

A
CONSTABLES GUIDE,
CONTAINING
A COMPILATION OF THE
STATUTES OF VIRGINIA & KENTUCKY,
AND SO MUCH OF THE
STATUTES & COMMON LAW OF ENGLAND
*As remains in force in Kentucky, relating to the
Office of Constable.*
WITH A TABLE OF
MAGISTRATES & CONSTABLES FEES.

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A
CONSTABLES GUIDE.

THIS WORK WILL BE FOUND USEFUL TO

JUSTICES,

SHERIFFS,

CONSTABLES,

*And also all other persons who wish to know
when these officers are in the dis-
charge of their duty.*

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A TABLE

OF SOME OF THE PRINCIPAL MATTERS.

Preface.	Provisions of the Constitution, and Acts of Assembly, relative to Constables appointment, power and duty.
History of Constables Office.	To Fee Bills.
Common Law in force relative to Preserving the Peace.	— Jury to try the right of property.
— Prosecuting Offenders.	— Riots, Routs, and Unlawful Assemblies.
— General duties of Constables in making Presentments.	— Executions.
— Executing Warrants.	— Privileges of Witnesses and Voters.
— Making Arrests.	— Qualifications of Jurors.
— The consequences of assaulting an Officer.	— Attachments.
— Entering Houses.	The Act enlarging the jurisdiction.
— Imprisonment.	Table of Fees.
— Breaking open Houses.	
— Search Warrants.	
— The qualifications of Constables.	
— Their removal from Office.	
— Qualifications of Jurors.	
— Rescous.	

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PREFACE.

IN consequence of the late extension of the jurisdiction of the Magistrates, in civil cases, the authority of the Constable, also, is enlarged; and that officer who previously had more weight in society than was well known, has now become so important as to merit the attention of the community at large.

The chief object of the following compilation is to furnish a guide to Constables; many of whom necessarily are ignorant of the duties of the office; more particularly when they are first appointed. And they have not the means of acquiring the requisite information without having recourse to extensive law libraries—as there is no work extant in which the law on this subject is collected together. The reason of this may be, that in England it was not thought safe to trust Constables with a knowledge of their powers.* And in Virginia, whence the laws of this country were first borrowed, the power of a Constable was much more limited than it is now here. As the writer of this cannot concur in the notion that men should be vested with powers, and a knowledge of those powers be withheld from them for fear they should abuse them, this work has been undertaken.

*Judge Blackstone observes, vol. 1. p. 355.

“The General duty of all Constables, both high and petty, as well as of the other officers, is to keep the king’s peace in their several districts; and to that purpose, they are armed with very large powers, of arresting and imprisoning, of breaking open houses and the like; of the extent of which powers, considering what manner of men are for the most part put into these offices, it is perhaps well that they are generally kept in ignorance.”

PREFACE.

A work of this kind is not only calculated to be useful to Constables, but in experienced Justices will, also, most probably, be benefitted by it; inasmuch as the office of Constable being particularly connected with, and dependant on the office of Magistrate, almost every thing appertaining to the office of Constable, should be known to Justices of the Peace.

And this work will, perhaps, be found useful to many others besides officers—all who have any thing to do with Constables,

Constables clothed “with a little brief authority,” sometimes abuse the trust reposed in them by their country, and go beyond their legal powers. They too often infringe both the rights of persons and property, but more particularly in extorting unreasonable fees. In this work will be found, amongst other things, a table of fees; so that any one who can read may, by consulting it, detect an imposition in this particular attempted to be practised by a Constable.

In the execution of the work, an attempt has been made to bring together the various scraps of the statute, and common law of England, which remain still in force; and for greater certainty and satisfaction, reference is had to the authority, copying the words of the author. And in digesting the statutory provisions of this country, the various acts embracing or referring to the office of Constable have been gone over, and such as remain unrepealed are here transcribed verbatim, in every instance where it could be thought at all necessary. It is possible and even probable some errors may be discovered hereafter, though considerable labour has been bestowed upon the subject in order to insure correctness.

HISTORY OF CONSTABLES OFFICE.

THE old writers say that the word Constable, is Saxon, and composed of two other words, which signify the stay or support of the King.* The office of Constable seems to have been appendant on the feudal system, and was anciently in most of the kingdoms of Europe highly important and eminently honorable. The grand high Constable in England was the next person in the realm to the king. And, indeed, in progress of time, the power annexed to this office was deemed too great to be held by the subject, and after the attaind of the duke of Buckingham, lord high Constable, for treason, in the 13th year of Henry the 8th, this office became forfeited to the crown. And since that time it has never been granted to any one but pro hac vice, to be exercised at coronations, &c.

The power and jurisdiction of the lord high Constable was the same with the earl Marshal, and he sat as judge, having precedence of the earl Marshal in the marshal's court, and they had several courts under them. These tribunals had cognizance of all matters of war, arms, combats, blazons of armory, and contracts touching these matters. Out of the high Constable's office were drawn subordinate offices of Constables of hundreds, and of franchises; whose duty was also principally confined to military affairs. Under these Constables of

* Blackstone is of opinion that it is derived from the French.

HISTORY OF CONSTBLES OFFICE.

hundreds, by statute and custom, there were created sub-Constables, for the preservation of the public peace, called parish Constables: these last are the only description with whom we have any thing to do in Kentucky. See Bacon's abridgment under the title Constable. 1 vol. Jacob's Law Dictionary. Burn's Justice.

A CONSTABLES GUIDE.

The Common and Statutory Laws of England remaining in force in this state, on the subject of a Constables Office.

CONSTABLES are to be persons of honesty, knowledge, and ability—not infants, lunatics, &c. Jacob's Law Dictionary.

As Constables were originally instituted for the better preservation of the peace, they may, by the common law, arrest felons and all suspicious persons that go abroad by night and sleep by day, or resort to bawdy houses, or keep suspicious company. Bacon Abr. Gwi. F. vol. 1. page 687.

They are justifiable in arresting persons directly charged with felony, although it should turn out afterwards, that no felony had been committed. Doug. p. 359. 2 Hale's pleas of the crown. 84: 89: 91. 2 Haw. B. 02: C. 12: and C. 13: 2 Bacon. 687.

If they have notice that a burglary hath been committed it is their duty to pursue the felon immediately: Cro: Eliz: 652.

They ought to present to the grand jury all offences. Dal. 388.

Constables may arrest felons and other suspicious persons—vagrants, &c.

Constables may arrest those charged though no felony is done.

when notified that a burglary is committed bound to pursue the felon. sho'd make presentments.

Constable bound at his peril to endeavour to part affrayers.

He may demand assistance, & the citizens bound to obey him.

Constables may imprison affrayers until the heat of passion be over or take them to justice of the peace.

cannot commit in any other manner.

Constable may not lay hands on those who barely quarrel with words, but must command the peace.

Author's remarks.

A Constable is not only empowered, as all private persons are, to part an affray in his presence, but *is bound at his peril* to endeavour it, not only by doing his utmost himself, but, also, by demanding the assistance of others, which they are bound to give him under pain of fine and imprisonment. And it is said that if he sees persons actually engaged in an affray, whether the violence were done or offered to another, or even to himself, or see them upon the very point of entering into an affray, as where one threatens to beat another, &c. he may carry the offender before a Justice of the peace in order to find sureties for his keeping the peace, or may imprison him a reasonable time until the heat be over. But he has no power to commit the offender in any other manner or for any other purpose, for he cannot commit him to jail until he shall be punished: neither ought he to lay hands on those who barely contend with words, without threats or any personal hurt, but all he can do in such a case, is to command them, under pain of imprisonment, not to fight. Bacon's abr. vol. 1. p. 687.

This has been set down as law in the words of the author, because no repeal of it in express terms has been found; yet Constables should exercise the power of imprisoning mentioned here with great caution, and never use it but in extreme cases, lest it should not turn out to be law at this day.

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 the Constable freshly follow, he may break open the doors to take them. But he cannot of his own authority, compel a man to find sureties, who is delivered into his hands as having broken the peace in his absence, but ought to carry him before a Justice of the peace. Neither can he arrest a man for any affray out of his view, without a warrant from a Justice of the peace, unless felony were done or like to be done.

If a constable see a person expose an infant in the street who refuses to take it away, he may lawfully apprehend and detain such person till he or she shall consent to take care of it, and so may a private person. 2 Bacon 688. 2 Haw. C. 19.

As a Constable is the proper officer to a Justice of the peace, he is bound to execute his warrants. Hence it has 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.—Bacon's Abr. vol. 1. p. 689.

Constable may break open houses to preserve the peace.

Cannot compel one to give surety of the peace.

cannot arrest a man for an affray out of his presence.

Seeing one about leaving a child in the street may detain them. same of private persons.

a constable the officer of a Justice and when a Justice is required to issue his warrant the constable is the officer to whom it should be directed, unless otherwise directed by law.

a constable cannot execute a warrant directed to all constables out of his precinct; if to himself otherwise.

Constable not obliged to show his warrant.

But if he acts out of his precincts must show his warrant.

All cases best to show the warrant.

Words do not amount to an arrest.

To make an arrest there must be a touch-

If a warrant be directed to all Constables, generally, no one can execute it out of his own precinct; but if it be directed to a particular Constable, by name, he may execute it any where within the jurisdiction of the Justice.—Lord Raymond, 545.

A sworn Constable, in executing a warrant in his precinct, need not show it to the party, though he demand a sight of it; but, in making an arrest, he ought to acquaint him with the substance of it.—6. Co. 54. 2 Bacon 688.

But if he acts out of his precincts, or is not commonly known, he must show his warrant, if demanded; otherwise the party may make resistance, and need not obey it.—2 Haw. 85. 86. Dal. C. 169. 2. B. 688.

But if the Constable has no warrant, it is sufficient to notify that it is in the name of the commonwealth.—1. H. 583.

Perhaps, in all cases in this country, it would be safest to show the warrant, though the law may authorise a different proceeding.
By the Author.

If a Constable come unto the party and require him to go before the Justice, this is no *arrest nor imprisonment*. Dal. C. 170.

For bare words will not make an arrest, without laying hold on the person, or otherwise confining him. But if an officer comes into a room and tells the party he arrests him, and

locks the door, this is an arrest, for he is in custody of the officer. 1 Sal. 79. 2 Haw. 129. Cases in the time of Lord Har. 31.

An unlawful arrest without a Justices warrant, cannot be made good by a warrant taken out afterwards. Dyer, 244.

If a Constable, after he hath arrested a party by force of a warrant, suffer him to go at large on his promise to return again, he cannot by force of the same warrant arrest him again. But if he return voluntarily into custody, the Constable may detain him, and bring him before the Justice, in pursuance of the warrant. 2 Bacon, 689. Dal. 117. 3 Haw. 9.

But if the party arrested do escape, the officer upon fresh pursuit may take him again, and again, so often as he escapeth, though he were out of view, or that he shall fly into another town or county. Dal. C. 169. B. A. 689.

A Constable cannot justify an arrest by force of a warrant from a Justice of the peace, which expressly appears on the face of it to be for an offence whereof a Justice of the peace hath no jurisdiction, or to bring the party before him at a place out of the county for which he is a Justice. Cro. 147. 148. 2 Strange 1002. 2 Bacon 689.

A general warrant to apprehend all persons suspected, without naming or particularly describing any person in special, is illegal and

ing of the person, or a confinement.

The warrant afterward does not make the persons arrest good

if constable after arrest suffer him to go at large, he cannot take him again; but he may return into custody.

If the party escape, the officer may take him again.

If the warrant shows that the magistrate had not jurisdiction, the constable cannot arrest.

A general warrant to apprehend all offenders without naming them bad.

Constable to keep the peace—
make hue and cry after felons, prosecute offenders.
Make presentments.
Execute warrants.
Return offenders.
Tavern keepers.
Vagrants.
Mothers of bastard children.
Overseers of roads.
And all common nuisances.

void for its uncertainty; for it is the duty of of the Magistrate, and ought not to be left to the officer to judge of the ground of suspicion; and a warrant to apprehend all persons guilty of the crime thereon specified is not a legal warrant, for the point on which its authority depends is a fact to be decided on a subsequent trial, namely, whether the person apprehended thereupon be guilty or not. 2 Bacon 689. 4 Bla. Com: 291. 3. B. 1742. 1 Bla. Reports, 562: 2 Str. 307.

A Constable shall keep the peace, apprehend felons, rioters, &c. and make hue and cry after felons, and take care that the laws against rogues and vagrants be put in force. He ought to present unlawful games, tippling and drunkenness, bloodshed, affrays, &c. He is to execute precepts, warrants, &c. directed to him by a Justice of the peace. He should return all public house keepers who are not licensed, and all such persons as entertain inmates who are likely to become chargeable to the county. He should present night walkers, whores, and mothers of bastard children, likely to become chargeable to the county. Also, defects in high ways, and those who ought to repair them— all common nuisances in streets and high ways, bakers who sell bread under weight, forestallers, engrossers, &c. Dal. C. 1. p. 8. Jacob's Law Dictionary.

A Constable may make fresh pursuit into another county; also, may command all persons to assist, to prevent a breach of the peace; and he may justify beating another if assaulted, and if he happens to be killed doing his duty it will be taken to be premeditated murder. Constables may take any person into custody they see committing a felony. But if it be out of their sight, as where a person is seized by another, they may not do it without a warrant from a Justice.

A Constable cannot detain a man at his pleasure, but only stay him to bring him before a Justice to be examined; and this detainer may be for a day without warrant and be justified. Dal. C. 1. p. 8. Hale's pleas, 135.

If one abuse a Constable, he cannot carry him to prison there to remain until tried, but must carry him before a Justice who may commit him. 2 Danv. 149. Jacob's Law Dictionary.

But it is said by the original power in a Constable he may, for a breach of the peace and some other misdemeanours less than felony, imprison a man; and if an offence be committed for which a Constable may arrest, he may convey the offender to the sheriff or jailor. Though the safest way in all cases is to bring him to a Justice of the peace, to be bailed or committed as the case may require. 2 Hale, 88. 89.

Constable may make fresh pursuit into another county.

May justify beating another if assaulted and if killed it is murder.

May take any one in custody they see offending.

Not so if out of their sight.

May detain offenders a short time without a warrant.

Cannot commit to jail.

Must bring him before a Justice of the peace.

Must execute all precepts from a Justice of the peace.

Not obliged to go out of his precincts.

The constable may convey the offender before any Justice he thinks proper.

Constable not obliged to return a Justices warrant to Justice.

Best in all cases to return the warrant & leave it with the justice.

The Constable's office being ministerial and relative to the Justices of the peace, their precepts ought to be executed by him, or on default he may be indicted and fined. 2 Hale 88. 89.

If a warrant be directed to a Constable by name, to execute out of his own parish or precinct, he may execute it, but he is not obliged to do it. 1 Salk. p. 175. 3 Salk. 99.

It is at the election of the Constable to carry an offender before any other Justice than him who issued the warrant, if the warrant be not specified to bring the offender before the Justice that granted it. 5. R. 59. Jacob's Law Dictionary, under title of Constable.

A Constable is not obliged to return a Justices warrant to the Justice, but may keep the same for his justification in case he should be questioned for acting; but he may give the Justice an account of what he hath done upon it. 2 Lord Raymond, 1196.

Here it may be necessary to observe that the above applies exclusively to criminal cases—under our act of Assembly, the officer is expressly directed to return all warrants, attachments, &c. in 30 days, and as Magistrates courts are by our laws made courts of record, which they were not in Lord Raymond's time, perhaps in all cases the officer should not only return the warrant

to the Justice, but suffer it to remain in his hands, from whence copies can be had in case of necessity.

Constables may stop such persons as go or ride unlawfully armed to the terror of the people, may take away their arms and carry them before a Justice. Dal. 338.

Constables with others summoned by them may enter bawdy houses, and arrest persons committing a breach of the peace. Sta. 13 year. Hen. 7.

A Constable permitting or aiding a felon to escape before arrested, is guilty of a misdemeanor, for which he may be fined and imprisoned—and if he be actually in custody, and then he voluntarily permit him to escape, it is felony in the Constable; but if the escape be involuntary it is only finable. He may put a felon in the stocks and lock him in, or put irons upon him, or pinion him, to prevent an escape. Dal. 272.

A Constable may discharge any person arrested on suspicion of felony, where no felony has been committed. Dal. 272. Cro. Eliza. 202. 752.

A Constable may ex-officio apprehend felons, and may call other persons to assist him. He may break open a house to take a felon. If he fly the Constable must make an inventory of his goods, make hue and cry after him, &c. Dal. 289. 344. 27. Eliz. C 13.

May stop persons who put the citizens in terror.

May enter bawdy houses and arrest persons committing breaches of the peace.

A constable permitting felon to escape, guilty of misdemeanor when not in custody.

If arrested felony.

If involuntary, misdemeanor.

May confine a felon to prevent escape.

May discharge when no felony committed.

May ex-officio apprehend.

Make an inventory of estate.

General
warrant
bad.

Upon a general warrant without expressing a particular felony or treason, a Constable cannot lawfully break open a house.

Cannot
break out-
side door in
civil case.

In a civil suit, the officer cannot justify the breaking open an outward door or window in order to execute process; if he doth he is a trespasser—but if he findeth the outer door open and entereth that way, or if the door be opened to him from within and he entereth he may break open inward doors if he findeth that necessary, in order to execute his process. Fos. 319.

May break
inner door.

Breaking
the door
trespass.

In such case, if the officer broke open the outer door and entered in, it was a trespass, but after he was in, if he took the goods or broke open a trunk or inner door, the taking of the goods is good.—Cowper's Reports p. 1. See Lee vs. Gansell—Swain's case in 5 Co. That breaking open the outer door was a trespass, but taking away the goods was lawful.

Taking the
goods law-
ful.

The reason given by Lord Mansell in Gansell's case is this—The law forbids the breaking the outer door or window of a man's house, because it would leave the family within exposed to thieves and robbers; and thus produce fatal consequences, and it is much better that you should wait for another opportunity than to do an act of violence which may probably be attended with such dangerous consequences. Cowper Re. p. 6.

Leaves the
family ex-
posed.

Again Burn says:—That a man's house is his Castle for safety and repose, for himself and family; but if a stranger who is not of the family upon pursuit, taketh refuge in the house of another, this rule doth not extend to him. It is not his castle, he cannot claim the benefit of a sanctuary therein. Fos. 319.

And it is, also, to be remembered that this rule is to be confined to the case of arrest upon process in civil suits only. For where a felony hath been committed, or a dangerous wound given, or even where a minister of justice cometh armed with process, founded on a breach of the peace, the party's own house is no sanctuary for him in these cases. The justice which is due to the public must supersede every pretence of private inconvenience. Fos. 320.

Finally, in all cases, if an officer, to serve a warrant, enters a house, the doors being open, and then the doors are locked upon him, he may break them open, in order to regain his liberty. 2 Haw. 87.

But if such person, either upon the attempt to arrest, or after the arrest, assault the officer, to the intent to make his escape from him, and the officer, standing upon his guard, kills him, this is no felony; for he is not bound to go back to the wall, as in common cases of defence, for the law is his protection. 2 H. H. 118.

Man's house his castle:

but not for a stranger.

confined to civil cases.

Criminal cases, the officer may break the door.

If an officer be confined, may break out.

If one assault an officer, and the officer, in his own defence, kill him, it is not felony.

constables
to apprehend gamblers.

Constables are to apprehend persons engaged in unlawful gaming, and carry them before a Justice of the Peace. And Constables neglecting their duty herein, forfeit forty shillings. 33 H. 8. C. 9.*

Constable may secure felons.

If Jailors refuse to receive a felon, the Constable may secure the prisoner in his house, or carry him back to the place where apprehended. 10 Hen. 4. Dal. 340. 3 Jr. 1 C. 12.

constables to make hue and cry.

Constables are to make hue and cry after offenders, where a felony has been committed. 3 Edw. 2 Ch. 6 p. 27 Eliz. c. 13.

constables to make indictment against innkeepers.

A Constable is, on complaint, to cause an indictment to be made against inn-keepers, for refusing to lodge a traveller, or to provide him victuals, &c. who offers to pay for the same. Statute 1 year. Ja. 1. c. 9. and Wood's In't.

To whip robbers of orchards. May compel persons infected with the plague to stay in their houses.

Robbers of orchards to be whipped, by order of Justice, by the Constable of place. See 43 Eliz. Ch. 7. 9.†

To present all offences.

Constables may command and compel persons infected with the plague to keep within their houses. 1 Jas. 1 Ch. 31.

constables liable to be fined.

At the Grand Jury Court, they are to present all offences against the peace, &c. belonging to their offices. 43. Eliz. ch. 2.

If a Constable doth not his duty, he may be indicted and fined; and, on the other hand, he is protected if he doth his duty. Ba. Abr.

* Perhaps the penalty of 40 shillings may not be considered in force at this day.

† There is some doubt whether this remains in force.

It is the Constable's duty to prosecute all who buy and sell by false weights and measures. 8. H. 6. C. 5.

To prosecute offenders.

If a Constable is assaulted in the execution of his office, he need not go back to the wall, as a private person ought to do; and if, in striving together, the Constable kills the assailant, it is no felony: but if the Constable is killed, it shall be construed pre-meditated murder. Hale's Pleas Crown. 37. 1 H. H. 457.

Constable may kill without going back to the wall.

but if he be killed it is felony.

In removing Constables from office, he must have notice of the charge against him, and of the time and place of trial. See Dalton, c. 28.

In moving against Constable, he must have notice.

An arrest in the night is good, both at the suit of the king, (in this country the commonwealth) or of the subject, else the party may escape.

Arrest in the night is good.

Law process is not to be served on Sunday, except in treason or felony, and escapes. Jacob's Law Dictionary. This is by a statute of Ch. and a similar statute was passed in Virginia, which will appear hereafter.

Sunday:

Jurymen are to be freemen, indifferent, not outlawed, nor infamous—Aliens, and men attainted of any crime, ought not to serve on juries—Infants, persons seventy years of age, clergymen, apothecaries, are exempted by law from serving on juries. 3 Ju. 221. 2 Ju. 447.

Qualifications of jurymen. As it common law. See statute page.

General warrant not good.

A general warrant to search all suspected places for felons or stolen goods, is not good. H. Pl. 93. Burn's Jus.

A warrant to search all suspected places no more or better than a blank warrant.

Mr. Hawkins says, I do not find any good authority that a Justice can justify sending a general warrant to search all suspected houses in general for stolen goods: because it seems to be illegal in the very face of it, for it would be extremely hard to leave it to the discretion of a common officer to arrest what persons and search what houses he may think fit: and if a Justice cannot legally grant a blank warrant for the arrest of a single person, leaving it to the party to fill up, surely he cannot grant such warrant, which might have the effect of a hundred blank warrants. 2 H. 82, 84.

On complaint of felony, and place named, warrant grantable.

But, on complaint, and oath made of goods stolen, and that the party suspects the goods are in such a house, and shews the cause of his suspicion, the Justice may grant a warrant to search in those suspected places, mentioned in his warrant, and to attach the goods and the party in whose custody they are found, and bring them before him or some other Justice, to give an account how he came by them, and, further, to abide such order as to law shall appertain. 2 H. H. 113. 159.

Must attach the goods and party.

Search to be made in day time, generally.

But in that case, lord Hale says, it is convenient that such warrant do require the search to be made in the day time. And, though I will not affirm, says he, that they are unlawful

without such restriction, yet they are very inconvenient without it; for many times, under pretence of searches made in the night, robberies and burglaries have been committed, and, at best, it creates great disturbances. 2 H. H. 150.

But in case not of probable suspicion only, but of positive proof thereof, it is right to execute the warrant in the night time, lest the offenders and goods all be gone before morning. Burn's Justice.

but on proof
may go in
the night.

Furthermore, such warrant ought to be directed to the Constable, or other public officer, and not to any private person, though it is fit the party complaining should be present and assisting, because he knows his goods. 2 H. H. 150.

Must be
served by
Constable.

Whether the stolen goods be in the suspected house or not, the officer and his assistants may enter in the day time, the doors being open, to make search; and it is justifiable by warrant. B. J. 132. 4 vol.

Warrant
justifies en-
try.

If the door be shut, and, upon demand, it be refused to be opened by them within, if the stolen goods be in the house, the officer may break open the door. 2 H. H. 151.

May break
open the
door.

If the goods are not in the house, yet it seems the officer is excusable that breaks open the door to search; because he searched by warrant, and could not know whether the goods were there till search made; but it seems

Officer ex-
cusable,
but party
not.

the party making the suggestion is punishable in such case; for, as to him, the breaking of the door is eventus lawful, or unlawful: *tæ wit*, lawful if the goods are there, unlawful if not there. *Burn's Justice* 132.

On the return of the warrant executed, the Justice hath these things to do:

Duty of
Justice in
return of
search war-
rant.

As touching the things brought before him, if it appear they are not stolen, they are to be restored to the proprietor: if it appear they were stolen, they are not to be delivered to the proprietor, but deposited in the hands of the Sheriff or Constable, to the end that the party robbed may proceed, by indicting and convicting the offender, to have restitution. *2 H. H. B. Jus.* 132.

RESCOUS.

Rescue is the taking away, or selling at liberty, against law, a distress taken for rent, or services, or damage feasant. But the more general notion of rescues is, the forcibly freeing another from an arrest, or some legal commitment, which, being a high offence, subjects the offender, not only to an action at the suit of the party injured, but, likewise, to fine and imprisonment at the suit of the king.*

If a man distrain cattle, and, as he is driving them to the pound, they go into the owner's house, and he refuse to deliver them, this is a rescue in law.

* In this country, to the commonwealth.

But here we must observe, there can be no rescues 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 distress, and be disturbed regularly, his remedy is by action on the case.

If, upon fieri facias, the Sheriff or other officer seizes goods which are taken away by a stranger, this is not properly a rescue; for, by the seizure of the goods, by virtue of a fieri facias, the officer has a property in them, and may maintain trespass or trover for them. Also, the party injured may have an action on the case against the wrong doer.

If, upon a fieri facias, the officer return that he had seized the goods, but that they were rescued by B and C, &c. this is not a good return, but he shall be amerced. The party, also, at whose suit the execution issued, may charge him, by scire facias, for the value of the goods.

It seems, that where the defendant, in any execution, endeavours to rescue his goods or person from the officer, that the officer has a right to maintain his possession thereof by force.

The Author.

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CONSTABLES GUIDE.

Constitutional and Statutory Provisions on the subject of the Constables Of- fice.

IN the 9th Sect. of the third Article of the Constitution, it is provided as follows:—

The county courts shall be authorised by law to appoint inspectors, collectors, and their deputies, surveyors of high ways, constables, jailors, and such other inferior officers, whose jurisdiction may be confined within the limits of a county.

County
courts to
appoint
constables.

An act to amend and reduce into one the several acts concerning Constables, and authorising Coroners to summon Jury, approved Dec. 23, 1805. 3 Little 126. 2 Bradford 249.

§ 1. Be it enacted by the General Assembly, that the county courts of each county shall lay off their respective counties into districts, and shall appoint a Constable in each district, who shall execute the duties enjoined them by law; and provided, that if any Constable who is now in office shall not come forward on or before the third county court which shall be holden within each county in this commonwealth, after the passage of this

County
courts to
lay off the
county into
districts, &
appoint con-
stables
therein.

Those in office to give security.

Constables must enter into bond.

Penalty.

Forbids a deputy to collect fees

Execute process & return it.

Pay money collected;

and perform all other duties of Constable.

act, and give security according to its provisions, if the court should deem it proper to appoint them, the office of such Constable or Constables are hereby declared to be vacated.

§ 2. Every person, being appointed a Constable, and accepting the appointment, shall, in his county court, enter into bond with one or more good and sufficient securities, to be appointed by the court, in the penalty of five hundred dollars (in 1812, an act passed, which will be hereafter noticed, increasing the penalty to 1000 dollars)—with the following condition; viz. The condition of the above obligation is such, that if the above named A. B. as Constable of the county of C, shall, by himself, well and truly, collect all officers fees and dues put into his hands to collect, and account for and pay the same at such time and in such manner as is directed by law, and shall, well and truly, execute, and due return make of, all process and precepts to him directed, and to him delivered, and pay and satisfy all sums of money and tobacco by him received, upon any such process or precepts, to the person or persons entitled thereto, or to their order; and, in all other things, faithfully and truly, execute and perform the said office of a Constable, according to law, during the time of his continuance therein, then the above obligation to be void; otherwise, to remain in

full force, &c. which bond shall be payable to the governor for the time being, and his successors, and in his name and that of his successors. Any person or persons, injured by a breach of the condition, may, at his costs, prosecute a suit thereon, and recover damages: but such person shall be liable to pay costs to the defendant, if a verdict and judgment pass in his favour, or the suit be discontinued; and such bond shall not become void upon the first recovery, or dismissal upon a first or other suit, but may be put in suit from time to time, by, and at the cost of, any other person injured, until the whole penalty be recovered in such damages.

§ 3. And be it further enacted, That any officer or creditor, upon such bond, may, by application to a magistrate, who is hereby authorised to give judgment therein, recover the amount of any fees, put into the said Constables hands, or the amount of any money, put into the hands of such Constable to collect, on executions or fines, either for the commonwealth, or for any individual; and the said magistrate shall, on sufficient proof being made to him that such such Constable has neglected to account to such officer, commonwealth, or individual, for such money or fines, agreeable to law, enter up judgment for the amount thereof, together with ten per cent. damages and costs, and issue execution therefor, which

Bind payable to governor.

Any one injured may prosecute suit.

When void

Constables to be moved against, and how.

Constables failing to account how, to be proceeded against.

Single Justice may give judgment, with 10 per cent. damages.

No security to be taken.

Ten days notice necessary.

Constable to make oath.

The oath.

Constable must go to the residence of the party before he returns not found.

execution shall be acted on by some other Constable of the county, and on such execution such magistrate shall endorse "no security of any kind to be taken;" and the Constable to whom such execution shall be given, shall proceed to collect the same from the former Constable and his security or securities, as executions or replevin bonds are collected, ten days previous notice, in writing, being given to such Constable by the party, of the time and place that such application to a magistrate will be made.

§ 4. That any person, before he enters on the office of Constable, shall, in open court, give assurance of fidelity to the commonwealth, and take the oath of office prescribed by the constitution and law. (The first section of the 5th article of the constitution contains this provision: "Members of the General Assembly, and all officers, executive and judicial, before they enter on the execution of their respective offices, shall take the following oath or affirmation: 'I do solemnly swear, (or affirm, as the case may be,) that I will be faithful and true to the commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my abilities, the office of

according to law.' ") No Constable shall return, in any precept to him directed, that the defendant is not found within his bailiwick,

unless such Constable shall have actually been at the place of residence of such defendant, and, not finding him, shall have left a true copy of the precept, or unless such defendant's place of residence is unknown to such Constable; and no Constable shall be compelled to receive a precept or fees of any kind, against any defendant who is known to be out of his bailiwick; (except it be for the commonwealth) but if any Constable shall voluntarily receive such precept or fees, he shall be accountable for the same, in the same manner as if within his bailiwick.

Not compelled to receive fee bills agai'st persons out of his bounds; but if he does, liable there for.

§ 5. And be it further enacted, That, when any warrant, attachment or sub-poena shall be put into the hands of any Constable, and such Constable shall not return it to the magistrate who issued the same, or to some other magistrate of his county (as the case may require), within thirty days from the day of issuing the same, such Constable shall forfeit and pay to the party injured thereby, the sum of five dollars, recoverable by motion before a magistrate, in the same manner that money may be recovered, under this act, from a Constable, for failing to pay money made on executions. When any magistrate shall vacate his office, by death or otherwise, it shall be the duty of the Constable, in whose hands any process, of any nature whatsoever, issued by such magistrate

Failing to return process in 30 days, shall pay \$ 5 to the party injured.

Recoverable by motion before a magistrate.

may be, to return the same to any other Justice of the Peace for his county, within the time prescribed by law, under the same penalties for failing to return as if no such vacation had taken place.

County court, a majority of its members present, may remove Constables from office.

§ 6. The county court, a majority of all its members being present, shall have power, on complaint being made, to dismiss any Constable from office for failing to do his duty, or for malfeasance in office, having, by their clerk (on application of any person who may think himself injured), given ten days notice to such Constable to appear and make his defence. It shall, nevertheless, be the duty of such Constable to return and account for all papers, of every kind, that he may have officially in his hands at the time of his dismissal, in the same manner as if he were in office; and the person who may apply to the court for the dismissal of any Constable, shall pay all legal costs, in case he shall fail in his prosecution either by discontinuance, or judgment in favour of the Constable; and if the Constable shall be cast, he shall pay the costs.

Though removed, must return papers as a Constable.

Prosecutor liable for costs, if he fail.

The Constable liable, if removed.

Justices to give execution for acts in cases of riots, in which no replevin.

§ 7. In all cases where the party arrested or apprehended by a Constable, for riot or breach of the peace, and, on trial, shall be found guilty, the Justice or Justices before whom such offenders shall be tried, shall enter up judgment for the costs, agreeable to the fees herein after allowed, and issue execution

for the same immediately, and deliver it to the Constable, on which there shall be no replevin.

§ 8. When any property shall be taken by the Constable by virtue of his office, he shall (on the person or persons from whom such property may be taken, giving bond with sufficient security for the forthcoming of such property at the day of sale) suffer the property to remain in the hands of the debtor: but when such person or persons shall not be able, or shall refuse to give such security in either case, and the property shall consist of live stock, the Constable shall take care of the same, and allowance shall be made him out of the money arising from the sale of such property, to be judged of by the Justice to whom the execution is returned. There shall not be more than fifteen days between the time of executing and selling any property taken, by virtue of an execution, by a Constable; ten days previous notice shall be given of the time and place of sale, by advertising the property, specifying each article, at the most public place or places in the neighbourhood, where the persons from whom such property was taken resides.

§ 9. Where bond shall be given for the delivery of property, and shall not be complied with at the day of sale, the Constable shall return the bond to the Justice who issued the execution, if such Justice be still in office; if

May receive a forth coming bond.

Constable to keep live stock, and magistrate to fix the allowance therefor.

Ten days notice to be given in a sale of executed property.

If property not delivered, bond to be return'd to Justice,

and execu-
tion taken
out there-
on:
no security
to be taken

not, to the most convenient Justice; and it shall be the duty of such Justice to whom it is returned, on application of the plaintiff or his or her agent, to issue a new execution, including all costs, in which no security shall be taken.

May suffer
debtors to
replevin
for three
months.

§ 10. Constables shall, at or before the day of sale, suffer a debtor to replevin the debt and costs for three months, by his giving bond and sufficient security, payable to the party at whose suit the execution issued. The condition of a replevin or forth coming bond, shall specify, separately, the debt, interest, and costs, and Constables fees; and when execution shall issue thereon, the Justice of the Peace shall endorse "no security of any kind to be taken;" and no execution put into the hands of a Constable, shall be made returnable in more than ninety, nor less than thirty days.

Nature of
the replev-
in or forth
coming
bond.

Fees.

§ 11. The Constables in this commonwealth shall receive for their services, the several fees annexed to their several services herein after mentioned; to wit: for taking a replevin or forth coming bond, 25 cents; for levying an execution, 25 cents, and a commission of six per cent. in all sums above three dollars, which may be contained in the said execution; for serving a warrant for debt, 25 cents; summoning witnesses in any case, each 12 1-2 cents; serving a peace or search warrant, 100 cents; levying an attachment, 37 1-2 cents;

summoning a garnisher, 25 cents; carrying a criminal to jail, each mile in going and returning, 4 cents; taking up a vagrant, 50 cents; for apprehending a person, on a charge of felony, §2.

§ 12. Any Constable who shall receive or charge any more or greater fees than is herein expressed, shall forfeit and pay to the party so charged, the sum of 2 dollars for every false charge, to be recovered by a motion, before a Justice of the Peace, in the same manner that money collected on execution under this act is to be recovered.

§ 13. That it shall be lawful for any Constable to levy an attachment on the personal property of any person who is about to absent himself or conceal himself so that the ordinary process of law cannot be executed on such person, and the property so attached shall be delivered by the Constable as soon as may be, with his return upon the attachment to the Sheriff of his county, whose duty it shall be to act with the same in every respect as if it had been attached by himself—and the Constable shall be entitled to the fee for levying the attachment—and where attachments are levied by any Constable, the Justice before whom such attachment shall be tried, shall give judgment and award execution, on sufficient proof of the truth of the claim, or for any part there-

Penalty of §2 for receiving greater fees.

Recoverable by motion before a Justice.

may serve an attachment; in certain cases, return them to Sheriff.

In certain cases, magistrate may give judgment, &c.

of, subject to appeals, as other cases tried on a warrant.

Constables to take fees for collection.

May detain for them.

Constables to give bond once in two years.

Must make out fee bill, and how.

§ 14. It shall, and may be lawful, for the respective officers of this commonwealth, to put their fees into the hands of any Constable for collection, and for each Constable to collect the same; and it shall be the duty of the Constable to use due diligence in collecting, and shall have the same power to enforce payment as is now given to Sheriffs by law in similar cases. Such Constable shall account for, and pay to the persons entitled to receive the same, the money by them collected, within six months after such fees are put into their hands for collection, and shall be entitled to receive six per cent. on the money by them collected: Provided, that nothing herein contained shall prevent Sheriffs from being compelled to receive and account for fees, as heretofore prescribed by law.

§ 15. All Constables in this commonwealth shall hereafter give bond and sufficient security once in every two years; or forfeit their office.

By an act passed 1798, regulating officers fees, It is provided, that no fees shall be payable by any person whatsoever, until there shall be produced, or ready to be produced, unto the person owing or chargeable with the same, a bill or account in writing, containing the particulars of such fees, signed by the clerk or

officer to whom such fees shall be due, or by whom the same shall be chargeable, respectively; in which said bill or account, shall be expressed in words at length, and in the same manner as the fees aforesaid are allowed by this act, *every fee* for which any money shall be demanded. See 1 Bradford 450. 3 Littell 328.

Fee for replevin & delivery bonds.

By an act passed Nov. 15th, 1806, it is provided, "That no Constable shall be entitled to more than half commissions in any execution where the property is replevied, or delivery bond given, and not complied with at the day of sale; but shall be entitled to the commission heretofore allowed by law in cases where the money is collected. No person or persons shall be allowed to replevy for more than one month, where the amount of the execution issued by the Justice shall be less than twenty-five shillings, exclusive of costs.

Replevin for one month in twenty-five shillings.

A Constable shall have power to collect his own fees by distress, in the same manner as Sheriffs are allowed to do by law, or he may issue his fee bills, and put them into the hands of the Sheriff, or some other Constable, who shall be compelled to receive, collect, and account for the same, and shall have the same power to compel the payment by distress, that Sheriffs now possess in case of other officers fees.

Constables may issue fee bills, & put them in other officers hands for collection.

Distress.

Fees. By an act passed Dec. 27th, 1803 (See Littell 144), it is provided, That, for serving an execution, if the property be actually sold, or the debt paid, or where the Sheriff shall have taken bond for the delivery of property, which is not complied with at the day of sale, the Sheriff shall be entitled to five per cent. on the first hundred pounds, and two per cent. on all sums above that; and where he shall have levied an execution, and the defendant shall replevy, the one half of the above commission to be charged to the plaintiff and put into the replevin bond against the defendant: and for taking a replevin or forth coming bond, fifty cents; for summoning and attending a jury to try the right of property, one dollar and fifty cents, and no more, to be paid by the party cast by the inquest of the jury; and when a Sheriff or other officer shall summon a jury to try the right of property, he shall give ten days previous notice of the day of sale to the party claiming the property, if in the county; if not, then to his agent or attorney, if any such there be; and should the claimant not succeed in establishing the property to be his, the Sheriff, or other officer, as the case may be, shall sell the property, and not be liable to any suit on account of such sale; but if the party for whom the property shall be so seized, do, in opposition to the finding of such Jury, insist that the

Delivery bond.

Replevin.

Jury to try the right of property.

Notice.

May sell, if the Jury do not find for the claimant.

Sheriff, or other officer, shall sell the property, the officer shall not be compelled to make sale of the property, until the party demanding the same shall enter into bond, with sufficient security, to indemnify such Sheriff against all consequences that may arise from such sale. And the Sheriff or Collector shall receive, for seizing and selling any property, in collecting the public revenue or county levy, for all sums under one dollar, twenty-five cents; and for all sums above one dollar, six per cent in addition thereto; and such sums to be detained out of the money arising from the sales of such property; and the same for collecting clerks, or other officers fees, as for public taxes and county levies.

To indemnify.

Fee for seizing and selling.

By an act passed Dec. 22d, 1802 (Littell 3. 57), to suppress riots, routs, and unlawful assemblies of the people, it is provided, That if any riot, rout, unlawful assembly of the people, or breach of the peace, be made or committed in any part of this commonwealth, a Justice of the Peace, together with the Sheriff or under Sheriff of the county, or the Constable, where such riot, rout, unlawful assembly, or breach of the peace, shall be made, shall come with the power of the county, if need be, to arrest him or them, and shall arrest them, and put him or them in the jail of the county, unless they give bail, with sufficient security, for their appearance at the the time and place fix-

Riots, routs &c. how to be suppressed.

Justice, Sheriff and Constable, to go with the power of the county to commit to jail, unless they give bail.

Summon a
Jury.

Offenders
fined.

Offenders
may be im-
prisoned.

Proceed-
ings where
offenders
have de-
parted.

Penalty on
Jurors for
making de-
fault.

ed on for their appearance by said Justice; and it shall be the duty of the Sheriff, or under Sheriff, or Constable, to summon Jurors to attend at the time and place directed by the Justice, as aforesaid, and ho, after being sworn by the said Justice, shall proceed to punish each offender by a fine not exceeding twenty dollars; and, in default of the payment thereof, shall be imprisoned, not exceeding ten days. And if it happens that such trespassors and offenders, or either of them, be departed before the coming of said Justice and Sheriff, or under Sheriff, or Constable, the same Justice shall diligently inquire, within one month after such riot, rout, unlawful assembly, or breach of the peace, so made, and thereof shall hear and determine according to law. And for this purpose the Sheriff, or under Sheriff, or Constable, having a precept to him directed by said Justice, shall summon the offender or offenders, and return twelve fit persons as Jurors, who, having been sworn, or, in case of their non attendance, the deficiency being supplied by bystanders, shall inquire of said riot, rout, unlawful assembly, or breach of the peace, and award against him or them whom they shall find guilty thereof due pains by imprisonment or amercement, as is before directed; and if so many of them should not appear, those who shall make default shall be fined by said Justice, not exceeding five dollars each: And if default be in

the Sheriff, or under Sheriff, or Constable, he so in default shall forfeit to the commonwealth twenty pounds, to be recovered by action of debt in any court having cognizance thereof, to be applied towards lessening the county levy: and, moreover, the Justices of the Peace in every county where such riot, rout, unlawful assembly of the people, or breach of the peace, shall not be made in their presence, having information thereof, upon oath or affidavit, together with the Sheriff, or under Sheriff, or Constable, of the same county, shall execute this act by summoning a Jury, and proceeding as before directed, every one on pain of twenty pounds, to be recovered by action of debt or information in any court having cognizance thereof, to be applied towards lessening the county levy, as often as they shall be found in default, in the due execution of this act; and on such default of the Justices and Sheriff, or under Sheriff, the same offence or offences shall be punished as heretofore. The whole of the 22d Sect. in the act entitled an act to amend an act, entitled an act to amend the personal laws of this commonwealth, is hereby repealed.

§ 20. That the Sheriff, under Sheriff, or Constable, shall be entitled to one dollar and fifty cents, and no more, for summoning each Jury under this act, and attending upon the trial, and conducting to jail any offender against

On Sheriff
&c.

Duty of
Justices,
&c.

Penalty for
failure.

Allowance
to Sheriffs,
&c.

Offenders
subjected
to costs.

When a
prosecutor
shall pay
costs.

Form of re-
turn.

Fieri facias
executed.

not execu-
ted.

the same; and such officer shall be entitled to the same fee for serving any warrant or precept under this act, and summoning witnesses, as are allowed by law to Constables for similar services; and the defendant shall, in every case he is found guilty under this act, pay the costs of the prosecution, which the Justice before whom he is convicted, shall award against him, upon the verdict of the jury being against him: and the prosecutor shall, in every case where the defendant is acquitted, pay the costs of the prosecution, for which judgment shall be entered against him by the Justice before whom the defendant is tried, as before directed.

By an act passed Dec. 19th, 1796 (1 Bradford 257), on the subject of executions, it is provided, That writs of execution, after being issued, shall be executed by the Sheriff, or other officer, to whom the same shall be directed, and shall return according to the respective forms hereafter mentioned; to wit: The return of a fieri facias* is as followeth: "By virtue of this writ to me directed, I have caused to be made the within mentioned sum of

, of the estate of the within A. B. which said sum of , before the Judges or Justices within mentioned, at the day and place within contained, I have ready as that writ requires; or, "The within named A. B. hath no

* Fieri facias is an execution against the estate.

estate within my bailiwick, whereby I can make the sum within mentioned;" or, "By virtue, &c. I have caused to be made of the estate of the within named A. B. the sum of _____, which I have ready to render to the within named C. D. in part of the debt and damages within mentioned; and I do further certify, that the said A. B. hath no more estate within my bailiwick, whereof at present I can make the residue of the said debt and damages, as by the said writ is required."

Executed in part.

Return of a *capias ad satisfaciendum*:* "By virtue of this writ to me directed, I have taken the within named A. B. whose body, before the Judges or Justices within named, at the day and place within contained, I have ready to satisfy C. D. of the debt and damages within mentioned, as within to me is commanded;" or, "The within named A. B. is not found within my bailiwick."

Return of a *ca. sa.*

body taken.

Not found.

By an act passed Dec. 17th, 1792, it is provided, that all officers who are about to levy executions, shall make the debt or damages and costs recovered, first of the goods and chattels (exclusive of slaves), and if there be no goods and chattels, or not sufficient found in his bailiwick, then of the slaves; and if there be none, or not sufficient found in his baili-

The order in which estate is to be taken by execution; first goods, next, negroes, and last, land.

* *Capias ad satisfaciendum* is an execution on the body.

wick, lastly of the lands, tenements, and hereditaments, in possession, reversion, or remainder, or so much thereof, in one or more entire parcels, as shall be sufficient, and such part as the owner shall direct, if he thinks proper.

lands made
liable to
debts.

By the 4th Sect. of the act subjecting lands to the payment of debts, approved Dec. 17th, 1792, it is provided by the 1st Section, That lands, tenements, and hereditaments, shall, and may, by virtue of a writ of fieri facias, be taken and sold in satisfaction of all judgments, in a manner herein after prescribed.

Lands
bound by
the execu-
tion from
the time it
is in the of-
ficers hands

Officer to
endorse the
time.

Notice to
public:

to party.

Day of sale
not less
than twenty
days.

§ 4. Every writ of fieri facias, shall bind the property of the lands, tenements, and hereditaments, from the time it shall be delivered to the officer, who shall, without fee, endorse on every such writ the day and time of day when he received the same. When the goods and chattles taken in execution, by virtue of a fieri facias, shall not be sufficient to satisfy the debt, damages, and costs, the Sheriff, or other officer, shall give public notice at the court house of his county, on the next court day after the seizure; and, moreover, shall give notice to the owner, if he be in the county; or, otherwise, to his agent, if any such be known; and at some term appointed in the notice, not less than ten, nor more than twenty days, from the court day on which the notice

was first given, the said lands, tenements, and hereditaments, shall be exposed to sale by auction, on the premises, if in a settled part of the county, or at such other place in the settled parts of the county, as the owner shall, by writing, under his hand, delivered to the officer, direct.

Sold at auction.

As directed by party.

By 5th §. But if the owner shall refuse or neglect to point out some place, within the settlement, at which the same may be made, then the Sheriff shall proceed to make sale of the land at the court house of the county wherein the land shall lie.

If owner neglect to fix place, Sheriff may sell at courthouse

By § 6. If the party against whom a judgment shall be entered, have several parcels of land which lie in one and the same county, he or his agent may, by writing, under his hand, at any time before the day of sale, require the Sheriff or officer, to whom a writ of fieri facias upon the judgment shall be directed, to make the debt or damages and costs of such of the said parcels as the owner or his agent shall think proper; and if the parcels be in different counties, the clerk shall, and may, at the like request in writing, direct the fieri facias to the Sheriff, or other officer, of any county which the party or his agent (making oath, or solemn affirmation, that he hath land there) shall particularly mention, at any time before the writ shall be delivered to the officer; and if the debt or damages and costs be made of any oth-

party may cause the Sheriff to sell such lands as he may think proper.

Clerk may direct fieri facias to any county.

Oath of party that he has land

Sales, in certain cases, void.

Money not paid, sale to be made.

Form land to be laid off.

Fees.

Lands, on first execution, to be sold at three months credit, bond equal to replevin bond

May replevin all executions

er parcel of land, or of land lying in any other county than that mentioned in such written requisition, the sale of such other parcel, or of the land in such other county, shall be void. If the owner shall not pay the money, or damages and costs, before, or at the day of sale, the Sheriff or officer shall proceed to sell the lands, tenements, and hereditaments, or such estate and interest therein as the party convicted shall have, or so much thereof as shall be sufficient, laid off in one or more entire parcels, if it may be done in such place and manner as the owner or his agent, if he thinks proper, shall direct for ready money, or tobacco, as the demand shall be, and the fees.

§ 24. By an act passed Dec. 21st, 1799, it is provided, That when lands shall be taken in execution, the Sheriff shall sell so much thereof as will satisfy the execution, at three months credit, for whatever sum the same will bring; and he shall take bond, with sufficient security, from the purchaser, which bond shall be returned to the clerks' office, whence the execution issued, within twenty days thereafter, and shall have the force of a replevin bond: Provided, always, that if the defendant or defendants, in any execution, shall, at or before the day of sale, tender sufficient security, to be bound with him, to pay the amount, and, also, all costs, with lawful interest, for the same, to the creditor or creditors, on such execution, within

three months; then the Sheriff, or other officer, shall immediately release the estate or body (as the case may be) of such defendant or defendants from such execution: which bond shall be returned and proceeded on, as heretofore has been directed in respect to replevin bonds.

Release property.

Return bond to the office.

By the 6th Sect. of the act of Assembly, passed Dec. 19, 1804, to amend the penal laws, it is provided, That no act of limitations shall apply to any felony, or other crime, punishable by confinement in the penitentiary hereafter committed: and no *appeal* or writ of error shall be had in any case prosecuted under the act respecting riots, routs, and unlawful assemblies of the people, or under the act respecting the disturbance of religious societies.

No act of limitations apply to felony.

No appeal from judges under riot act, or the act relative to religious assemblies.

By a Statute of Virginia of 1751, it is provided in the 6th Sect. That it shall not be lawful for any Sheriff, or other officer, to execute any writ or process upon the Lord's Day, commonly called Sunday, nor upon any person attending his duty at any muster of militia, or any election of a burgess or burgesses; and that all process so executed shall be illegal and void; unless the same be issued against any person or persons for treason, felony, riot, breach of the peace, or upon an escape out of prison or custody; and such process shall, and may, be executed at any time or place.

Sunday.

Persons at muster not to be arrested, nor at elections, unless for felony, or breach of the peace, &c.

Witnesses privileged from arrest whilst at court, and going and returning.

One day for every 20 miles.

Attending on county reference or survey.

Qualifications of Jurors.

By an act of Assembly, Feb. 6, 1798, it is provided, Witnesses shall be privileged from arrest in all cases, except treason, felony, and breach of the peace, during their attendance at any court, or other place, where their attendance shall, by subpoena, first duly executed by a sworn officer, or by some indifferent person who shall have made oath to the due execution thereof, have been required; and in coming to and returning thence, allowing one day for every twenty miles from their places of abode: Provided, always, that no person whatsoever, attending any of the courts in this commonwealth, or upon any reference or survey, by order of any such court, in virtue of any subpoena, shall be privileged from an arrest by original, or other process, unless such person shall be actually a witness in the matter in such subpoena expressed.

As a Constable has sometimes to summon Juries, I here insert the qualifications of a lawful Juryman.

By a law passed 24th Feb. 1797, Sect. 51, it is provided, That no person shall be capable of being of a petit Jury for the trial of treason, felony, breach of the peace, misprison of treason, breach of the penal law, or any other plea of the commonwealth, or of any estate or title in or to lands, tenements or hereditaments, in any court of record within this commonwealth, or to be a Juror in any case what-

soever, depending in the superior courts within this commonwealth, unless such person be a house-keeper, and possessed of a visible estate, real or personal, of the value of twenty pounds at least.

By an act passed Dec. 19th, 1804, Sect. 1st, it is provided, That it shall and may be lawful for any creditor, where his debt doth not exceed five pounds, to go before any Justice of the peace of the county where his debtor resides, and make oath how much is justly due him, and that he has grounds to suspect, and verily believes, that such debtor intends to remove his effects, or so to dispose of them as to evade the payment of the debt he owes him; and, thereupon, such Justice shall issue an attachment against the estate of such debtor, returnable before himself, or some other Justice of the Peace, directed to all Constables and Sheriffs in the commonwealth of Kentucky. And, by virtue thereof, it shall be lawful, as well for the Sheriff, or any Constable of the county where such attachment shall be obtained, as for the Sheriff, or any Constable of other counties, to pursue and seize such effects, and make return of such attachment to some Justice of the Peace of the county where such attachment shall be levied: and, thereupon, such proceedings shall be had as in other cases of attachment.

Attach-
ment.

complaint.

Issue war-
rant.

May pur-
sue & seize
property.

Must give
bond, &c.

§ 2d. Be it further enacted, that any person obtaining an attachment as aforesaid, shall give bond and security with the Justice from whom it may be obtained, as in other cases of attachments. And in all cases, the property so attached may be replevied by the debtor or agent, by giving bond and sufficient security to the officer attaching the same.

Property
may be re-
plevied.

May dis-
train for
fees.

In an act before recited in this book, it is mentioned, that the Constable shall have power to distrain for fees, in the same manner that the Sheriff is empowered to do—which is as followeth: “And the Sheriff of any county, for all fees which shall remain due and unpaid after the tenth day of April, in any year, either to himself or the Sheriff of another county, which shall be put into his hands to collect, as aforesaid, is hereby authorised and empowered to make distress, and sale of the goods and chattels of the party refusing or delaying payment, in the same manner as for other fees due to any of the officers herein before mentioned.” 1 Brad. p. 551.

To sell in
the same
manner of
executing.

By the 8th Section of the execution law of Dec. 19, 1796, it is provided, That a writ of fieri facias, or other writ of execution, shall bind the property of the goods, lands, tenements, or hereditaments, against which such writ issued forth; but from the time such writ shall be delivered to the Sheriff, or other officer, to be executed; and for the better mani-

festation of the said time, such Sheriff, or other officer, his deputy or agent, shall, upon the receipt of any such writ, without a fee for doing the same, endorse upon the back thereof, the day of the month and year when he received the same. And if two or more writs shall be delivered against the same person, on the same day, that which was first delivered shall be first satisfied.

Where the defendant holds real estate, but has no title that is not the legal title, it cannot be taken in execution.

An Act declaring the law concerning the ESCAPE of DEBTORS, and other PRISONERS.

Approved January 16, 1798.

(See 1 Bradford, page 32.)

Section 1. FOR the more effectual retaking and securing prisoners who escape out of prison: *Be it enacted*, That if any person committed, rendered or charged in custody, in execution, or upon *mesne* process to any county prison, or to the jail of any district, shall thence escape, it shall and may be lawful for any justice of the peace, in the county where such prisoner was in custody, upon oath of such escape before him made, by the sheriff, under sheriff, jailor or other creditable person, to grant unto any person demanding the same, one or more warrants, under his

Process against prisoners escaped.

escape warrants.

hand and seal, directed to all sheriffs and constables within this commonwealth, reciting the cause of such prisoners commitment and time of his or her escape, and commanding them and every of them, in their respective counties, and precincts, to seize and retake such prisoner so escaped or going at large, and being so retaken, forthwith to convey and commit to the prison where debtors are usually kept; in the county where such retaking shall be, there to be kept in safe custody, until he or she be thence discharged by due course of law: which warrant the sheriff is hereby required to obey, and to receive the prisoner into his safe custody, and to give a notice to the person or persons delivering him or her, testifying his receipt of such prisoner, and shall also make return of the execution of such warrant, to the court of that county or district from whence the prisoner escaped; and if he or she was there in custody charged in execution, then the sheriff shall safely keep him or her, without bail or mainprise, until he or she shall make full payment and satisfaction to the plaintiff or plaintiffs, creditor or creditors in whose name such execution was sued out, or until the judgment or judgments obtained against him or her, shall be reversed or discharged by due course of law; and if such prisoner shall have been in custody upon *mesne* process in any action of debt or upon the case, the sheriff to

Return thereof upon retaking the prisoner and proceedings thereon.

whom he or she shall be recommitted, shall in like manner keep such prisoner in safe custody, and make return of the execution of the warrant by which he or she was retaken, to the court of that county or district wherein he or she was first arrested, and thereupon it shall be lawful for such court, upon the plaintiff's or creditor's filing his declaration, to proceed and give judgment thereon, according as the truth of the case shall appear to them, in the same manner as if the defendant had appeared in the said court, and refused to plead, unless such defendant shall cause special bail to be entered in the said court, and shall immediately plead to issue, and then upon certificate under the hand of the clerk of the said court, that such bail is given, delivered to the sheriff in whose custody such defendant then shall be, it shall be lawful for the sheriff to set at large such prisoner, and not otherwise; but where any prisoner escaped and retaken upon such warrant as aforesaid, shall thereafter be charged with treason, felony, or other crime or cause in behalf of the commonwealth, for which he or she ought to be tried in the district court, and shall be for such cause removed to the jail of this commonwealth, such prisoner shall be charged in the said public jail, with all the causes he or she stood charged, in the prison from whence he or she was so removed, until

he or she be thence delivered by due course of law, in like manner as is herein directed.

Mode of proceeding against prisoners escaping from the prison rules.

§ 2. When any person in execution who shall have obtained the liberty of the prison rules, by giving bond and security for the same, shall hereafter escape and go out of the same, the sheriff of the county where such prisoner was in custody, shall and is hereby required, immediately to apply to a justice of the peace for an escape warrant, to retake such prisoner, according to the directions of this act; and such sheriff shall, and is hereby required, immediately to give notice thereof to the creditor at whose suit he was in custody, or to his attorney, or agent, and shall assign over and deliver to such creditor or his attorney, the bond by him taken, for the liberty of the prison rules, who shall be obliged to receive the same, and thereupon it shall and may be lawful, for such creditor or his attorney, to pursue the method directed by this act, for retaking such debtor, upon the escape warrant aforesaid; and if he be retaken thereon, and be recommitted to jail, the securities for his keeping the prison rules shall be discharged from their bond, or such creditor, or his attorney, shall, and may, at their election, commence and prosecute an action or suit at law against the security or securities, named in such bond for the recovery of his debt, notwithstanding he shall have applied for and obtained an escape warrant against

his debtor as aforesaid; if such debtor is not retaken and committed to jail thereupon, the sheriff shall not be liable or answerable for the payment of the debt, for which such prisoner was in custody, unless the security or securities named in the bond by him taken of such prisoner for the liberty of the prison rules, shall afterwards be found to have been insufficient for the payment of such debt, at the time such bond was taken.

§ 3. And whereas the situation of most prisons in this commonwealth, hath given opportunities to evil disposed persons to break open the same, and turn out debtors and others in custody, to the hindrance of justice, prejudice of creditors, and ruin of sheriffs, who have been compelled to pay the debts with which such prisoner stood charged: For remedy whereof,

§ 4. *Be it further enacted*, That no judgment shall be entered against any sheriff, or other officer, upon any suit brought upon the escape of any debtor in his or their custody, unless the jury who shall try the issue, shall expressly find, that such debtor or prisoner, did escape with the consent, or through the negligence of such sheriff or his officer or officers, or that such prisoner might have been retaken, and that the sheriff and his officers neglected to make immediate pursuit.

Recital.

When and how a sheriff is made liable for escapes.

An action of debt may be maintained against a sheriff.

§ 5. *Provided always*, That where any sheriff shall have taken the body of any debtor in execution, and shall wilfully and negligently suffer such debtor to escape, and such sheriff, or the person suing out such execution, shall die before a recovery can be had against such sheriff for such escape, the person suing out such execution, his executors or administrators, shall and may, have and maintain, an action of debt against such sheriff, his executors, or administrators, for the recovery of all such sums of money and tobacco, as are mentioned in such execution, and damages for detaining the same; any law, custom or usage to the contrary notwithstanding.

Penalty on private persons suffering prisoners in their custody to escape.

§ 6. If any private person have any prisoner in his keeping, arrested for suspicion of felony, treason or murder, and the person that is so arrested escape by negligent keeping, before that he be brought to jail, then the person from whom such prisoner so escaped, shall be liable to a fine, on being found guilty on an indictment, in the court of that district in which such escape was made.

An Act to reduce into one the several acts respecting SLAVES, FREE NEGROES, MULATTOES and INDIANS.

Approved February 8, 1798.

(1 Bradford, page 107.)

§ 10. If any white person, free negro, mulatto, or Indian, shall at any time be found in company with slaves at any unlawful meeting, or shall harbor or entertain any slave without the consent of his or her owner, such person being thereof convicted before any justice of the peace, shall forfeit and pay fifteen shillings for every such offence, to the informer, recoverable with costs before such justice, or on failure of present payment, shall receive on his or her bare back, twenty lashes, well laid on, by order of the justice before whom such conviction shall be.

§ 11. And every justice of peace upon his own knowledge of such unlawful meeting, or information thereof to him made within ten days after, shall issue his warrant to apprehend the persons so met or assembled, and cause them to be brought before himself or any other justice of his county, to be dealt with as this act directs; and every justice failing herein, shall forfeit and pay fifty shillings for every such failure. And every sheriff who shall fail upon knowledge or information of such meeting, to endeavour to suppress the same, and bring the offenders before some justice of the

Punishment of persons present at unlawful meeting of slaves, or harbouring the slaves of others.

Duty of justices & other officers in suppressing unlawful meetings

peace to receive due punishment, shall be liable to the like penalty of fifty shillings, both which penalties shall be to the informer and recoverable with costs before any justice of the peace. And every under sheriff or constable who upon knowledge or information of such meeting, shall fail to perform his duty in suppressing the same, and apprehending the persons so assembled, shall forfeit and pay three dollars for every such failure to the informer, recoverable with costs before any justice of the county wherein such failure shall be.

An Act concerning BOAT-MEN.

Approved December 20, 1794.

(1 Bradford, page 178)

Where
any persons
enter into
contract to
serve on
board of
any boat or
vessel, and
fails to per-
form,

How pro-
ceeded a-
gainst.

Section 1. *BE it enacted by the General Assembly,* That when any owner or supercargo of a boat or vessel lying within any port or place within this state, and destined to any port or place either within or without this commonwealth, shall enter into any bargain or contract in writing, with any person to serve such owner or supercargo, on board any such boat or vessel, and shall receive any part of the consideration, to be expressed in such writing for such service, and shall afterwards fail or refuse to perform such bargain or contract, it shall be lawful for such owner or supercargo, to apply to any justice of the peace, and upon shewing to such justice such

bargain and contract as aforesaid, it shall be lawful for such justice, and he is required to issue his warrant, specially describing therein the person named in such bargain or contract, and intended to be apprehended by such warrant, commanding the sheriff or any constable to apprehend such person and deliver him to such owner or supercargo, on board any such boat or vessel; and the sheriff or constable into whose hands such warrant may come, shall immediately proceed to execute the same, under the directions of such owner or supercargo, and for so doing such sheriff or constable shall receive the sum of fourpence for every mile he shall travel in the execution of his office, to be paid by the person employing him, whether owner or supercargo, to be deducted from such person's wages; and should any sheriff or constable refuse or fail to execute such warrant without good cause for so doing, he shall forfeit and pay to the person obtaining the same, the sum of five dollars.

Fee to sheriff or constable.

Penalty on sheriff or constable.

§ 2. *And be it further enacted,* That such owner or supercargo shall have power and authority to detain any person so delivered him as aforesaid, on board such boat or vessel, and to compel him to perform his contract or service.

Power of the owner over such person so contracting

commerce
ment.

§ 3. This act to be in force from the passage thereof.

An Act to amend and reduce into one act, the several acts CONCERNING BASTARDY.

Approved December 14, 1795.

(See 1 Bradford, page 182.)

Proceed-
ings a-
gainst she-
riff.

Coroners
and consta-
bles.

Penalty
failing to
execute
warrants.

§ 2. *And be it further enacted,* That when the sheriff of any county within this commonwealth, shall be charged with being the father of any bastard child, the warrant for apprehending him shall be directed to, and executed by the coroner of such county, and the same proceedings shall be had thereon as before directed by this act, as in other cases. And when the coroner or constable of any county shall be charged with being the father of any bastard child, the warrant shall be directed to, and executed by the sheriff, and the same proceedings had thereon as before directed. And in all other cases the warrant for apprehending a person charged with being the father of any bastard child, shall be directed to the constable, and by him executed.

§ 3. If any sheriff, coroner, or constable shall refuse or neglect to execute any warrant to him directed, in any case specified in this act, he shall forfeit and pay ten pounds, by action of debt, in any court of record, one half to the person sueing for the same, and the other half to the use of the commonwealth.

An Act to reduce into one the several acts establishing COUNTY COURTS, and regulating the proceedings therein, and concerning the appointment of JUSTICES of the PEACE and their jurisdiction.

Approved December 17, 1796.

(See 1 Bradford, page 211.)

§ 1. *Be it enacted by the General Assembly,* That there shall be a competent number of justices of the peace appointed in the several counties within this commonwealth.

Justices to be appointed.

§ 2. Every person so appointed a justice of the peace, before he enters on the execution of his office, shall take the oath prescribed by the constitution of this state; and if any person whatsoever, shall presume to execute the office of a justice of the peace, without first qualifying himself in the manner by this act required, he shall for every such offence forfeit and pay the sum of fifty pounds; one moiety to the commonwealth, and the other moiety to the informer, to be recovered by an action of debt, in any court of record within the state; which oath may be administered by any one justice of the peace to another, and a certificate of which shall be recorded in the court of the county to which the justice taking the same shall belong.

To take an oath.

Penalty on failure.

§ 3. In every county of this state, a monthly court shall be held by the justices thereof, at the several respective places that have been

Monthly courts to be held in

each county.

May adjourn from day to day.

Proviso.

Their jurisdiction.

or may be assigned for that purpose, upon the days which are or may be limited by law for holding courts for each county respectively, and at no other time and place: which courts shall be called county courts, and shall consist of the justices appointed for each county, as above directed, and three of them shall be sufficient to hear and determine all causes depending in the said county courts: *Provided nevertheless*, that if the business of any of the said courts cannot be determined on the court day, the justices may adjourn from day to day, until all causes and controversies then depending before them shall be heard and determined, or otherwise continued until the next court: *Provided also*, that no monthly court shall be held for any county, in any month, in which a court of quarter sessions is directed by law to be held for the same county.

§ 4. The county courts shall and may have cognizance, and shall have jurisdiction of all causes respecting wills, letters of administration, mills, roads, the appointment of guardians, and settling of their accounts, and of admitting of deeds and other writings to record: they shall superintend the public inspections, grant ordinary license, and regulate and restrain ordinaries and tippling houses, and appoint processioners: they shall hear and determine according to law, the complaints of apprentices and hired servants, being citizens of

any one of the United States, against their masters or mistresses, or of the masters or mistresses against their apprentices or hired servants: they shall have power to establish ferries and regulate the same, and to provide for the poor within their counties.

§ 5. From time to time for ever hereafter, the court of every county of this commonwealth, shall cause to be erected and kept in good repair, (or where the same shall be already built, shall maintain and keep in good repair) within each respective county, and at the charge of such county, one good and convenient court house of stone, brick or timber, and one common jail and county prison, well secured with iron bars, bolts and locks; and also one pillory, whipping post and stocks: and where land shall not be already provided and appropriated for that purpose, such court may purchase two acres, whereon to erect the public buildings for the use of their county, and for no other use whatsoever: and to every court-house already erected and established, two acres of land built upon and adjacent thereto, not having any house, orchard, or other immediate conveniencies thereon, shall be, and remain appropriated to such court-house; and the fee-simple thereof is hereby declared to be in the court of the same county and their successors, to the use of such county as afore-

To erect public buildings.

To purchase two acres of land therefor.

Penalty on
failure to
keep a suf-
ficient jail
&c.

said: but where a court house is already built in any town, the land so laid off for the same and the other public buildings, shall be judged and held sufficient; and if the justices of any county court shall, at any time hereafter, fail to keep and maintain a good and sufficient prison, pillory and stocks, every member of the court so failing, shall forfeit and pay five hundred pounds of tobacco; one moiety to the commonwealth, and the other moiety to the informer, to be recovered with costs by action of debt or information, in any court of record in this commonwealth: and moreover, the court so failing shall be liable to the action of the sheriff from time to time, for all damages recovered against him upon any escape, for the want of a sufficient prison; and such sheriff, or his executors, or administrators, shall, and may sue for the same by action of debt or information, brought in the district court against the justices so failing, or the survivors of them; and upon recovery in such suit, the judges of the said court are hereby empowered and required to proportion how much every particular justice of the court so failing, who shall be then living, and the executors or administrators of such as shall be deceased, shall pay respectively, and to enter up judgment accordingly, whereupon one or more executions shall or may be issued.

§ 6. And the justices of every county shall, and they are hereby empowered and required to mark and lay out the bounds and rules of their respective county prisons, not exceeding ten acres of land, adjoining such prison; which marks and bounds shall be recorded, and renewed from time to time as occasion shall require; and every prisoner not committed for treason or felony, giving good security to keep within the said rules, shall have liberty to walk therein, out of the prison, for the preservation of his or her health, and keeping continually within the said bounds, shall be judged in law a true prisoner. And if the court of any county shall at any time think fit, they are hereby authorised and empowered, at the charge of their county, to cause a ducking stool to be built in such convenient place as they shall direct.

To lay off
prison
rules

To erect
a ducking
stool.

§ 7. The justices so appointed, and each of them shall be conservators of the peace within their respective counties, and shall have cognizance of all causes of less value than five pounds, current money, or one thousand pounds of tobacco; in which said causes they may give judgment, and thereupon award execution; and in all such cases discount shall be allowed, and the justices shall give judgment either for the plaintiff or defendant, as the case may be, provided the plaintiff had reasonable notice of such discount. *Provided*

The just-
ices to be
conserva-
tors of the
peace.

Their pow-
er and ju-
risdiction.

always, that no execution shall be issued against the body of any defendant, unless the judgment exceed the sum of twenty-five shillings; which execution shall be executed and returned by the sheriff or constable to whom directed, in the same manner as other executions are to be executed and returned.

what judgments final.

For what sums appeal may be granted.

Proceeding on appeals.

§ 8. All judgments given by any such justice or justices, when the amount thereof shall not exceed twenty five shillings, shall be final: in all judgments where the amount thereof shall exceed twenty five shillings, the party against whom such judgment shall be given shall have a right to appeal from the same to the next county court, to be held for the county wherein the judgment was rendered, provided there be ten days between granting the judgment from which the appeal is made, and the sitting of the court: whereupon the justice or justices who gave such judgment, shall suspend all further proceedings thereon, and shall return the papers, and the judgment he had given, to the clerk of the said court; and the said court shall, thereupon, at their next session, hear and determine the same in a summary way, without pleading in writing, according to the justice of the case, unless the said court, for good cause to them shewn, shall continue the same to the next court, beyond which second court, such appeal on no pretence shall be continued: and execution may be taken out

on a judgment given by the said court on such appeal, in the same manner as if the cause had been originally instituted in the said court. In all cases where any party may desire to appeal from a judgment of a justice, pursuant to this act, he shall receive from the justice a copy of such judgment, and produce the same to the clerk of the county court, and shall enter into bond in the office of such clerk, in a penalty double the sum of such judgment with security, who shall be approved of by the justice, from whose judgment the appeal is made; such bond shall be conditioned for the payment of the debt and costs in case the judgment shall be confirmed on the trial of the appeal. Upon the execution of such bond, the clerk shall certify the same to the magistrate and constable, enjoining further proceedings, and issue a summons to the appellee to appear at the court to which the appeal is returned, noting the day the same shall be set for trial by the clerk. The constable shall summons the appellee, his agent or attorney, if within the county; which summons shall be executed ten days before the court where the same shall be tried.

§ 9. Where the appellee shall reside in another county, the clerk of the court to which the appeal is made, shall have power and authority to issue a summons to cause such appellee to appear before the court; which sum-

Further regulations as to appeals.

mons shall be executed by the appellant, or some other person for him, on the appellee, and satisfactory proof of such service shall be made to the court to which the summons shall be returned; and if the appellant shall neglect to execute or cause to be executed such summons on the appellee, before the second court after praying an appeal, the judgment of the justice shall stand confirmed.

Papers and cost to be certified.

§ 10. It shall be the duty of the justice who gave the judgment, to lodge with the clerk, at or before the next court, any papers produced and read on the trial before him; and if no papers, to certify the same to the clerk, noting therein all the costs, the clerk shall docket the same in order. The court shall proceed and determine the appeal in a summary way at their next court, and give such judgment as to them shall seem just, with respect to the costs as well as the debt; but may grant a continuance if they deem it right, to the next term, but not longer. And in all appeals from the judgment of a single justice, the parties shall have the benefit of all legal testimony that can be produced.

Parties may produce testimony.

Witnesses living in another county may be summoned.

§ 11. Any justice of the county court shall have power to issue a summons to cause any person as a witness, living in another county, to appear and give evidence in any matter that may be depending before him, at the request of either party: and such witness shall be en-

titled to two pence per mile for travelling to and from, and ferriages, to be taxed in the bill of costs.

Their allowance.

§ 12. The monthly county courts, or any justice thereof, when acting in their judicial capacity, shall have the same power to punish contempts of their authority, as is given the courts of quarter sessions.

Justices power to punish contempts.

An Act to reduce into one, the several acts and parts of acts concerning EXECUTIONS, and for the relief of INSOLVENT DEBTORS.

Approved December 19, 1796.

(1 Bradford, page 266)

Section 20. No sheriff or other officer to whom a writ of *fieri facias* shall be directed, shall take in execution any slave or slaves, provided there be shown to such sheriff or other officer by the defendant, or any other person in his behalf, sufficient, either lands, goods or chattels, of such defendant, within the settled part of the country, upon which he may levy the debt and costs mentioned in such *fieri facias*; and no collector of any officer's fees, or of the public revenue or county levies, shall seize or make distress upon the slaves of any person for such fees, taxes or levies, if other sufficient distress can be had: and no sheriff or other officer, or collector of taxes, fees or levies, shall make or take unreasonable seizures or distresses: and if any sheriff or other officer or col-

Officers not to execute slaves if other property can be had.

Nor make unreasonable seizures.

lector as aforesaid, shall act contrary hereunto, such sheriff, officer or collector, shall be liable to the action of the party grieved, grounded upon this act, wherein the plaintiff shall recover his full costs, although the damage given do not exceed forty shillings.

Officer to pay surplus of sale to the debtor.

Remedy against officer failing.

On injunction money to be returned.

§ 24. Where upon a sale under any execution, the amount of such sale shall exceed the principal, interest and costs, the sheriff or officer shall pay such excess or surplus to the debtor, his executors, administrators or agent; and if any sheriff shall fail or refuse to pay such surplus or excess when required, such sheriff or officer, his or their security or securities, his or their executors or administrators, shall every and each of them be liable to the like penalty and judgment in favour of the debtor as is herein directed in favor of the plaintiff against a sheriff for money levied on an execution.

§ 25. When a sheriff, or other officer, under any execution, shall receive the whole or any part of the money or tobacco for which the said execution issued, and the person against whom such execution may have issued, his executors or administrators shall obtain an injunction of such execution, or for any part of the money or tobacco mentioned therein, before the money or tobacco so received by such sheriff or officer is paid to the plaintiff, his agent or attorney, or his executors or ad-

ministrators: in any such case the sheriff or other officer, his executors or administrators, shall repay to the person or persons against whom such execution issued, his executors, administrators or agent; the money or tobacco so received, or such part thereof as may be enjoined; and if any sheriff or other officer, his or their executors or administrators, shall fail or refuse when required to pay such money or tobacco so received, or such part thereof as may be enjoined to the person having a right to demand and receive the same: such sheriff or other officer, and their securities, his and their executors and administrators, and every of them, shall be liable to the like penalty and judgment in favour of the person, his executors or administrators, by whom the said injunction is obtained as is herein directed in favour of the plaintiff against the sheriff, for not paying the money or tobacco levied on an execution.

An Act to increase the jurisdiction of Magistrates.

Approved January 30th, 1812.

(See Acts of 1811, page 112.)

Section 1. *Be it enacted by the general assembly of the commonwealth of Kentucky,* That hereafter justices of the peace in the several counties in this commonwealth,

Jurisdiction of justices increased.

shall have original jurisdiction of all debts and accounts not exceeding fifty dollars.

May require bail to be taken in certain cases.

Form.

Persons failing to give bail, committed to jail.

Officer's fee for executing process.

Certain fees allowed to magistrates—

§ 2. *Be it further enacted,* That when a justice shall issue his warrant for any sum within his jurisdiction, and over the sum of twenty dollars, founded on a note, or other instrument of writing, for the direct payment of money; it shall be his duty to endorse on said warrant, that "Special bail is required:" and the officer upon executing the same, shall take bail endorsed upon the warrant, in the following words, to wit: "I, A. B. do hereby agree to be special bail for the within named C. D. Witness my hand and seal, this —— day of ——:" And on the defendant's failing or refusing to give such bail, the officer is hereby directed to commit him, her or them, to the jail of his county, until he, she or they, shall give such bail, or shall be otherwise discharged by due course of law. And the officer for taking the bail aforesaid, shall be entitled to twenty-five cents, to be taxed and collected as other costs.

§ 3. *Be it further enacted,* That the justices of the peace in this commonwealth, shall hereafter, in addition to the fees now allowed by law, be entitled to the following fees for the trial of all sums over five pounds, to wit: For issuing a warrant, twelve and one half cents—Giving judgment, twelve and one half cents—Issuing execution, twelve and one half

cents. And he shall keep a book in which he shall record all his proceedings; and shall be entitled to twelve and one half cents, for each case tried and recorded as aforesaid.

Their duty.

§ 4. *And be it further enacted,* That in all cases tried and determined before a single justice, where the matter in controversy shall be above five pounds, either party shall have a right to appeal from the judgment of such justice, to the circuit court of the county in which the judgment shall have been given. Which appeal shall be docketed by the clerk of said court as other causes; and shall be tried and determined in all respects, as it would or might have been, had it originally been instituted in said court; said court making such order therein, as to its preparation for trial, as they may deem right and equitable. *Provided, however,* that nothing in this act contained, shall be so construed, as to repeal the law now allowing appeals from the judgment of a single justice.

Party aggrieved may appeal to circuit court.

There to be tried & determin'd as other cases originating there in.

Proviso.

§ 5. *Be it further enacted,* That on the granting of all appeals from judgments of magistrates for sums exceeding five pounds, it shall be the duty of the magistrate before whom the trial was had, to transmit all papers had before him on such trial, to the clerk of the circuit to which the appeal is taken, at or before the court next succeeding the granting such appeal—together with a certificate of the

On appeals the justice to transmit to the clerk of circuit court a copy of record and certificate of costs.

Costs—
how col-
lected.

Party ap-
pealing, to
enter into
bond—

Condition.

No appeal
dismissed
for irregu-
larity.

where cre-
dits are en-
dorsed so
as to re-
duce it to a
certain
sum—jus-
tices to
have ex-
clusive ju-
risdiction.

Parties
may arbi-
trate their
differences

Subject to
an appeal.

costs on the trial before him: which costs shall be taxed by the clerk as the other costs, and collected accordingly.

§ 6. *Be it further enacted,* That the person praying an appeal shall, in the clerk's office of the circuit court, to which the appeal is returnable, enter into bond and security, to be approved by said clerk, in a sum not less than double the original debt and costs, with condition to pay the same, provided he gets cast. And no appeal shall be dismissed for any irregularity in the proceedings had before the magistrate; but the same shall be tried on its merits, as though no trial had been previously had thereon.

§ 7. *Be it further enacted,* That in all cases where the sum due, or secured by any instrument of writing, shall be reduced by credits endorsed thereon, to a sum not exceeding fifty dollars, in all such cases, justices of the peace shall have exclusive jurisdiction, for the recovery of such balance.

§ 8. *Be it further enacted,* That in all cases of trial before a magistrate, the parties litigant shall have the same right to settle their difference by arbitration, as is allowed by law in causes pending in the circuit court; and the award returned by the arbitrators may be made the judgment of the justice; subject, however, to an appeal under the same rules and regula-

tions, as other cases of appeal from the judgment of a justice.

§ 9. *Be it further enacted*, That an appeal may be taken from the judgment of any justice of the peace, at any time within twenty days after the time of granting the judgment, and at no time thereafter.

Time in which an appeal may be taken.

§ 10. *Be it further enacted*, That hereafter, when any justice of the peace may resign or remove out of the county, it shall be his express duty to return all the papers and his record book, to the clerk of his county in all cases of judgments over five pounds: or in case of the death of such justice, the clerk of the county court shall demand and receive from the representatives of such justice, such papers and record book, to be by such clerk filed and preserved in his office; from which copies may be given to any person requesting the same; and when certified by the clerk, shall be evidence as other records are at present under the existing laws of this state.

Duty of justices in case of removal or resignation—and of their representatives in case of death.

Duty of the clerk of the county court, in certain cases.

§ 11 *Be it further enacted*, That within six months after the passage of this act, each constable in this commonwealth shall, in the court of his county, enter into bond, with good security, in the penalty of one thousand dollars, conditioned as the law directs, for the faithful performance of the duties enjoined on him by law; and, on any constable failing or refusing to pay over to the plaintiff or his attorney, any

constables to give bond.

The amount, condition.

§ On failing or refusing to pay over

monies collected—
how to be
proceeded
against.

On failing
to return an
execution,
him & his
securities
to be liable
for the a-
mount and
ten per
centum
damages.

How to be
recovered.

Person or
written ap-
plication to
be made
for a war-
rant in all
cases.

On an ap-
peal a sum-
mons shall
be issued
against the
appellee.

money by him collected, where the sum exceeds five pounds, he shall be liable to a motion in the circuit court, under the same rules and regulations which now govern motions against sheriffs.

§ 12. *Be it further enacted* That, whenever an execution is put into the hands of any constable in this commonwealth, and he fails or refuses to return the same within twenty days from the return day of said execution, he and his securities, or any of them, shall be liable for the amount thereof to the person in whose name the execution issued, with ten per cent. damages thereon, to be recovered in like manner upon motion, as other monies are to be recovered of constables.

§ 13. *And be it further enacted,* That it shall not be lawful for a justice of the peace, to issue any warrant in any civil case, except on personal or written application of the plaintiff to him, or the filing with him the bond, note, or some other written specialty, as evidence of the debt.

§ 14. *Be it further enacted,* That the party praying an appeal from the judgment of a single justice, where the amount in dispute shall be above five pounds, shall have a summons executed on the appellee at least ten days before the court, at which the appeal shall be set for trial; which summons shall be issued

by the clerk, and executed by the sheriff or constable, at the request of the appellant.

§ 15. This act shall commence and be in force, from and after the first day of June next.

Commencing clause

§ 16. *Be it enacted*, That in cases of appeal to the circuit court, when the appellant executes bond with approved security in the clerk's office, it shall be the duty of the clerk to issue a *supersedeas* staying all further proceedings until the trial in the circuit court; and upon the receipt of such process, the officer having any execution, shall stay all further proceedings.

In cases of appeal the clerk to issue a *supersedeas*.

An act allowing compensation to the Justices of the County Courts within this Commonwealth for their services.

Approved December 20th, 1802.

(2 Bradford, page 200.)

§ 2. *And be it further enacted*, That any justice who shall sign any blank warrant, or permit his name to be put thereto, shall for every such offence forfeit and pay the sum of ten dollars, to be recovered with costs, on motion in the court of quarter-sessions in the county where the offence may be committed, by any person suing for the same, one half to the informer, and the other half to be applied towards lessening the county levy, provided the opposite party have ten days previous

Penalty in signing blank warrants.

notice of such motion; or on the presentment of the grand jury, in which case the whole shall be applied to the benefit of the county.

An act more effectually to suppress the practice of Gaming.

Approved December 10, 1804.

(2 Bradford, page 326.)

Tax on
billiard ta-
bles.

Section 1. *BE it enacted by the general assembly,* That there shall be annually levied and collected a tax of one hundred dollars on each billiard table within this commonwealth, in the same manner, and under the same rules and regulations as other taxes are.

Table
kept up
and used
liable to be
taxed.

§ 2. *And be it further enacted,* That every billiard table which shall be kept up and used for the purpose of playing thereon, at any one time within the year, shall be considered as though it had been continued for the purpose of playing thereon for the whole year.

Lien on
the table.

§ 3. *And be it further enacted,* That this state shall have a perpetual lien on every billiard table for the amount of the tax, interest, and cost due thereon; and the owner, possessor and occupier of any billiard table, shall moreover be subject to the payment of any deficiency which may remain due, and which shall not be made by the sale of any such table, in the same manner as for other taxes.

Who are
liable for
the tax.

§ 4. *Be it further enacted,* That it shall be the duty of every justice of the peace, upon

his own view, or who shall receive information of the exhibition of any A B C or E O table, or other table, bank, wheel, machine, or other contrivance whatsoever, used for the purpose of betting or winning money, lands, tenements, goods or chattels, where it shall come or be within his own knowledge or view, immediately to proceed by himself, or when he shall receive information thereof, to issue his warrant, directed to the sheriff or any constable of the county for that purpose, and in every case, such justice, sheriff or constable shall, and they are hereby authorised to call upon any number of persons which he or they may think proper to assist in seizing and destroying, by burning or otherwise, every such table, bank, wheel, machine or other contrivance, used for the purpose aforesaid; and for which purpose the said justice is authorised and directed, and every sheriff or constable having a warrant issued as aforesaid, which shall set forth therein such authority, shall and may proceed to break open any house or doors thereof, in which such table, wheel, bank, machine or other contrivance as aforesaid, may have been exhibited or lodged for safe keeping. And it shall also be the duty of such justice to commit to the jail of his county, or cause to be apprehended by his warrant aforesaid, the owner or exhibitor of such table, bank, wheel, machine, or other contrivance as

A B C and other tables, their use how suppressed

Justice may proceed upon view or issue his warrant.

Sheriff or constable may execute it, &c.

tables may be seized, and burnt.

Sheriff, &c may break open houses.

The owner or exhibitor may be apprehended.

Penalty for refusing to obey justice, sheriff, &c.

Penalty on justice, &c

aforesaid, to be dealt with according to law. And any person called upon as aforesaid, and refusing to obey the said justice, sheriff, or constable, shall for every offence, forfeit and pay ten dollars on complaint before any justice of the peace; and every justice, sheriff or constable failing to perform any of the duties required by this act, shall forfeit and pay one hundred dollars, one half to the informer, and the other to the use of the commonwealth, before any court having competent jurisdiction.

This act shall commence and be in force from and after the passage thereof.

An act authorising sheriffs and constables officially to give certain notices.

Approved, February 12th, 1808.

(See Acts of 1808, page 23.)

§ 1. *Be it enacted by the general assembly,* That it shall be lawful for any sheriff or constable to serve notices and make return thereof officially, in cases of application for obtaining and dissolving injunctions, taking depositions, making surveys under an order of court, the service of a declaration in ejectment, and every other notice which is required by law to be given, and such officer shall endorse thereon the time when any notice was given.

§ 2. There shall by the party requiring any notice to be given, be paid to the officer serving the same and taxed in the suit as other costs, the following fees: for serving a declaration in ejectment the same fee as heretofore allowed by law, and for serving any other notice twenty-five cents: *Provided, however,* that nothing in this act shall be so construed as to prevent any declaration in ejectment or notice from being served or given as heretofore.

This act shall be in force from the passage thereof.

An Act to amend the Penal Laws of this Commonwealth.

Approved February 1, 1813.

(See Acts of 1812, page 71.)

Section 1. *BE it enacted by the General Assembly of the Commonwealth of Kentucky,* That if any person shall wilfully, maliciously, or contemptuously interrupt, or disturb any congregation assembled in any church, chapel, meeting house, or other place of religious worship, or misuse any person being there; a justice of the peace, together with the sheriff, or under sheriff of the county, or constable, where such interruption or disturbance shall have been committed, shall come with the power of the county, (if need be) to arrest him or them, so disturbing the congregation, and shall ar-

Interruption of persons assembled for religious worship.

Offenders may be committed to jail by a justice of the peace.

Duty of the officer attending such justice.

Penalty on such offender.

Duty of the justice in case the offender departs.

Jury to be summoned

rest such person or persons, and put him or them in the jail of the county; unless he or they shall give bail with sufficient security for his or their appearance, at such time and place as may be fixed on by the justice aforesaid ; and it shall be the duty of the sheriff, or under sheriff, or constable, to summon twelve qualified jurors to attend at the time and place directed by the justice aforesaid; who, after being sworn by any justice of the peace for said county, shall proceed to punish each offender by a fine, not exceeding thirty dollars, and in default of the payment thereof, the person or persons so offending, shall be imprisoned, not exceeding fifteen days. And if the offender or offenders depart before the coming of such justice and sheriff, or under sheriff, or constable, the justice as aforesaid shall diligently inquire after such offender or offenders, by a precept to the said sheriff or under sheriff, or constable directed; and for this purpose the sheriff or under sheriff, or constable, having a precept to him directed by said justice, shall summon the offender or offenders, and return twelve proper persons for jurors—who having been sworn as aforesaid, or in case of their non-attendance, the deficiency being supplied by by-standers, shall inquire into such disturbance or interruption, and shall award against him or them, whom they shall find guilty thereof, due pains by imprisonment or amerce-

ment, as is before directed. And if any of the jury should fail to attend as aforesaid, he or they may be fined at the discretion of the said justice, not exceeding five dollars each; and should the sheriff, under sheriff or constable, fail to do the duty assigned him by this act, he shall forfeit to the commonwealth twenty pounds, to be recovered by action of debt in any court having cognizance thereof, to be applied towards lessening the county levy; and moreover the justices of the peace in every county, where such disturbance or interruption shall not be made in their presence, having information upon oath or affidavit, together with the sheriff, under sheriff, or constable of the same county, shall execute this act by summoning of a jury, and proceeding as before directed; and on default thereof, shall forfeit to the commonwealth thirty pounds, to be recovered by action of debt, in any court having cognizance of the like sums, to go towards lessening the county levy.

§ 2. *And be it further enacted,* That so much of the thirty-sixth section of an act, entitled "an act to amend the penal laws of this commonwealth," as comes within the purview of this act, shall be, and the same is hereby repealed.

§ 3. *And be it further enacted,* That the sheriff, under sheriff, or constable, shall be entitled to one dollar and fifty cents, for sum-

Penalty on the jurors failing to attend.

Penalty on the officer failing to do his duty; how collected and applied.

Penalty on the justice:

compensation to the officer—

how and by whom paid

Persons committing a rape to suffer death in certain cases.

Justice may direct a jury to be summoned in certain cases.

moning each jury under this act, and attending on the trial, and conducting to jail any offender against the same; the officer shall be allowed the sum of one dollar, for arresting each person, and for summoning each witness, twenty-one cents. And the defendant shall, in every case in which he is found guilty under this act, pay the cost of the prosecution; and the prosecutor shall, in every case where the defendant is acquitted, pay the cost of the prosecution, for which judgment shall be rendered, and execution issued as in other cases.

§ 4. *Be it further enacted*, That if any person shall hereafter be convicted of a rape upon the body of an infant under the age of twelve years, he shall suffer death.

All fines collected under this act, shall go to lessen the county levies, to be accounted for as other sums are for lessening the county levies.

An Act to amend the act to increase the jurisdiction of Magistrates.

Approved the 30th of January, 1813.
(See Acts of 1812, page 42.)

§ 1. *Be it enacted by the General assembly of the Commonwealth of Kentucky*, That whensoever hereafter a justice of the peace shall issue his warrant, and thereon bring any cause to trial before him, for any sum to the value of five pounds, and not exceeding fifty dollars, pursuant to an act of assembly, ent

tled "an act to increase the jurisdiction of magistrates," if either party shall require a jury, the justice so trying the cause, shall by warrant, authorise the constable, or other officer who acts before such justice, to summon a jury, possessing the same qualifications as jurors in the circuit courts, and subject to the same exceptions or challenge, to appear before said justice, at the time and place in such warrant directed; and if a sufficient number of those summoned shall not appear, or any of those appearing shall be challenged, and set aside, the deficit shall be supplied by the by-standers, or such others as the officer can procure. The justice of the peace shall proceed to charge such jury on oath, well and truly to try the cause to them submitted, and to determine such facts as may be submitted to them by the parties, and a true verdict to render agreeably to the evidence. And said justice shall preside over said trial, preserve order and decorum, and determine questions of law arising out of the cause, submitted to him by either party; and shall render judgment agreeably to the verdict when returned to him by the said jury.

§ 2. *And be it further enacted,* That said justice of the peace shall further have power to fine the constable, or other officer, in any sum not exceeding 10 dolls. for failing to summon said jury agreeably to the warrant issued

Subject to certain rules & regulations:

Duty of the justice,

& his power.

Justice may fine the constable for a neglect of duty;

or delin-
quent or
disorderly
jurors.

for that purpose; and shall also impose a fine on delinquent or disorderly jurors, in any sum not exceeding five dollars, having previously summoned such offender to shew cause to the contrary, or give him an opportunity of making his excuse.

constables
fees.

§ 3. *And be it further enacted,* That the constable, or other officer summoning said jury, shall be entitled to, and receive a fee of 75 cents, for summoning a jury pursuant to this act, to be collected and payable as his other fees are by law.

§ 4. *Be it further enacted,* That where the appellee, in an appeal from the judgment of a single justice, shall by his own act prevent the execution of the process before the second court, the court shall have power to continue the cause until such summons can be executed.

Jurisdic-
tion of jus-
tices of
the peace.

§ 5. *And be it further enacted,* That the justices of the peace in this commonwealth shall have exclusive original jurisdiction of all sums not exceeding fifty dollars, founded on any speciality, bill, or note in writing, or account.

Appellant
may adver-
tise against
appellee in
certain ca-
ses, and be
equivalent

§ 6. Where any appellee shall reside out of this commonwealth, so that a subpœna cannot be served upon him, it may be lawful for the appellant to proceed to advertise in some newspaper authorized by law to publish advertisements, under the same rules and regulations as are directed in suits in chancery;

which shall be equivalent to a service of a subpœna, and the court shall proceed to hear and determine the same, in the same manner as if the subpœna had been returned executed.

to service of subpœna.

§ 7. *Be it further enacted*, That it shall be the duty of the constable to endorse on the warrant the day that it was executed, the justice before whom it is tried, the place that the trial is to be at, and the day on which the trial is to be; and no justice shall proceed to try any suit, except by consent of the parties, unless it shall appear by the return of the constable, that the summons had been executed a reasonable time before the trial. *Provided*, that in causes tried before a justice of the peace under the provisions of this act, no fee shall be taxed in the bill of costs against the defendant for summoning a jury, unless he shall have controverted the plaintiff's right to recover.

Duty of the constable.

Proviso.

§ 8. *And be it further enacted*, That it shall not be necessary for the person appealing from the judgment of a justice of the peace under the provisions of this act, or the act passed at the last session of the general assembly, entitled "an act to increase the jurisdiction of Magistrates," to file a declaration; nor shall either of the parties be bound to any particular formalities in pleading or otherwise: *Provided*, however, that the court may make

In appeals, not necessary to file a declaration.

Proviso.

such order as they shall deem necessary for a fair and speedy trial of the cause on its merits.

Justices
fees. § 9. *And be it further enacted,* That the justices of the peace in this commonwealth, shall be entitled to the same fees for their services in the prosecution and trial of cases under five pounds, as they are entitled to receive for similar services in the prosecution and trial of cases above five pounds.

Constables are not permitted by law, either directly or indirectly, to purchase property which they sell under execution.

TABLE OF MAGISTRATES' FEES.

	D. C.
For copy of judgment and certifying papers on an appeal	50
For certificate of an oath where it shall be required	12½
For posting a stray, or strays where one or more of the same species are included in the same post note, for the whole service	17
For issuing an attachment and taking bond	50
For issuing summons for gurnishee or gurnishees and taking schedule of effects	12½
For an order of sale	12½
For attending to take depositions in any case, per day	1 00
For taking a recognizance of special bail	25
For certifying a power of attorney or deed of conveyance	12½
For issuing warrant in civil cases	12½
For giving judgment	12½
For trying and recording each case	12½
For attending to swear appraisers to the estates of deceased persons, per day	50
For issuing an execution	12½

TABLE OF CONSTABLES' FEES.

	D. C.
For taking a replevin or forth-coming bond	25
For levying an execution and a commission of six per cent on all sums above three dollars which may be contained in said execution.	25
For execution when debt replevied or delivery bond taken, half commission allowed.	
For serving a warrant for debt	25
For summoning witnesses in any case, each	12 $\frac{1}{2}$
For serving a peace or search warrant	1 00
For levying an attachment	37 $\frac{1}{2}$
For summoning gurnishee	25
For carrying a criminal to jail, each mile in go- ing and returning	4
For taking up a vagrant	50
For apprehending a person on a charge of felony	2 00
For pursuing and taking runaway boat-men <i>four-pence</i> for each mile the constable may travel in the execution of his office.	
For summoning jury to try the right of proper- ty, to be paid by the party cast by the in- quest of the jury,	1 50
For seizing and selling property in collecting the revenue or county levy, and clerks' and other officers' fees, for all sums under one dollar,	25

	D. C.
For all sums above one dollar, six per cent. in addition thereto.	
For summoning a jury under the riot act, attending on the trial, and conducting the offender to jail,	1 50
For the same under the act to prevent disturbances of religious worship	1 50
For taking special bail	25
For serving a notice	25
For summoning a jury pursuant to the act of 1813 to amend the act to increase the jurisdiction of magistrates	75
For pillorying a person	41½
For putting into the stocks	21
For whipping a slave by order of court, to be paid by the public	41½
For whipping a free person, to be paid by such person,	41½

Penalties to which Constables are liable.

Generally for breaches of duty, Constables are liable to be indicted and fined. *See page 22.*

Penalty of Constable's bond \$1000.

For a neglect of duty or a breach of duty may be fined on his bond by the party injured.

When Constable fails to account for executions, fines, or fee bills put into his hands to collect, the justice on

motion to give judgment for the amount, and 10 per cent. damages.

On judgments against Constables for breach of duty not allowed to replevy.

Failing to return a warrant, attachment or subpoena in 30 days, to pay five dollars to the party injured.

Liable to be removed by county court for breach of duty, and if removed to pay costs.

For charging more than lawful fees Constables liable to pay two dollars, besides paying back the over charge.

For failing to discharge duty under the riot act, liable to pay 20 pounds.

For permitting debtors to escape out of their custody; liable to pay the debt.

For neglecting to suppress unlawful gathering of slaves, liable to pay a penalty of fifty shillings.

For failing to pursue runaway boat-men when required liable to pay 5 dollars.

For failing to execute the law concerning bastardy liable to pay 10 pounds.

For making unreasonable seizures liable to an action by the party aggrieved.

For failing to execute the law against A B C and E O tables, gambling and gamblers, liable to pay 100 dollars.

For failing to execute the law relative to the disturbance of religious worship, liable to pay 30 pounds.

For failing to summon jury in civil cases, liable to be fined by justice 10 dollars.

INDEX.

	<i>Page.</i>
Arrests, power and duty of constables in relation	
thereto 10, 12, 15, 17, 19, 24, 49, 51, 61, 81, 84	
Arrest, what amounts to an	14
when unlawful	15, 49
in the night	25
Affray	10
Affrayers, concerning arresting	13
relative to presenting	17
Assaulting an officer, consequences thereof	21, 23
Appointment of constables	29
Attachments	37, 51
Act of assembly relative to constables' general duties	29
riots	41
escapes	53
boat-men	60
concerning bastardy	62
county courts	63
increasing the jurisdiction of magistrates	73, 86
concerning gambling	80
worship	84
Auction, sales at	47
Appeal, none allowed in riots	49
from justices	68, 69, 75, 78
Arbitration	76
A B C tables, how suppressed	81
Advertisement against absent defendant	88
Breaking open doors, when it may be lawfully done	13,
19, 20, 24.	
Bastards, mothers of	16
Bakers who sell under weight	16

Breach of the peace, for which constables ought to take	
the offender before a justice in all cases	17
committed in bawdy houses	19
Burglary	11
Bond, constables to enter into	30, 77
be renewed	38
payable to governor	31
when void	31
forth-coming	35
in cases of attachment	52
appeal	68, 76
Boat-men, act concerning	60
Bastardy, act concerning	62
Bail, special	74
Blank warrants not allowed	79
Conservators of the peace, constables	16
Constables, qualification thereof	11
not doing their duty	22
duty in seizing gaming table	82
when assaulted	21, 23
how proceeded against	31, 33, 37, 78
fee bill	92, 93,
County courts to appoint constable	34
remove constable	29
Constitution, clause relative to constables	99
Costs, prosecutor liable for	34
constables liable for on failure	34
in cases of riots	34
Ca. sa. return thereof	44
definition	45
Complaint on attachment	51
Contempts, how punished	71
Costs on appeal to county courts	76
Clerk's duty in certain cases	77
Drunkards	16
Discharge, constables may in certain cases	19
Duty of justice on return of search warrant	26

Districts to be laid off by county courts	29
Deputy, none allowed	30
Damages against constable	31, 32
Delivery bond	35
Distrain for fees	52
Exposing infants in the streets	13
Escape	15
constables aiding	19
Execution for costs	34
and sale of property	35
on forth-coming bond	36
return day thereof	36
return thereon	44
the order in which estate taken	45
when it binds the estate	46, 52
when slaves cannot be taken with	71
Escapes	54, 55, 56, 57, 58
Felons	11, 16, 17, 22
Felony, where none committed	19
not in certain cases	22, 24
Force to repel	27
Fee bills	33, 38
Forth-coming bond	35
Fees, constables	36 to 41, 43, 61, 74, 83, 85, 88
may distrain for them	37, 52
Fieri facias, when property rescued	27
Fieri facias, return therein	45
definition	45
to any county	47
Fees, Magistrates	74
Fines, how appropriated	43, 86
Fee bill, constables	92
magistrates	91
Gamblers, constables to apprehend	22, 82
General warrant	14, 15, 20, 24

History of constables office	9, 10
High ways, when out of repair, overseer to be present- ed by constable	16
Hugh and cry to be made	22
Imprisonment	12, 19, 42
Ingrossers and forestallers - - - - .	16
Justices, jurisdiction of - - - - .	18
Inn-keepers in certain cases to be indicted - - - - .	22
Indemnification of constable - - - - .	41
Infants, exposing them in the street - - - - .	13
cannot be constables	11
Jurisdiction of justices	15, 67, 74, 88
Jailors refusing to receive felons	22
Jurymen, qualifications of	23, 50
Justices of peace try motion against constable	31
jurisdiction of attachment	37
Jury to try right to property	40
rioters	42, 84
default of - - - - .	42
in civil cases - - - - .	87
Justices duty under riot act - - - - .	42, 43
Judgments, what penal	68
Injunction on money to be returned - - - - .	72
Justices to keep a record - - - - .	75
Justices' fees - - - - .	74
Justice's duty and power in fining - - - - .	42, 85, 87
Killing, by an officer in discharge of his duty, justifiable	23
Live stock, how kept - - - - .	35
Lands made liable to debts - - - - .	46
party may cause constable to sell such as he may think fit	47
form to be laid off when sold - - - - .	48
sold at three months credit	48
Limitation, none in felony - - - - .	49
Measures, false - - - - .	23

Murder, not for an officer to kill when acting in his own defence	-	-	-	23
Money collected by constables	-	-	-	30
Motion against constables	-	-	31, 33,	37
Magistrate's resignation	-	-	-	77
Magistrate's fee bill	-	-	-	91
Night walkers presented	-	-	-	16
arrest therein	-	-	-	23
Notice on motion	-	-	-	32
of trial by jury	-	-	-	49
of sale of property	-	-	-	46
to be given by constable	-	-	-	82
Overseers of roads to be presented by constable	-	-	-	16
Offenders, where to be carried	-	-	-	18
Officers when assaulted	-	-	-	21
Orchards, robbers thereof	-	-	-	22
Office, in removing constable from	-	-	-	23
Oath, constables	-	-	-	32
of party	-	-	-	37
Offenders under riot act pay costs	-	-	-	44
Officer to endorse on execution	-	-	-	46
Power and duty of constables in making arrests	10, 13, 14,			
	16, 17, 19, 20, 24			
in executing warrants				13
in making presentments	11,			22
in making pursuit after felons				11
parting affrayers	-			12, 13
in relation to imprisonment				12
Plague, persons inflicted therewith	-	-	-	22
Per cent. relative to	-	-	14, 18,	33
Pursuit into another county	-	-	-	17
Persons going unlawfully armed	-	-	-	19

Peace, breach thereof	-	-	-	19
constables conservators of	-	-	-	11
Process, constable to execute	-	-	-	30
failing to return	-	-	-	33
return not found	.	.	.	32
Papers, constable to return them	.	.	.	34
Prosecutor liable for costs	.	.	.	34, 44
Penalty for taking fees	.	.	.	37
on constables under the riot act	.	.	.	43
under boatmen's act	.	.	.	61
Persons at muster	.	.	.	49
Pursuit of property under attachment	.	.	.	51
Property, when bound by execution	.	.	.	46, 52
Penalty on constables under the act concerning bastardy	.	.	.	62
concerning gaming tables	.	.	.	82
concerning disturbers of religious worship	.	.	.	85
Qualification of constables	.	.	.	11
Qualifications of jurors	.	.	.	23, 50
Removing constable from office	.	.	.	23, 34
Replevin, what the law thereon	.	.	.	26
Residence, constables must go to	.	.	.	33
Riots, justices to give execution	.	.	.	34
how to be suppressed	.	.	.	41, 84
Replevin, none in cases of riots	.	.	.	34
allowed in certain cases	.	.	.	36, 39, 48
in cases of attachment	.	.	.	52
Return of attachments	-	.	.	37
Return day of execution	.	.	.	36, 72
Release of property when replevied	.	.	.	49
Sureties, constable cannot make a man find sureties	.	.	.	13
Shewing warrant	.	.	.	14
Sunday, serving process thereon	.	.	.	23
Search warrant	.	.	.	24
who to be served by	-	-	-	25

Search, when to be made	24, 25
Stolen goods	25
Search warrant, magistrate's duty thereon	27
Security to be given by constable	30
Stock, allowance for keeping	35
Sales, ten days notice	35
when made	46
where made	47
Security, none taken	36
Seizing and selling for fees	41
Sales in certain cases void	47
how made	52
surplus of, paid to debtor	72
Sunday	49
Slaves, unlawful gatherings, duty of constable thereon	59
when liable to execution	71
Supercedeas, when appeal to be	79
Taverns and tippling houses	16
Terror, those who put the people in terror may be stopped	19
Trial of the right of property	40
Time in which an appeal may be taken	77
Unreasonable seizures not to be made under executions	71
Vagrants	16
Warrants, constable to execute all issued by magistrates generally	13, 18
general	14, 20
relative to shewing it	14
that shew the want of jurisdiction	15
generally to apprehend all felons, void	15, 20
mode of executing	17
to whom to be returned	18, 19
to search	24

Warrants to search, when	:	24, 25
magistrate's duty	.	26
under attachment	.	51
how granted	.	78
Words, those who barely contend with	.	11
Weights, false	.	22
Whores, to be presented to the grand jury	.	16
Witnesses, privileged	.	50
Worship, interruption of	.	83

APPENDIX.

An act directing the county courts to appoint Patrolers.

Approved November 29th, 1799

Sec. 1. *Be it enacted by the General Assembly,* That the several county courts within this commonwealth, shall from time to time lay off their respective counties into as many districts, not exceeding five, as to them shall be deemed necessary; and appoint in each district a company of patrolers, to continue in office for twelve months, consisting of one discreet person, to be called the captain of the patrol, and as many others under his direction as they may deem necessary, not exceeding four, who shall severally take an oath to perform the duties assigned them by this act; and the said company so appointed, shall patrol as many hours in each month, as the court appointing the same may direct, but not to be less than twelve hours in each month, within their respective bounds to them assigned, and visit negro quarters and other suspected places of unlawful assemblies of slaves. And any slave found at such assembly, or who shall be found strolling about from one plantation to another, without a pass from his or her master, mistress, or overseer, shall receive any number of lashes on his or her bare back, at the discretion of the captain of the patrol, not exceeding ten, and if taken before a magistrate, he or she shall receive any number of lashes at the discretion of such magistrate, not exceeding thirty-nine, on his or her bare back. And no slave shall be suffered to buy or sell any article of property whatever, unless such slave shall have in writing particularly specifying in his or

County courts to appoint patrolers.

Patrolers' duty.

Punishment of slave strolling without a pass.

Or fund in possession of property not specified in his pass.

Compensation to the Capt. of patrol, and his associates.

Their privileges.

They are to return on oath the time of their service.

Repealing clause.

her pass, such article or articles; and any slave found in the possession of any article of property, without such writing as aforesaid, shall be subject to suffer any number of lashes at the discretion of the captain of the patrol, not exceeding ten, and if taken before a magistrate, he or she shall receive any number of lashes at the discretion of such magistrate, not exceeding thirty-nine, on his or her bare back. And the captain of the patrol shall receive as a compensation for his services, the sum of four shillings for every twelve hours he may be employed in the duties hereby enjoined him, and the assistant patrolers, shall receive for their services each of them, three shillings for every twelve hours they may be employed in the duties hereby enjoined them, to be paid out of the county levy, and moreover be exempt from militia service, for and during the term such person may continue in appointment as aforesaid. And the clerk of the said county, shall furnish the commanding officer of the regiment or judge advocate with the names of such patrolers and the time of their service. And the said patrolers shall make return upon oath of the time they have respectively been employed as aforesaid, before some justice of the peace, and such justice shall certify the same; which certificate shall be laid before the court of claims in each county, to be levied accordingly.

Sec. 2. *And be it further enacted,* That all and every act or acts or parts of acts that come within the purview of this act, shall be and the same are hereby repealed.

This act shall commence and be in force from and after the passage thereof.