , in the said county, A. L. of , in the said county , complained unto us J. P. and K. P. Esquires, two of the justices of our said lord the King, assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, that he the said A. L. did demise at rack rent unto A. T. of , husbandman, a messuage and tenement called , consisting of , situate, lying, and being at aforesaid, in the county aforesaid, and that on the said day of , in the year aforesaid, there was in arrear and due unto the said A. L. from him the said A. T., the tenant of the said demised premises, one year's rent thereof, and that he the said A. T. hath deserted the said demised premises, and left the same uncultivated and unoccupied, so as no sufficient distress could be had to countervail the said arrears of rent; whereupon the said A. L., then and there, to wit, on the said day of , in the year aforesaid, at aforesaid, in the county aforesaid, requested of us the said justices that a due remedy should be provided, according to the form of the statute in that case made and provided; which complaint and request by us the aforesaid justices being heard, we (having no interest, nor either of us having any interest in the said demised premises,) on the said day of, in the year aforesaid, at aforesaid, in the county aforesaid, did personally go upon and view the said demised premises, and then and there, upon our own proper view, did find the said complaint to be true, and did then and there affix, on the most notorious part of the said demised premises, to wit, upon the outer door of the [mansion-house,] a notice in writing under our hands and seals, that we the said justices, on the day of next, would return to take a second view thereof; upon which said day of , in the year aforesaid, we did return and take a second view of the said premises, and there, upon our own proper view, did find that he the said A. T. did not appear, nor any person on his behalf, to pay the said rent in arrear, and that there was no sufficient distress upon the said premises, nor upon any part thereof, to countervail the said arrear of rent: therefore we the said justices, at aforesaid, in the county aforesaid, on the day of aforesaid, did put the said A. L. into possession of the said demised premises, according to the form of the statute aforesaid. In witness whereof we the said justices unto this record do set our hands and seals, the day of , in the year of our Lord .

II. DISTRESS BY WARRANT OF JUSTICES.

When it may be granted.

A distress by warrant of justices of the peace is usually issued for the purpose of compelling payment of a penalty or costs.

A magistrate has no power whatever at common law to issue such a warrant, his authority for that purpose can only be derived from act of parliament, and then only in case it is expressly given. The magistrate therefore must be guided in his proceedings in this respect by the express enactment of the legislature.

Sometimes this authority to justices is given by the statute, directing him to exercise it *immediately* upon nonpayment of the penalty; in other cases, only upon failure of payment after a certain number of days. In the latter case no demand is it seems necessary to enable the magistrate to issue the

(a) *Ante*, 1003.

DISTRESS BY WARRANT OF JUSTICES.

warrant after the expiration of the time limited for payment. 6 *East*, 75; *Paley*, 234.

Appeal.

Several statutes give a power of appeal to the party convicted, and at the same time provide that, upon the appeal and security given for the prosecuting it, the distress shall be stayed until the appeal be determined. In such cases after the determination of the appeal, if the time limited for making the distress be expired, the magistrate may it seems issue his warrant immediately without any fresh demand, for the time runs from the order. 6 *East*, 75. But if the warrant has been issued before and suspended by the appeal, it is better after the decision of the appeal to apply to the magistrate and lay the facts before him, before proceeding to the execution of the warrant. Per *Lawrence*, J. 6 *East*, 69; *Paley*, 234.

Summons.

In a distress for poor rates a summons is necessary before issuing the warrant; (*R.* v. *Benn*, 6 *T. R.* 198; *post*, Poor, Vol. IV.); and the same should be issued in most cases where the distress is for a mere rate or assessment.

Demand.

As to when a demand and refusal of a land tax or assessed tax rate is necessary before distress, see *Gibbs* v. *Head*, 8 *B. & Cres.* 528; *post*, Land Tax, Vol. III. p. 509.

If there be *reasonable* ground for the magistrate's doubting his authority to grant the desired warrant of distress, he had better not do so; and the court would not compel him to act. *R.* v. *Js. Bucks*, 1 *B. & Cres.* 485; 2 *D. & R.* 687; 1 *D. & R. Mag. Ca.* 366, S. C.

Oath.

If an oath or affirmation be required before granting the warrant of distress, the same may be made before any justice acting under the statute which authorises the levy. 15 Geo. III. c. 39; *post*, Oaths, Vol. III.

Form of warrant.

With respect to the warrant of distress itself, it is directed to the constable or other proper officer of the parish or district in which the goods to be distrained upon are to be found. It then shortly recites the conviction, and commands the officer to levy the sum specified, directing to whom it is to be paid. It should state when the distress is to be sold. 27 Geo. II. c. 20, *post*, 1017. It should be warranted by the conviction. 2 *Ld. Raym.* 1189. Very often the form of the warrant is prescribed by the act allowing it to be issued. The warrant should in general be under the hand and seal of the magistrate, and in most statutes it is required to be so. *Post*, Warrant, Vol. V. But in *Willes, Rep.* 411, it was held that a warrant of distress, granted by two justices under stat. 9 Geo. II. c. 23, which refers to stat. 12 Car. II. c. 24, s. 45, on a conviction for selling spirituous liquors without a license, need not be *under the seals* of the justices; it is sufficient if it be *under their hands*. See further, *post*, Warrant, Vol. V.

Who to execute it.

The constable or parish officer, or other known officer in a borough or other special jurisdiction, is the proper person to execute the warrant. *Paley*, 235. He is bound to execute and return the warrant if delivered to him in a reasonable time. *Fost.* 127, *ante*. As to the place where they may execute it, see the 5 Geo. IV. c. 18, s. 6, *post*, 1020.

Mode of execution.

The mode of executing warrants in general will be found treated of under *post*, title, Warrant, Vol. V.

In cases of distress for the levying of penalties there seems to be no power to break open doors or gates, in case they are locked up or shut, unless such penalty or part thereof he given to the King; which matter may seem to require some consideration. See 2 *Hawk.* c. 14, s. 5; 2 *Jones*, 233; 1 *B. & A.* 227; 2 *B. & A.* 592; 3 *B. & A.* 330. And as to breaking open doors in general, *post*, Warrant, Vol. V.; House, Vol. III. p. 278, 279.

It should seem that in general the law as to what may be taken in execution under a writ of *fieri facias* would be here applicable. See *Tidd's Prac.* 9th ed. 1001, &c.

If the party convicted be a feme covert, the goods of the husband are not in general liable to be distrained on, unless there be an express authority for it in the act of parliament allowing the distress, as there is in the 22 Car. II. c. 1. See 11 *Co.* 61 b; *Paley*, 237.

By the 27 Geo. II. c. 20, s. 2, *post*, 1017, the officer, upon the execution of the warrant, is bound, if required, to show it to the person whose goods are distrained, and to suffer a copy of it to be taken.

Justices to limit in warrants of distress the time for sale.

Sale]—Before the stat. 27 Geo. II. c. 20, there was no time limited for the sale of the goeds; by section 1, however, of that act it is enacted, that in all cases where any justice of the peace is, or shall be, required or impowered, by any act of parliament, to issue a warrant of distress for the levying of any penalty inflicted, or any sum of money directed to be paid by or in consequence of such act, it shall be lawful for the justice granting such warrant therein to order and direct the goods and chattels so to be distrained to be sold and disposed of within a certain time to be limited in such warrant, so as such time be not less than four days, nor more than eight days, unless the penalty or sum of money for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, be sooner paid.

Not less than four, nor more than eight days.

It had before been solemnly resolved that these words in an act of parliament, "to be levied by distress," must be understood of "distress and sale." 1 *Salk.* 379; *Carth.* 502; 1 *Ld. Raym.* 583; 6 *Mod.* 83.

The sale ought to be by the officer for ready money, and if he sells on credit, he will be liable for the produce. *Semble, Morley* v. *Hocker*, 6 *Mod.* 83.

Costs and charges.

Costs and Charges]—Before the 18 Geo. III. c. 19, *ante*, 903, 809, except where special provision was made for levying the costs and charges, no more than the mere penalty could in any case be levied. That act, however, first empowered the justice to give costs, and at the same time authorised the recovery of the amount in addition to the penalty if under 5*l*. If the penalty amounts to or exceeds that sum, the costs are still to be deducted out of it, provided the deduction does not exceed one-fifth of the penalty.

The costs of the distress are given by several statutes, in certain cases of warrants of distress; though it seems, from the case of *Moyse* v. *Cocksedge*, *Will.* 636, that such a power is impliedly given in all acts that authorise the levying of a sum of money by a warrant of distress. To remove all doubts, however, the stat. 27 Geo. II. c. 20, s. 1, enacts, "that in all cases where any justice or justices of the peace is or are, or shall be, required or empowered by any act or acts of parliament now in force, or hereafter to be made, to issue a warrant of distress for the levying of any penalty inflicted, or any sum of money directed to be paid, by or in consequence of such act or acts, it shall and may be lawful for the justice or justices granting such warrant, therein to order and direct the goods and chattels so to be distrained to be sold and disposed of within a certain time to be limited in such warrant, so as such time be not less than four days, nor more than eight days, unless the penalty or sum of money for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, be sooner paid."

27 Geo. 2, c. 20.

Officer to deduct charges of taking, keeping, and selling.

And by sect. 2, "the officer making such distress shall and is hereby empowered to deduct the reasonable charges of taking, keeping, and selling such distress, out of the money arising by such sale; and the overplus (if any) after such charges, and also the said penalty or sum of money shall be fully satisfied and paid, shall be returned on demand to the owner of the goods and chattels so distrained; and the officer executing such warrant, if required, shall show the same to the person whose goods and chattels are distrained, and shall suffer a copy thereof to be taken."

Copy of warrant.

Quakers excepted.

Sect. 3. But this shall not extend to alter any provisions relating to distresses to be made for the payment of tithes and church rates by the people called Quakers, contained in stats. 7 & 8 Will. III. c. 34, and 1 Geo. I. st. 2, c. 6.

Mode of ascertaining amount of charges.

There is no power given by this act to the justices to ascertain such charges; therefore it seemeth that the officer executing the warrant shall be the sole judge thereof in the first instance, and afterwards, if the owner of

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the goods distrained shall be dissatisfied, the reasonableness thereof shall be determined by a judge and jury upon an action brought.

But by special statutes, this power of ascertaining the charges of distress and sale is sometimes given to the justices, as is set forth in this book under the respective titles.

Quaker's tithes and church and other rates, taxes, &c.

The above-mentioned statutes of the 7 & 8 Will. III. c. 34, and 1 Geo. I. st. 2, c. 6, relate not only to *tithes and church rates*, (by which last seemeth only to be understood the churchwardens' rate for the repair and other uses of the church,) but also to any customary or other rates, dues, or payments, belonging to any church or chapel, which of right by law and custom ought to be paid for the stipend or maintenance of any minister or curate officiating in any church or chapel. Therefore, for any thing that appears from the words of this statute, unless it be in the case of *tithes* or *church rates*, the justices may order the distress for those other dues and payments to be detained for a certain time, and the officer may deduct the charges not only of *distraining*, but also of *keeping* and *selling* the distress; whereas by those former acts above mentioned, the officer was only allowed to deduct the necessary charges of *distraining*.

Now by 7 & 8 Geo. IV. c. 17, *ante*, 630, the provisions of the 57 Geo. III. c. 93, *ante*, 995, regulating the costs of distresses for rent not exceeding 20*l.* are extended to distresses not exceeding 20*l.* for land tax, assessed taxes, poor's rates, church rates, tithes, highways rates, sewers rates, or any other rates, taxes, impositions, or assessments whatever.

33 Geo. 3, c. 55.

Where distress cannot be found in the jurisdiction of the justices granting warrants, it may be levied in any other place.

Formerly there was no means of levying the penalty if the offender was not possessed of sufficient goods to answer it within the jurisdiction of the convicting magistrate, for the levy could not be made elsewhere. But now by stat. 33 Geo. III. c. 55, s. 3, reciting, "And whereas warrants of distress granted by justices of the peace are sometimes ineffectual, by reason of the goods and chattels of the persons against whom such warrants are granted, being out of the jurisdiction of the justice granting the same," it is enacted, that in all cases where any penalty, forfeiture, fine, or other money may by warrant of any justice of the peace be directed to be levied by distress and sale of the goods and chattels of any person, if sufficient distress cannot be found within the limits of the jurisdiction of such justice, on oath thereof made by one witness before any justice of any other county or place, (which oath shall be by him certified by indorsement on such warrant,) such penalty, forfeiture, fine, or other money, or so much thereof as may not have been before levied or paid, shall and may, by virtue of such warrant and indorsement, be levied by the person to whom such warrant was originally directed, by distress and sale of the goods and chattels of such person in such other county or place; to be applied in like manner as if sufficient distress had been found within the jurisdiction of the magistrate originally granting such warrant; and if no such distress can be found, such offender shall be proceeded against according to law.

If no distress found, offender to be proceeded against according to law.

Backing magistrate not answerable for irregularity.

Provided that no justice who shall indorse any certificate upon, or authorise the execution of any such warrant of distress which may not have been granted within his jurisdiction, shall be answerable for any irregularity which may have been committed in or about the obtaining or granting of such warrant.

Constable's jurisdiction.

By the 5 Geo. IV. c. 18, s. 6, *post*, 1020, constables may execute warrants out of their precincts, provided it be within the jurisdiction of the justice granting or backing the same.

5 Geo. 4, c. 18.

By stat. 5 Geo. IV. c. 18, intituled "An Act for the more effectual recovery of penalties before justices and magistrates on conviction of offenders; and for facilitating the execution of warrants by constables," reciting that, "by several acts, certain penalties and forfeitures are imposed on persons for offences committed against the directions of such acts, which are directed to be recovered before any justice or justices of the peace, or any magistrate or magistrates, within their respective jurisdictions; and on non-payment thereof, such penalties and forfeitures, together with the reasonable costs and

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5 Geo. 4, c. 18.

charges attending the several convictions, are directed to be levied by distress and sale of the goods and chattels of the offender or offenders, by warrant under the hand and seal of such justice and magistrate respectively: and whereas no power is given to such justices and magistrates, on conviction of such offenders, to detain him, her or them in custody till return is made to the warrant of distress, for the purpose of ascertaining whether such offenders have any goods and chattels to satisfy such penalties, forfeitures, costs and charges, whereby such offenders frequently escape any punishment for their offences:" it is enacted, "that from and after the passing of this act, (31 Mar. 1824,) whenever any penalty or forfeiture is or shall be directed to be recovered before any justice or justices of the peace, or magistrate or magistrates for any county, riding, soke, city, division or place, and such justice or justices of the peace, magistrate or magistrates, is or are authorised and empowered, on the conviction of the offender or offenders, in default of payment of such penalty or forfeiture, together with the reasonable costs and charges attending such conviction, to cause the same to be levied by distress and sale of the goods and chattels of the offender or offenders, by warrant or warrants under the hand and seal of such justice or magistrate, or hands and seals of such justices or magistrates, together with the reasonable costs of such distress and sale; and in case upon a valuation being taken of the goods and chattels of the offender or offenders, sufficient distress for the payment of all such penalties and forfeitures and other costs and charges cannot be found, or in case it shall appear to such justice or justices, magistrate or magistrates, either by the confession of the offender or offenders or otherwise, that the offender or offenders has or have not sufficient goods or chattels whereupon the same may be levied, within the jurisdiction of such justice or justices, magistrate or magistrates, no sale shall take place of the goods and chattels of such offender or offenders, but it shall be lawful for such justice or justices, magistrate or magistrates, to commit such offender or offenders to the common gaol or house of correction, for such time and in such manner as in such acts respectively mentioned and directed, then and in every such case it shall and may be lawful to and for such justice or justices, magistrate or magistrates, at his or their discretion, to order the offender or offenders so convicted to be kept and detained in safe custody until return shall be made to such warrant or warrants of distress, unless such offender or offenders shall give sufficient security, to the satisfaction of such justice or justices, magistrate or magistrates, for his, her or their appearance before him or them on such day or days as shall be appointed for the return of such warrant or warrants of distress, such day or days not being more than eight days from the time of taking such security; and such security such justice or justices, magistrate or magistrates, is and are hereby empowered to take by way of recognizance or otherwise, as to him or them shall seem right and proper; or in case it shall appear to the satisfaction of such justice or justices, magistrate or magistrates, either by the confession of the offender or offenders or otherwise, that he, she or they hath not or have not goods or chattels within the jurisdiction of such justice or justices, magistrate or magistrates, sufficient whereon to levy all such penalties and forfeitures, costs and charges, such justice or justices, magistrate or magistrates, may at his or their discretion, without issuing any warrant of distress, commit the offender or offenders for such period of time, and in such and like manner, as if a warrant of distress had been issued and a *nulla bona* returned thereon."

When a penalty is directed to be recovered before a justice, on default of payment justice may distrain on offender's goods.

In default of sufficient distress no sale of goods shall take place, but offender may be committed, unless security be given, &c.

Proviso for the case of no goods within the jurisdiction.

Sect. 2. "And whereas by some acts certain penalties or sums of money are to be recovered before a justice or justices of the peace, or a magistrate or magistrates, and he or they is and are authorised to issue forth his or their warrant for levying such penalties or sums of money by distress and sale of the goods and chattels of the offender or defendant; but no further remedy is provided in case no sufficient goods and chattels can be found whereon to levy such penalties or sums of money; for remedy whereof, be it further enacted, that whenever it shall appear to any such justice or justices of the peace, magistrate or magistrates, by whom any penalty or sum of money is adjudged to be paid, upon the return of any such warrant of distress, that

In cases where penalties are directed to be recovered by distress, but no remedy provided where sufficient distress cannot be found, justices may commit the offender, &c.

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5 Geo. 4, c. 18.

no sufficient goods and chattels of the offender or defendant can be found whereon to levy the sum adjudged to be paid, and all costs and charges, within the jurisdiction of such justice or justices, magistrate or magistrates, or in case it shall appear to such justice or justices, magistrate or magistrates, either by the confession of the party or parties, or otherwise, that he, she or they have not sufficient goods and chattels within the jurisdiction of such justice or justices, magistrate or magistrates, sufficient whereon to levy such sum of money, costs and charges, such justice or justices, magistrate or magistrates, at his or their discretion, and without issuing any warrant of distress, may proceed in such and the like manner as if a warrant of distress had been issued and a *nulla bona* returned thereon; and it shall be lawful for such justice or justices, or magistrate or magistrates, to issue forth his or their warrant for committing such offender or defendant to the common gaol for any term not exceeding three calendar months, unless the sum adjudged to be paid, and all costs and charges of the proceedings, shall be sooner paid; provided always, that the amount of such costs and expenses shall be specified in such warrant of commitment."

For a term not exceeding three months.

If offender, after committal to prison, pay amount of penalty and costs, he shall be discharged.

Sect. 3. "That in the case of any offender or offenders committed to the common gaol or house of correction for default of payment of such penalty or forfeiture, together with the reasonable costs and charges attending the conviction, if such offender or offenders shall at any time, during the period of his, her or their imprisonment, pay or cause to be paid to the governor or keeper of the prison, the full amount of such penalty, together with the costs and charges, it shall be lawful for such governor or keeper of such prison, and he or they are hereby required forthwith to discharge such offender or offenders from his or their custody."

Justices empowered to commit to prison without issuing warrant of distress in certain cases.

Sect. 4. "And whereas cases may occur where the recovery of such penalty or forfeiture by distress and sale of the goods and chattels of the offender or offenders may appear to the justice or justices of the peace, or magistrate or magistrates, for any county, riding, soke, city, division or place, to be attended with consequences ruinous, or in an especial manner injurious to the offender or offenders and their family or families; be it enacted, that the justice or justices, and magistrate or magistrates aforesaid, shall be empowered, and they are hereby authorised, in all cases and upon all such occasions as to them shall seem fit, and where such consequences are likely to arise, to cause to be withheld the issue of any warrant or warrants of distress, and to commit the offender or offenders aforesaid immediately after conviction, and in default of payment of the penalty or forfeiture, with costs and charges, to the common gaol or house of correction, for such time and in such manner as are in such acts respectively mentioned and directed: provided always, that it be by the desire or with the consent in writing of the party or parties upon whose property the penalty or forfeiture is to be levied."

Consent of party.

Act not to extend to Scotland.

Sect. 5. "That nothing herein contained shall extend or be construed to extend to that part of the United Kingdom of Great Britain and Ireland called Scotland."

Constables may execute warrants out of their precincts, provided it be within the jurisdiction of the justice granting or backing the same.(a)

Sect. 6. "And whereas warrants addressed to constables, headboroughs, tithingmen, borsholders, or other peace officers of parishes, townships, hamlets or places, in their characters of and as constables, headboroughs, tithingmen, borsholders or other peace officers of such respective parishes, townships, hamlets or places, cannot be lawfully executed by them out of the precincts thereof respectively, whereby means are afforded to criminals and others of escaping from justice: for remedy whereof, be it further enacted, that it shall and may be lawful to and for each and every constable, and to and for each and every headborough, tithingman, borsholder or other peace officer for every parish, township, hamlet or place, to execute any warrant or warrants of any justice or justices of the peace, or of any magistrate or magistrates within any parish, township, hamlet or place, situate, lying or being

(a) See this section already noticed, *ante*, 799, 1 *B. & Cres.* 288; 3 *D. & R. M. C.* 323, *ante*, 799.

within that jurisdiction for which such justice or justices, magistrate or magistrates, shall have acted when granting such warrant or warrants, or when backing or indorsing any such warrant or warrants, in such and the like manner as if such warrant or warrants had been addressed to such constable, headborough, tithingman, borsholder or other peace officer, specially by his name or names, and notwithstanding the parish, township, hamlet or place in which such warrant or warrants shall be executed, shall not be the parish, township, hamlet or place for which he shall be constable, headborough, tithingman or borsholder, or other peace officer, provided that the same be within the jurisdiction of the justice or justices, magistrate or magistrates, so granting such warrant or warrants, or within the jurisdiction of the justice or justices, magistrate or magistrates, by whom any such warrant or warrants shall be backed or indorsed."

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5 Geo. 4, c. 18.

Return of Warrant]—The constable is bound to certify to the justice, at the time assigned for the return of the warrant, what he has done upon it. *R.* v. *Wyatt*, 1 *Salk.* 380. He need not, nor should he return the warrant itself, for that is for his own justification. 2 *Ld. Raym.* 1196.

Return of warrant.

If the constable refuses to certify what he has done, or if he has levied the penalty and refuses to pay it over, he may be proceeded against by indictment or information; or it seems the justices before whom the warrant is returnable may fine him. *Paley*, 244. The Court of King's Bench will not grant a *mandamus*. *R.* v. *Nash*, 2 *Ld. Raym.* 996; 6 *Mod.* 83; *ante*, **Constable**, p. 811.

Replevin]—It may be as well to observe that where goods are taken by way of a levy, as for a penalty on a conviction under a statute, it is generally in the nature of an execution; and unless replevin be given by the statute, it will not lie, the conviction being conclusive and its legality not questionable in replevin. *Fenton* v. *Boyle*, 2 *New Rep.* 399; 6 *Bac. Abr.* 5th ed. 58, *Replevin*, (O.); *Com. Dig. Action*, (M.); 6 *Willes*, 673, n. *b*; 1 *B. & B.* 57; 7 *B. & C.* 338. In some cases where a special inferior jurisdiction is given to justices, and they exceed it, replevin lies. *Willes*, 673, n. *b*. It lies for goods distrained under a warrant from commissioners, authorised by act of parliament, to levy rates for specific local purposes, with power of distress. 1 *Swanst.* 301; and see 1 *B. & B.* 57. It lies to try the legality of a distress for poor rates, where there is a total want of jurisdiction; as if the party distrained on was not an occupier; (see 7 *B. & C.* 398; 3 *Wils.* 442; 1 *Salk.* 205; 6 *East*, 283); or for a sewers' rate; *semble*, 6 *T. R.* 522; *Hard.* 478.

Replevin, when it lies.

Forms.

(No. 1.)

General form of warrant of distress for penalty and charges of distress.

[*Kent.*]—*To the Constable of* *in the said county, and to all other Constables in and for the said county.*

WHEREAS C. D. late of *in the said county,* [*labourer,*] *was on this day* [or, *on the* *day of* *instant,*] *duly convicted before* [*me*], *J. P., one of his Majesty's justices of the peace for the said county, for that he the said C. D.* [&c. state the offence, as in the conviction], *against the form of the statute in that case made and provided; and* [*I*] *the said J. P., thereupon adjudged the said C. D., for his said offence, to* [&c. set out the adjudication as in the conviction]: *and whereas the said C. D., being so convicted as aforesaid, and being required to pay the said sums, hath not paid the same or any part thereof, but therein hath made default; these are therefore to command you forthwith to make distress of the goods and chattels of the said C. D.; and if, within the space of* [see *ante*, 1017,] *days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay one moiety of the said sum of* , *so forfeited as aforesaid, together with the said sum of* *for costs, unto A. B., who hath informed me of the said offence; and the said other moiety of the said sum*

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of so forfeited as aforesaid, unto the use of his Majesty, [or, *unto the overseers of the poor of the said parish of , where the said offence was committed, for the use of the poor of the said parish,* or, according to the statute, which enacts as to who is to have the penalty]; *rendering the overplus on demand unto the said C. D., the reasonable charges of taking, keeping and selling the said distress being first demanded. And if no such distress can be made, that then you certify the same unto me, to the end that such further proceedings may be had therein as to the law doth appertain. Given under my hand and seal this day of, &c.*

J. P.

(No. 2.)

Constable's return thereto.

[*Kent.*]—*I, E. F., constable of , in the county aforesaid, do hereby certify J. P., Esquire, one of his Majesty's justices of the peace for the said county, that by virtue of this warrant I have made diligent search for the goods and chattels of the within-mentioned C. D., and that I can find no sufficient goods or chattels of the said C. D. whereon to levy the sums within mentioned. Witness my hand the day of, &c.*

E. F.

(No. 3)

General form of commitment for want of distress.

[*Kent.*]—*To the Constable of in the said county, and to the keeper of the* [*house of correction*] *at in the said county.*

WHEREAS C. D., late of in the said county, [*labourer,*] *was on the day of last past, duly convicted before* [*me*] *J. P., one of his Majesty's justices of the peace for the said county, for that he the said C. D.* [&c. state the offence as in the conviction], *against the form of the statute in that case made and provided; and* [*I*] *the said J. P. thereupon adjudged the said C. D., for his said offence, to* [&c. set out the adjudication as in the conviction]: *and whereas afterwards, on the day of in the year aforesaid,* [*I*] *the said J. P. issued a warrant to the constable of , commanding him to levy the said sums by distress and sale of the goods and chattels of the said C. D.; and whereas it appears to me, as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said C. D., but that no sufficient distress can be found whereon to levy the same: these are therefore to command you, the said constable of aforesaid, to take the said C. D. and him safely to convey to the* [*house of correction*] *at aforesaid, and there to deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said house of correction to receive the said C. D. into the said house of correction, there to imprison him* [*and keep him to hard labour*] *for the space of calendar months, unless the said sums shall be sooner paid; and for your so doing this shall be your sufficient warrant. Given under my hand and seal at in the county aforesaid, this day of, &c. in the year of the reign of William the Fourth.*

J. P.

(No. 4.)

Award of costs and warrant of distress for.

See the forms, *ante*, 905.

Distringas. *See* Process, Vol. V.

Divine Service. *See ante*, Church; Public Worship, Vol. V.

Dogs.

AS to the duty on dogs, see *post*, **Taxes**, Vol. V. — Duty on.

So far as dogs fall under the consideration of the game laws, see *post*, title **Game**, Vol. II. — Game Laws.

As to the stealing of dogs, see *post*, **Larceny**, Vol. III. p. 572. — Stealing of.

The law takes notice of a mastiff, hound, spaniel, and tumbler, as valuable things. 1 *Saund.* 84. — What dogs taken notice of as valuable.

Other dogs are not considered in law of any intrinsic value, and at common law are not the subject of larceny. See 4 *Bla. Com.* 236. But several statutes have been passed to protect the property in them against theft, &c. See **Larceny**, Vol. III. p. 572.

Mischievous Dogs]—A *mastiff*, going in the street unmuzzled, from the ferocity of his nature being dangerous and cause of terror to his Majesty's subjects, seemeth to be a common nuisance, and consequently the owner may be indicted (*a*) for suffering him to go at large. — Dogs mischievous.

And in *Smith* v. *Pelah*, 2 *Stra.* 1264, it was ruled, that if any dog has once bit a man, and the owner having *notice* thereof keeps the dog, and lets him go about or lie at his door, an action will lie against him at the suit of the person bit, though it happened by his treading on the dog's toes; for it was occasioned by his not killing the dog on the first notice, and the safety of the King's subjects ought not afterwards to be endangered. And see *Blackman* v. *Simons*, 3 *Car. & P.* 138.

If a man knowingly keeps a dog accustomed to bite, and any person coming by chance in his way be bitten, an action lies against the owner, though he had no malice against the particular individual. *Per* Lord *Ellenborough*, C. J., in the case of *Townsend* v. *Wathen*, 9 *East*, 280.

Where the defendant's dog was reported to be mad, and the defendant tied him up, but he broke loose, and bit the plaintiff's child, who died of hydrophobia; it was held that the defendant was liable in damages to the amount of the apothecary's bill for attending the child; and Lord *Kenyon*, to prove the *scienter*, admitted evidence of reports in the neighbourhood that the dog had been bitten by a mad dog. *Jones* v. *Perry*, 2 *Esp.* 482; differently reported, *Peake's Evid.* 5th ed. 292. The defendant was bound to destroy or effectually secure the dog.

And in *Blackman* v. *Simons*, 3 *C. & P.* 138, it seems to have been considered that in general the owner of a vicious animal, after notice of its having done an injury, is bound to secure it at all events, and is liable in damages to a party subsequently injured, if the mode he has adopted to secure it becomes ineffectual.

But if a dog accustomed to bite be let loose at night for the protection of the defendant's yard, and the injury arise from the plaintiff's incautiously going into the yard after it has been shut up, no action will lie. *Brock* v. *Copeland*, 1 *Esp.* 203.

And in a late case at nisi prius, it was considered that a person cannot recover damages for an injury received from the bite of a dog placed in a yard for the protection of outhouses, unless he had such reasonable and justifiable cause for being in the place where the dog was as might be pleaded in answer to an action of trespass; and if he had such cause, the circumstance of there being a notice on a board, in large letters, warning persons to beware of the dog, will not be an answer to an action by him for the injury, if it appear that he was not able to read. *Sarch* v. *Blackburn*, 4 *C. & P.* 297.

If no suspicion be thrown upon the plaintiff by the defendant in such a case, it may be taken he had such cause, provided the dog is put in a place

(*a*) See form of indictment, *post*, 1025.

DOGS.

forming part of another entrance to the house of the defendant, although there may be other entrances of a more public description by which the plaintiff might have proceeded. *Sarch* v. *Blackburn*, 4 *C. & P.* 297.

In the same case *Tindal*, C. J., said, "I think a man has no right to place a dog so near the door of his house that any person coming to ask for money or on other business, might be bitten; and so with respect to a footpath, though it be a private one, a man has no right to put a dog with such a length of chain and so near that path that he could bite a person going along it."

Where the allegation in the declaration was that the dog was accustomed to bite mankind, and that the defendant knew it, it was held by *Abbott*, J., that proof that the defendant had warned a person to beware of the dog lest he should be bitten, was evidence to go to the jury in support of the allegation. *Judge* v. *Cox*, 1 *Stark.* 285; and see 1 *B. & A.* 823. Though where it was alleged that the defendant knew that the dog was accustomed to bite sheep, the Court of King's Bench held that proof that the dog had jumped at a man and chased sheep, was not evidence to support the allegation. *Hartley* v. *Halliwell*, 2 *Stark.* 214; 1 *B. & Ald.* 620, S. C.

So in an action for keeping a dog which bit the plaintiff, proof that the dog was of a fierce and savage disposition, and generally tied up by the defendant, and that defendant promised to make plaintiff a pecuniary recompense after the latter had been bit by the dog, was not considered sufficient. *Beck & Wife* v. *Dyson*, 4 *Campb.* 198.

In order to maintain an action for biting by the defendant's dog, it must be proved also that *he knew* his dog to be used to bite; but one instance is sufficient in that case. 12 *Mod.* 555; *R.* v. *Huggins*, 1 *Ld. Raym.* 1583.

If a man has a dog that *kills sheep*, this is not a public nuisance, but the owner of the dog (knowing thereof) is liable to an action; but if he is ignorant of such quality, he shall not be punished for this killing; and in an action upon the case for such killing, the plaintiff shall be required to prove in evidence that the dog had used to kill sheep. *Dyer*, 25; *Het.* 171.

And if a man keeps a dog accustomed to bite *sheep*, and he knows it, and notwithstanding he keeps the dog still, and afterwards the dog bites a horse, this shall be actionable, although he had been known before to bite sheep only; because the owner, after notice of the first mischief, ought to have destroyed or hindered him from doing any more hurt. 1 *Ld. Raym.* 116; *Bull. N. P.* 77.

But if my dog kills your sheep, and I freshly after the fact tender you the dog, you are without remedy. *Fitz. N. B.* 89, L. *b.* *Sed query* this.

Keeping noisy dogs.

Noisy Dogs]—Generally speaking, an action will not lie for such things as merely abridge the gratification of the plaintiff in the enjoyment of his property; and where the plaintiff brought his action against the defendant for keeping his dogs so near the plaintiff's house that his family were prevented from sleeping during the night and were much disturbed during the day, and the jury found a verdict for the defendant, though no evidence was given by him, the court refused to grant a new trial. *Street* v. *Tugwell*, Selw. *N. P.* 1047; see *post.* **Nuisance**, Vol. III. p. 914.

Dogs straying. Trover.

Dogs Straying]—An action of trover was brought for a pointing dog. The plaintiff proved the dog to be his property, and that it was found at the defendant's house twelve months after it was lost. The defendant said the dog strayed there casually, and demanded 20*s.* for twenty weeks' keeping before he would deliver up the dog. A verdict was given for the plaintiff subject to the opinion of the court whether this refusal amounted to a conversion of the dog. But the counsel for the defendant declined arguing the question; and the plaintiff had judgment. *Binstead* v. *Buck*, 2 *Bla. Rep.* 1117.

Dogs' collars.

Dogs' Collars]—A remark has been made by Sir *John Fielding*, in his

Observations on the Penal Laws, which ought to be repeated here. He "recommends it to all persons to put brass or steel collars on their dogs' necks, with the name and place of abode of their owners, and to fasten them with a padlock; for the stealing such collars being felony, it will facilitate the punishing of the offender; and the dog, when found, is recoverable by action."

Indictment for keeping a mastiff unmuzzled.(a)

—— *THE jurors for our Lord the King upon their oath present, that C. D. late of, &c. on the, &c. in the year of the reign of our Sovereign Lord William the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and on divers other days and times between that day and the day of the taking of this inquisition, at the parish aforesaid, in the county aforesaid, near unto the King's common highway, there unlawfully did keep, and still doth keep, a certain large dog of a fierce and furious nature; and the said dog, on the day and year aforesaid, and on the said other days and times, at the parish aforesaid, in the county aforesaid, near unto the said highway, there unlawfully did permit and suffer, and still doth permit and suffer, to go unmuzzled and at large; by reason whereof the liege subjects of our said Lord the King, on the day and year aforesaid, and on the said other days and times, at the parish aforesaid, in the county aforesaid, could not nor can they now go, return, pass and labour in and through the said highway there, without great danger and hazard of being bit, maimed and torn by the said dog, and losing their lives, to the great damage, terror and common nuisance of all the liege subjects of our said Lord the King, in, by and through the said highway there going, returning, passing, repassing, and labouring, to the evil example of all others, and against the peace of our Lord the King his crown and dignity.* (See a form, *post*, Nuisance, Vol. III. p. 919.)

Domesday Book, *when Evidence. See post*, Evidence, Vol. II. p. 40.

Doors, *as to Breaking Open of. See post*, Warrant, Vol. V.; House, Vol. III. p. 278.

Dower. *See post*, Forfeiture, Vol. II.

Driving furiously. *See post*, Malicious Injuries to Persons, Vol. III. p. 717; Stage Coaches, Vol. V. p. 555; Homicide, Vol. III. p. 244.

Drunkenness. *See* Alehouses, *ante*, 100, 101.

(a) See other precedents, 3 Ch. C. L. 642, 3.

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