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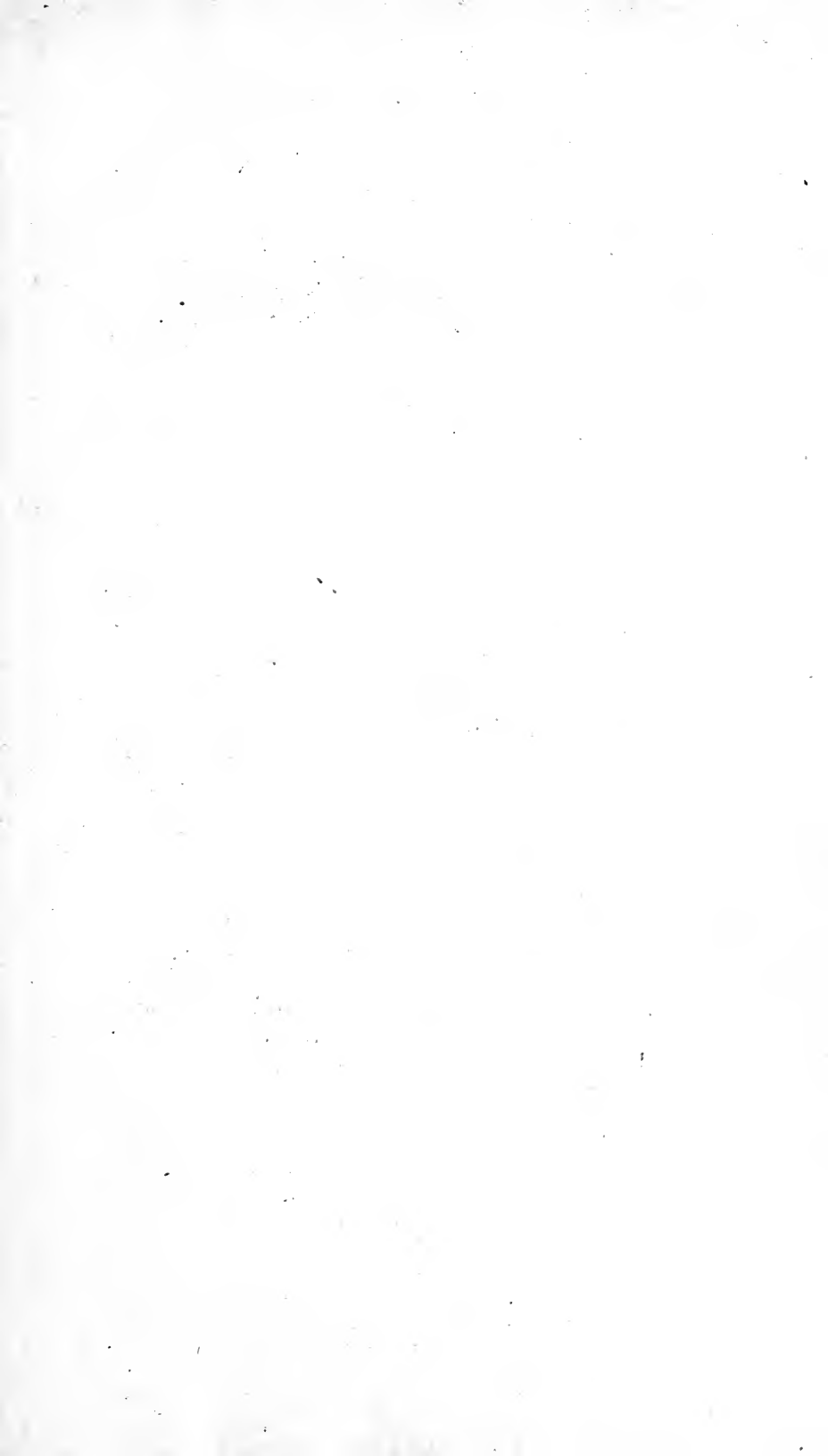
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T H E
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O F
C O N S T A B L E :

B E I N G
AN ENTIRELY NEW COMPENDIUM
O F T H E L A W
CONCERNING THAT ANCIENT MINISTER
FOR THE CONSERVATION OF THE PEACE.

CAREFULLY COMPILED FROM THE BEST AUTHORITIES.

W I T H A P R E F A C E ;

A N D

A N I N T R O D U C T I O N ,
CONTAINING SOME ACCOUNT OF THE ORIGIN
AND ANTIQUITY OF THE OFFICE.

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P R E F A C E.

ASINCERE wish to benefit the community, by furnishing its most ancient, most constitutional, and most useful officer with a compendious system or manual of his duty and powers, carefully extracted from, and upon an actual perusal of the best authorities, has produced the following sheets,—a mere epitome, in fact, of the original compilation. But the utility of the measure seemed, upon second thoughts, to be more favoured by a pamphlet, affording the fullest information in the narrowest compass, than by a volume, which the verbose prolixity of modern statutes, vying, as it were, with each other in conveying the simplest regulation in the most embarrassing manner, and greatest possible number of words, would have extended to a size and price little calculated to invite the class of readers for whom it was principally intended. The decision, therefore, was in favour of the briefest summary; such a one as men who have little money, leisure, or capacity (one or other, or, indeed, all of

which are, unfortunately, too often met with in the composition of a modern constable) might buy, read, and, if possible, understand*.

- The language, however, is generally that of the authority quoted; and the books referred to (which it may be occasionally necessary to consult) are to be found in many booksellers shops, and in the libraries of the four law societies: few barristers, at the same time, are without all or most of them; and some justices of peace, it is presumed, may possess "The Statutes at Large." It is undoubtedly a serious consideration, that the persons and property of almost all but professional men should be subjected to laws which they are totally ignorant of, and do not even know where to find, or how, unless by dear-bought and fatal experience, to get acquainted with; and of which the mere study is sufficient employment for the best part, if not the whole, of a long life. These "Statutes at Large," which, while they preserve many acts that are

* A small tract published under the direction of "the society (as it is called) for carrying into effect the kings proclamation," since the following pages were prepared for the press, has not appeared to supersede the present attempt. Of former publications on the subject it may be sufficient to observe, that all or most of them have been looked into.

not, and many more that ought not to be, in force, do not contain above half the number that are actually so*, are comprised in no less than

* The private and local acts, every where in force and no where to be met with, are at least as numerous. "How is this?" exclaimed a lawyer one day, "why all these proceedings of yours are manifestly illegal; contrary to *Magna Charta*; to the Bill of Rights, to the liberty of the subject, to —." "Sir," says his client, who was a churchwarden, "we have got an act of parliament." And thus it is; every little dirty parish in the environs of London must have a law for itself. The churchwardens or overseers can provide the money, the attorney wants a job, the justice looks forward to the penalties, and the *gemmen of the wessry* like authority; an act of parliament is accordingly obtained, and, being an admirable compound of ignorance and knavery, cannot fail of proving exceedingly beneficial to the community. To the statutes which *are not and ought not to be in force* may be added those which are altogether doubtful, and, till they come in question, cannot be positively said either to be in force or not. The drawer of a modern act of parliament seldom troubles himself about former laws on the same subject; he erects the new house and leaves the old one standing. It is a well-known observation of a grave and learned serjeant, that an act of parliament was much wanted to repeal all the laws made for thirty years past. This, to be sure, would be pretty well; but a retrospect of two or three hundred would be infinitely better. Lord Coke complains bitterly of the injudicious penners of acts of parliament in his time, "overladen," as he says, "with provisoes and additions, and many times on a sudden penned or corrected by men

than *sixteen closely printed quarto volumes*; the Common Law is dispersed through near *two hundred folios*, exclusive of every other size, many of which exist only in a barbarous gibberish peculiar to the profession *: even a very imperfect *abridgement* of it filling no less than *twenty-four*. This, however, is a complaint which has been so frequently and so ineffectually made †, that one must have pa-

of none or very little judgment in law." Those acts, however, which gave such just offence to this truly learned and eminent lawyer, will appear perspicuous as light, and "brief as womans love," when compared with the endless and inextricable parliamentary labyrinths of the present century. See also 1 Black. Com. 10.

* It was long since objected as a fault to the professors of the law, that they wrote their reports and books of the law in a strange and unknown tongue, which none could understand but themselves, to the end that people being kept in ignorance of the law, might the more admire their skill and knowledge, and esteem and value it at a higher price. Preface to Sir John Davis's Reports, published in 1628.

† Bishop Burnet, near a century ago, pronounced the law "the greatest grievance of the nation." And the great lord Bacon, who complains that the laws were then "subject to great incertainties, and variety of opinions, delays, and evasions," delivered a formal proposition to king James I. for their amendment; and this at a time when the statutes were in *two* volumes, and, beside the year books, there were but *four reporters* extant.

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tience till the mischief, every day increasing, shall remedy itself; till, in short, "there is A DROP TOO MUCH."

Sir William Blackstone observes that, considering what manner of men are for the most part put into the office of constable, it is perhaps very well that they are generally kept in ignorance of the extent of their powers*; an observation to which it may be readily conceived, the compiler of the following Digest does not subscribe. In fact, he has ever regarded it as equally farcastic, illiberal, and unbecoming; and only to be accounted for by the professional character and habits of the writer; who, doubtless, thought that *law*, like *religion*, being a *mystery*, the *scriptures* should in both cases be locked up in an *unknown language* or *unintelligible jargon* †; that the *profane* ought to know no more than the *initiated* may think fit to communicate; and that, in short, the most ignorant are the most tractable, and consequently the fittest for good Christians and good subjects. If the powers which the law has vested in the constable be so large, that it is even dangerous he should know them, why were they given him? why

* 1 Com. 356.

† 3 Com. 322. and Bentham's Fragment of Government, Preface, p. xxxv.

are they not taken away? why is he to be punished for neglecting duties of which it is best he should be ignorant? Would it not be full as well, considering what manner of men are for the most part put into the office of justice of peace, if they too were to be kept in ignorance of the extent of their powers? This, indeed, it may be, is already the case; though they do not on that account seem the less inclined to abuse them. But wherefor is it that such "manner of men" are put into the Office of Constable? Because upward of a hundred acts of parliament, which few ever see, and still fewer comprehend *, added to the arbitrary and capricious decisions of some courts, and the ignorance and innovation of others, have rendered it so burthensome, servile, vexatious, and expensive, that they who possess or usurp the power of filling it, select

* The emperor Caligula, it is said, caused his laws to be written so small, and placed so high, that, though all might clearly see, none could possibly read. The English law is thought by some to bear in many instances a great resemblance to the Roman. And it seems a maxim in both, that *ignorantia legis non excusat*. Others have not hesitated to say that British statutes resemble cobwebs, placed in darkness and obscurity, for the purpose of entrapping the smaller flies, in order to glut the *bottled-spiders* of Westminster Hall with their blood. But these, no doubt, are the ravings of beggered suitors, and consequently not to be regarded.

those

those who have nothing to recommend them but the willingness with which they receive the yoke, and the patience with which they bear it. The reason given for this partiality is, that *no* GENTLEMAN can accept *such an office*; poverty, both in purse and in spirit, being looked upon as the proper qualification for a constable. These same GENTLEMEN, it should seem, are *high-mettled horses*, who would kick and wince, and play the devil, in short, if you attempted to put them in the shafts; the VULGAR are *asses*, who tamely submit to every indignity. But, gentleman or no gentleman, he who can best afford to lose his time and money, who has spirit and ability to sustain fatigue, and resolution to oppose insult and oppression, is the fittest person to discharge the Office of Constable. To confer it, from whatever motive, upon people of base or inferior condition, was long ago reprobated by lord Bacon as “a mere abuse or degenerating from the first institution*.” And, certainly, the necessity of a man who depends upon his daily employment for the daily bread of himself and his family, and whose time is of course the most precious, ought to be a sufficient excuse in any court of justice why he should not be

* Law Tracts, 183.

compelled to serve this office; only it would probably cost him more to obtain the determination than he can value his time at. It is, doubtless, a very scandalous insinuation that justices of peace, who have some how or other acquired the power of making constables, select the meanest and most ignorant by way of magnifying their own wisdom and consequence; gems, it is well known, which require no foil to increase their lustre.

It is, by no means, a less abuse, when a person every way fit for the office is pitched upon, to admit in his stead any worthless fellow that he can procure, base enough to serve the duty for a few guineas. What integrity or propriety of conduct can be expected from one whose necessity renders every shilling that is offered him an irresistible temptation? The great Shakspeare has satirised this practice with admirable pleasantry, in his play of *Measure for Measure*, where he introduces the character of a foolish substitute bringing a charge before one of the dukes deputies:

Escalus. Come hither to me, master Elbow; come hither, master constable. How long have you been in this place of constable?

Elbow. Seven years and a half, sir.

Esa. I thought, by your readiness in the office, you had
had

had continued in it some time.—Alas! it hath been great pains to you! they do you wrong to put you so oft upon it. Are there not men in your ward sufficient to serve it.

Elbow. Faith, sir, few of any wit in such matters: as they are chosen, they are glad to choose me for them; I do it for some piece of money, and go through with all*.

If the preservation of peace and good order be the interest of society, the legislature would essentially contribute to that end in extending more effectual protection and encouragement to the constable. This would be done by causing all the laws which authorise or oblige him to do particular acts, or any way concern the execution of his office, to be reduced into a single statute, conceived in plain intelligible language †; and by requiring every court, at the election of a constable, to put a

* There is another not over-wise constable in the Comedy of *Much ado about Nothing*; and again in that of *Loves Labour Lost*. It is to be hoped such a character is not so very common now a days.

† A resolution of all the judges would answer the same purpose. Something of this kind, it is true, was formerly attempted by a chief justice, but being hastily, carelessly, and every way badly done, was deservedly rejected by his brethren.

copy of it into his hands : in order that, having his power and duty constantly under his eye, he might be without excuse in neglecting the one, and without danger in exercising the other. If it be true that every man who serves the public ought to be paid by the public, it is most unreasonable and unjust that a duty should be imposed upon any one, which, if attended to as it ought to be, would demand the greatest part of his time, not only without making him the slightest recompence, but even obliging him to be at (what is to him) a considerable expence ; for even the mere " consumption of time, to him who lives by the sale of his time, is equivalent to expence." Suppose, therefore, that every person duly elected a constable were, during his continuance in office, not exceeding one year, exempt from all taxes and impositions, parliamentary, or local ; and, in case of actions against him touching his office (the dread of which is one great obstacle to its due execution) should be allowed to defend, not *in forma pauperis*, but some really unexpensive mode *. This, if not an adequate

* The defence of actions by an *innocent man*. requires the fortune of a *rich one*. Even a *pauper*, who is to swear himself not worth *five pounds* in the world, will have

adequate compensation, would be a great relief, and in some cases, at least, an indemnity, to persons serving the office, would induce them to accept it with cheerfulness, and execute it with spirit, conscious that in so doing they were benefiting society without injuring themselves *. One cannot, however, have the satisfaction to think, that a suggestion so advantageous both to the community and to the individual, stands the least chance of ever passing into a law. If, indeed, the proposal were for a productive tax upon constables, or for the purpose of making bad worse, or of heaping oppression upon the oppressed, there would be little fear of its being adopted. This, therefore, is another of those self-reforming grievances which must be patiently suffered to attain their *worst* state.

To conclude: If the following pages prove at all instrumental toward making a single constable more active, confident, and secure in the discharge of such of the powers and duties of his office as are any way beneficial to society, (for the less he attends to the others

have to provide *ten*, or possibly *fifty* times that sum, to prosecute or defend his suit.

* In some parts of the north, the constable is intitled to an ancient *cess* charged upon certain lands, which has formerly amounted to a pretty considerable sum.

the

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the better,) the compiler will have reason to flatter himself that his efforts, though humble, have not been useless.

INTRO-

INTRODUCTION,

§ 1. **T**HE origin of the word **CONSTABLE**, which some etymologists have erroneously sought for in the Saxon language (¹), is undoubtedly to be found in the *Comes Stabuli* of the Eastern empire: hence the *constabularius*, *constabulus*, &c. of barbarous Latinity; the *connestable* of the French; the *conestabile* of the Italians, &c. (²) This *comes stabuli* was at first, as his title imports, no more than prefect or superintendant of the imperial stables, or, in other words, the emperors master of the horse; but having, in process of time, obtained the command of the army, his name, corrupted into *constabulus* and *constabularius*, began to signify a commander; and, with this signification, appears to have been introduced into England at the Norman Conquest, or, perhaps, sooner; since, in fact, some such officer seems to have been already known under the title of *Stallarius*.

§ 2. **THE CONSTABLE (OR LORD HIGH CONSTABLE) OF ENGLAND** was an officer of the highest dignity and importance in the realm. He was the leader of the kings armies; and had the cognizance of all contracts and other matters touching

(¹) See Lambard, Sir T. Smith, and others.

(²) See Spelman's Glossary, *voce* **CONSTABULARIUS**.

arms or war ⁽³⁾. This office, which appears to have been granted by William the Conqueror to Walter earl of Gloucester, or, according to others, to William Fitzosbern, or Roger de Mortimer, became, afterward, hereditary in two different families, as annexed to the earldom of Hereford; and, in that right, after a lapse of near two centuries, (several persons enjoying the title and authority in the mean time) was revived, by judgement of law, in the person of Edward Stafford duke of Buckingham; but Henry VIII, thinking the office too high and dangerous for the hands of a subject, took the first opportunity of putting an end to it by cutting off his head. Since this period, there has been no lord high constable, except *pro hac vice*, as Robert earl of Lindsey was appointed in 1631 to determine the appeal of lord Rea against Ramsey, and as some person or other is created at the coronation of a king or queen.

§ 3. We had also CONSTABLES OF CASTLES, that is, keepers or governors, so called, of the castles of the king or great barons, whom the French term *châtellains*, from the Latin *castellani*, and who were frequently hereditary, and by feudal tenure; such were the constable of the tower, the constable of London, or Baynards-castle, the constables of the castles of Dover, Windsor, Chester, Flint, &c. some of which offices, though not now hereditary, are remaining to this day. These are the constables intended in *Magna Charta*, cc. 17. 20. and who, in the statute of Westminster the first (3 E. 1. c. 15.)

(3) 13 R. 2. ft. 1. c. 2. See also Madox's History of the Exchequer, p. 27, &c.

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are called constables of fees, and there considered as keepers of prisons; a constituent part, indeed, of all ancient castles. Lord Coke observes that before *Magna Charta* these constables of castles had the like authority within their precincts as the sheriff had within his bailiwick, and commonly sealed with their portraiture on horseback (*). The statute of 5 H. 4. c. 10. which recites that, by colour of their commissions as justices of the peace, they took people to whom they bore evil will, and imprisoned them in their castles till they made fine and ransom for their deliverance, and ordains that none be imprisoned but in the common jail, seems to have put an end to a race of tyrants so odious to the people as to be usually represented in romances under the character of monstrous giants, who, not content with the property, would eat the flesh, drink the blood, and grind the bones of the unwary and unfortunate traveler.

§ 4. There was likewise formerly a CONSTABLE OF THE EXCHEQUER; of whom we may read in the *Dialogus Scaccarii*, l. 1. c. 5. in the statute *De Distractione Scaccarii* (51 H. 3. st. 5.) in Fleta, l. 2. c. 31. and in Madox's History of that Court, p. 724, &c. We also find mention made in some old statutes of THE CONSTABLE OF THE STAPLE. See 27 E. 3. c. 8. 15 R. 2. c. 9. 23 H. 8. c. 6.

§ 5. We now come to THE CONSTABLE OF THE HUNDRED, OR HIGH, CHIEF, OR HEAD CONSTABLE (as he is otherwise called) of whom we shall have a little more to say. By the statute of

(*) 2 Inst. 31. See also W. 1. c. 17.

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Wynton, or Winchester (13 E. 1.) c. 6. it is ordained, that in every hundred or franchise there shall be chosen two constables to make the view of armour, as directed in the preceding part of the chapter; and that the constables aforesaid shall present before the justices assigned the defaults of armour and of the suits of towns and of highways; and shall also present those who harbour strangers in upland towns for whom they will not answer. They are likewise to present sheriffs or bailiffs who do not follow the cry of the county.

It is agreed by Mr. Lambard (⁵), by sir Edward Coke (⁶), and by sir Matthew Hale (⁷), that constables of the hundred were first introduced by this statute. And though Fitzherbert (⁸), and Crompton after him (⁹), have asserted that they were conservators of the peace at the Common Law; and though it is said in other books that "notwithstanding the opinions to the contrary," the high constable was an officer at the Common Law, and that the statute of Wynton only enlarged his authority (¹⁰), yet no one has hitherto produced the least evidence in support of such assertion. On the other hand, beside the authority of Coke and Hale, it has been expressly held from the Bench, that a high constable is not such an officer, nor conservator of the peace, whereof the

(⁵) On Constables, 3.

(⁶) 4 Inst. 267.

(⁷) 2 P. C. 96.

(⁸) J. P. 156, b.

(⁹) J. P. 201, b.

(¹⁰) 3 Keble, 231. Salk. 175. 381. 11 Mod. 215. L. Ray. 1193. 1195.

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Common Law takes any notice; that he is not mentioned in any book; and that, in fine, he is only by custom and for conformity⁽¹¹⁾. It must be confessed, that the first mention made of the high constable in any statute subsequent to that already cited, is by 4 E. 4. c. 1.⁽¹²⁾ And though sir William Blackstone has, in one place, attempted to carry up his antiquity as high as king Henry II.⁽¹³⁾ he, in another, expressly mentions him to have been first ordained by the statute of Winchester⁽¹⁴⁾. After all, however, nothing can be more certain than that the constable of the hundred, or high constable, whether he be allowed an officer at the Common Law or not, was instituted long before that statute. This curious fact is ascertained by a writ or mandate of the 36th year of king Henry III. preserved in the *Adversaria* to Wats's edition of Matthew Paris, and from which chapters 4. and 6. of the statute of Wynton are evidently taken, though it has hitherto escaped the notice of every writer or speaker upon the subject. By this writ it is provided, that in every hundred there should be constituted a CHIEF

(11) Cro. Eliz. 375. where it is said that in the North they had no high constables, which appears from Nordens *Description*, p. 30. to be the case in Cornwall.

(12) He afterwards occurs in 19 H. 7. c. 11. 22 H. 8. c. 23. 24 H. 8. c. 10, &c.

(13) 4 Com. 211. The *præpositus hundredi*, whom the learned author has mistaken for the high constable, seems to have been the bailiff of the hundred, as *præpositus comitatus* is the sheriff, and *præpositus manerii* the bailiff or reve of the manor. *Vide* Spelman, *in voce*. The *præpositus hundredi* is frequently mentioned in Domesday Book.

(14) 1 Com. 355.

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CONSTABLE, at whose mandate all those of his hundred sworn to arms [*i. e.* to have such arms, according to the quantity of their lands or chattels, as there directed] should assemble and be observant to him for the doing of those things which belong to the conservation of the kings peace (¹⁵). No mention, it is believed, of this officer can be any where found prior to the date of this instrument; which, however, it may be contended, no more determines the question as to his original creation, than the statute of Wynton appeared to do; the language in both cases being imperative, and the only difference consisting in the word *eleus* (chosen) for *constituatur* (constituted). Be this as it will, the discovery ought at least to teach not antiquaries alone, but even lawyers and judges to look a little into matter of record, and trust less to opinion, which ought no more to be law upon the Bench than it is off it.

§ 6. The CONSTABLE OF THE VILL (OR PETTY CONSTABLE, as, to distinguish him from the constable of the hundred, he is frequently called) has been repeatedly acknowledged by the law to be “one of the most ancient officers in the realm for the conservation of the peace (¹⁶),” and is declared by lord Coke to be as ancient as torns or leets be, and not to have begun about the beginning of E. 3. as some have supposed (¹⁷). It must be confessed, however,

(¹⁵) *In singulis vero hundredis constituatur UNUS CAPITALIS CONSTABULARIUS, ad cuius mandatum omnes jurati ad arma de hundredis suis conveniant, & eis sint intendentes ad faciendum ea que spectant ad conservationem pacis nostræ.*

(¹⁶) Popham, 13. and below, p. 1.

(¹⁷) 4 Inst. 265. His lordship here alludes to the opinion of

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however, that no mention of him, by this identical name, is any where found to occur anterior to the writ or mandate, already mentioned, of king Henry III. whereby it is provided, that in every villate or township there should be constituted a constable or two, according to the number of the inhabitants⁽¹⁸⁾. It is, nevertheless, pretty certain, that lord Cokes idea is right, and that this officer is actually owing to the institution of the frankpledge, usually attributed to king Alfred, and was in fact originally the senior or chief pledge of the tithing or *decenna*. In support of this position we may observe, that the constable (or an officer resembling him) is, in many places, at this very day, called the *headborough*, *tithingman*, or *borsholder*; all names belonging to the chief pledge, and to be found in numerous statutes in company with and as synonymous to *constable*⁽¹⁹⁾;

of Mr. Lambard, who says, "About the beginning of the reign of K. Ed. 3. petty constables were devised in towns and parishes for the aid of the constables of the hundred." An opinion which certainly detracts from the character of Mr. Lambard as an industrious or judicious antiquary. Lord Bacon, on the contrary, who allows the great antiquity of (petty) constables, doubts that the high constable was not *ab origine*, and only introduced for conveniency sake "when the authority of the justices of the peace [who did not exist before the first year of Edw. 3.] was enlarged by divers statutes." Law Tracts, 181. An idea equally erroneous.

(18) *In singulis verò villatis aliis constituatur UNUS CONSTABULARIUS vel duo, secundum numerum inhabitantium & provisionem prædictorum.*

(19) See 28 H. 8. c. 10. now repealed, in which we have likewise a *thirdborough*. See also Sir T. Smith, Commonwealth of England, 174, and Lambard on Constables *passim*.

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that the statute of 2 E. 3. c. 3. in which the name of *this* constable first occurs, the words are "BURGH-ALDRES, CONESTABLES, *et gardeins de la pees*;" and, lastly, that in the stat. of 20 H. 6. c. 14. the "CONSTABLES, TITHINGMEN, and CHIEF PLEDGES of every town, are required to aid the venders of goods in disputes with the kings purveyors." It was therefor rightly adjudged in *B. R. 23 C. 2.* that "*decennarius, prima facie*, is the same with a constable, and differed little in the execution of that office;" though Hale (who has elsewhere told us all he knew about the matter) said he was not the same officer (²⁰). It therefor follows, that the above ordinance

(²⁰) 1 Ven. 170. It should seem, indeed, from Lambard and others, that where there is a constable as well as a tythingman, headborough, or thirdborough in one and the same place, the office of the latter is inferior to that of constable. In Shakspeares comedy of *Much ado about Nothing*, two of the characters are a "constable" and a "headborough;" but, though it is sufficiently evident that Master Dogberry, the constable, takes a great deal more upon him than his "partner," yet as he supposes himself by much the wiser man, it is not perfectly clear that he was invested with any greater degree of authority. It is allowed, however, that where there is only a headborough, thirdborough or tythingman, his office does not at all differ from that of constable. One is, therefor, at a loss to conceive why the court (Gould J.) should, on the trial of Power for murder (O. B. Sep. 1789), ask one of the witnesses, "What are you, a *constable* or a *headborough*? — *A.* I am *headborough* of Aldgate." "Was there *any constable* in the passage at that time? — *A.* There was not." Since, the arrest being illegal for want of a *warrant*, it could make no difference what he was, nor whether any constable (supposing Aldgate had *both* constable and headborough) were present or not. Sly, the drunken tinker, in the *Taming of the*

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ance of Hen. III. far from instituting the office, merely enlarged the number of officers, placing them in towns and villages, instead of franchises; since it might frequently happen, that a manor of great extent had only a single constable for several townships; a case exactly similar, indeed, sometimes occurring at this day, where a township, comprehending several hamlets, equally populous it may be with itself, has only one constable for the whole ⁽²¹⁾. We find the constable beginning to be familiarly known by that name in the time of king Edward I, though

the Shrew, is threatened by his hostess with the “*thirdborough* ;” and, the term not being familiar to the London editors, got corrupted into *headborough*, which is evidently incongruous and absurd: “*Third, or fourth, or fifth borough*,” says he, “I’ll answer him by law.” In *Lopes Labour Lost*, Goodman Dull says, he reprehends the dukes own person, and calls himself “his grace’s *tharborough*.” Norden, in his *Description of Cornwall*, p. 30, tells us, that “tythings have *therdbarows*, in some places *bedbarows*, in some *borrowbeds*, and in the weste partes a tything man.” And Ben Jonson, in his *Tale of a Tub*, introduces the “high constable of Kentish-town,” the “headborough” of Islington, the “petty constable” of Hamstead, the “thirdborough” of Belfise, and “the high constables man.” This *thirdborough* is supposed by Blount a corruption of the Saxon *freoborg*, or freepledge; but, if one may be allowed the conjecture, it is not improbable, that as the *headborough*, or chief pledge, was the *first* man of the *ten* or *decenna*, and had the supreme authority, so the first man of each of the remaining *tbrees* (that is, the *first, fourth, and seventh* of the *nine*) might have had some subordinate jurisdiction as his assistants, and hence receive the name of *thirdboroughs*. The common pledges were called *handbarrows*.

(21) The book of *Villarum*, in the Exchequer, sets out all the vills, and there cannot be a constablewick created at this day (unless by act of parliament). 1 Mod. 13.

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it is not a little extraordinary that (not to mention Bracton, who wrote toward the end of the reign of Henry III.) there should not be a word about him in either Britton (²²) or the Mirror, and that he should be only incidentally named by the author of Fleta (²³) who has express chapters on the different and most inferior ministers of the law in his time. In certain articles of inquiry at the Eyre, perhaps, or Trailbaston, certainly in the time of Edward I. (²⁴) are the following items :

¶ *De ceus ke sunt CONESTABLES DE VILLS ou baylifs le roy, ke unt lor garfouns ovek eus de atacher les felouns, e il les fount garnir avant par quey lez comandemens le roy ne peussent estre tenuz en nul poynt* (²⁵).

¶ *De ceus ke desturbent les CONESTABLES DE VILLS ou bailifs, ou autre ministre, kil ne poent lor office fere*

(²²) He seems to mean constables in chap. 16. by *gardeins de villes*.

(²³) He is supposed to have been one of king Edward the First's judges, and by him committed to the *Fleet*. Britton, also, is thought to have been a judge, if not a bishop, in the time of the same prince. The Mirror was compiled by one Horne, citizen and chamberlain of London, in the reign of Edward the Second.

(²⁴) Coll. Madox, Mus. Brit. iii. 285.

(²⁵) Of these who are constables of vills or bailiffs of the king, who have their men with them to attach felons, and cause them to give notice beforehand by whom the commands of the king could not be kept in any instance; or it may mean, and cause them (the felons) to be forewarned (*i. e.* of the coming of the justices) whereby the kings commands cannot be observed, &c.

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come il sunt charget per le roy pur la pes de sa terre garder (²⁶).

He seems also to be meant by the two following chapters of the Eyre, as given in Fleta, l. i. c. 20. §§ 126. 133.

De vic' CONSTABULARIIS vel aliis qui retonsores ceperint, vel attachiaverint cum retonsfura cruda vel cum platis seifitos, & qui pro mercede eos deliberaverint & attachiamentum illud conclaverint (²⁷).

De vic' CONSTEBULAR' & ballivis quibuscunque qui mercedem ceperint per sic, quod pacerent & fingerent attachiare suspectos, vel qui eos attachiaverint, sive Christianos sive Judæos, pro levi suspitione, quos non invenerint seifitos cum retonsfura, & ipsos pro mercede deliberaverint (²⁸).

Several of these charges or articles of inquiry, even of the time of Hen. III. are extant in old chronicles, but none of them has been found to make any mention of the constable.

He is named in the statute of 2 E. 3. c. 3. already

(²⁶) Of those who disturb the constables of vills or bailiffs, or other ministers, that they cannot do their office, as they are charged by the king for keeping the peace of his realm.

(²⁷) Of sheriffs, constables, or others who shall have taken or attached clippers or coiners, seised with (or possessed of) the thing clipped (or coined) fresh, or with (or of) unwrought silver, and for reward shall have let them go, and concealed the attachment.

(²⁸) Of sheriffs, constables, and bailiffs whomsoever, who shall have taken reward for this that they should connive at and feign to attach suspected persons, or who shall have attached them, whether Christians or Jews, for a light suspicion, and not finding them seised with the thing clipped, shall have let them go for reward.

mentioned,

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mentioned, for the first time, and in those of 4 E. 3. c. 10. 5 E. 3. c. 14. 25 E. 3. ft. 1. c. 6. and 36 E. 3. ft. 1. c. 2. in several statutes, now repealed or obsolete, in the reigns of R. 2. H. 4. and H. 6. in the 1 H. 7. c. 7. &c. &c.

In the *Vision of* (i. e. concerning) *Piers the Plowman* are the following lines, which may serve to give us some imperfect idea how he was considered in the time of that writer (i. e. about the year 1380).

The king swore by Christe and by his crowne betw
 That wrong for his werkes should woo thorowly,
 And commanded A CONSTABLE to cast him in prons,
 And let hym not these seven yeres see hys fete once ⁽²⁹⁾.

This passage is the rather curious, as we do not elsewhere find that the constable had any power to put people in irons, much less to detain them for so considerable a length of time. Possibly, however, it is to be understood of the constable or keeper of a castle, before mentioned; although it must be confessed that the expression would in this case have been more accurately *THE constable*, since there could not well be more than *one* such officer attending the court.

§ 7. Notwithstanding any thing that has been said or omitted in the course of this enquiry, it seems highly probable that, at the Common Law, and before the mandate of Henry III. the constable of the hundred, and the constable of the manor, were officers of the same nature and authority, originating at the same time, and differing only as to the extent of their several districts: In short, that they bore to each other the same analogy as subsisted between the

(29) Fo. xviii, b.

bailiff

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bailiff of the hundred and the bailiff of the manor; and, consequently, that the local jurisdiction of the constable of the hundred was commensurate with that of the torn or leet at which he was elected, being such part of the division only as was not comprehended within the jurisdiction of any other leet. It follows, therefore, that the constable of the hundred neither possessed nor could have exercised any more authority within the precinct of the leet, than the constable of one manor possessed or could have exercised in another; the manor being, to all intents and purposes, exempt from and excluded out of the hundred ⁽³⁰⁾. The preeminence, therefore, which the constable of the hundred is supposed to have, or may think proper to assume, over the constables of manors or townships within the hundred, is altogether unfounded and imaginary, and might, with equal justice or propriety, be claimed by the bailiff of the hundred or sheriff of the county over the bailiff of the manor, or, in short, by any one constable over another whose district was more circumscribed; for though, as lord Bacon observes, the high constables authority hath the more ample circuit, "yet I do not find," says he, "that the petty constable is subordinate to the high constable, or to be ordered or commanded by him ⁽³¹⁾." Those cases, therefore, wherein it has been adjudged, that the being subject to a particular leet shall not excuse a man from serving the office of constable of the hundred, seem

⁽³⁰⁾ See 4 Inst. 261. It should hence seem that at this day a warrant directed to all constables generally, cannot be legally executed by the high constable within the limits of any petty constabulary.

⁽³¹⁾ Law Tracts, 181. 187. .

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to have been decided upon a wrong principle, and (to use an expression of sir Edward Coke) "for want of the knowlege of antiquity (32)."

All this, however, is spoken with an exception not of acts of parliament only, which, tinker-like, for one flaw they pretend to remedy, make a hundred (33), but also of the powers and pretensions exercised or asserted by the quarter sessions, which being generally composed of men who neither know nor care what the law is, and who, therefore, consider themselves as a sort of legislative body, and at liberty to do whatever they please,—finding it, perhaps, much easier to make new laws than to become acquainted with those already made,—has, in direct opposition to a positive rule of law (34), usurped so much, and so long, with respect to the election and controul both of the constable of the hundred and of the constable of the vill, that it is become difficult, if not impossible, to determine, with any degree of precision, the actual rights of either.

(32) 3 Keble, 197. 230, 231. Freeman, 348. 11 Mod. 215.

(33) To offer advice to the legislature may be a presumptuous but is certainly a useless measure. It would, however, lessen the mischief which almost every act of parliament unintentionally does, if a general saving or proviso were introduced, as is usual in private acts, whereby every right, law, or custom, not expressly taken away or altered by such act, should continue in force.

(34) That a court created by act of parliament cannot prescribe, nor exercise any authority which is not thereby expressly given to them. "How," says Holt, "can justices of peace make a constable, who is an officer at Common Law, and they only by statute?" 12 Mod. 180. See also 4 Inst. 267.

T H E
O F F I C E
O F
C O N S T A B L E.

C H A P. I.

O F H I S Q U A L I T Y.

10 E. 4. 18. **T**HE constable was ordained to repress felons, Conservator and to keep the peace, of which he was and of the peace.
Cromp. J.P. is a conservator by the common law*.
201. 4 Inf.
265.

His

* Conservators of the peace, by the common law, were,
1. in respect of their offices; 2. constituted for the purpose.
Those in respect of offices were (and still are) 1. the king;
2. the chancellor or keeper of the great seal; 3. the lord high
steward; 4. the lord marshall; 5. the lord high constable;
6. the justices of the court of Kings Bench; 7. the lord trea-
surer; 8. the master of the Rolls; (N. B. the last two are
doubtful;) 9. the sheriff; 10. the coroner; and, 11. the (pet-
ty) constable. Those constituted for the purpose (and instead
of whom are the modern justices of peace) were, 1. ordinary;
2. extraordinary. The ordinary were, 1. by tenure; 2. by
election; 3. by prescription. Those by tenure were such as
held lands of the king by this particular service, amongst
others, of keeping the peace within a particular district. Those

B

by

1 Hale P.C.
88

His office is, therefore, 1. original or primitive, as a conservator of the peace; 2. ministerial and relative to justices of the peace, coroners, sheriffs, &c. whose precepts he is to execute.

1. Conser-
vator.
2. Minister
of the jus-
tice, &c.

1 Hale P.C.

459.
Comb. 446.
Carth. 508.
1 Salk. 176.
L. Raym.
1300.
12 Mod.
316.
Foster,
312. n.
2 Black.
Rep. 1135,

He is, however, an officer only for his own precinct, and cannot execute a warrant directed "to the constable of the vill," or "to all constables" generally, out of that particular jurisdiction; for he is a constable no where else; nor is he compellable to do it, though the warrant be directed to him by name; but he may if he will, and so may any other person*.

Local jurif-
diction.

1 H. Black. 13.

by election were such as were chosen to this office in pursuance of the kings writ by the freeholders in the county court. And those by prescription were such as claimed this power by immemorial usage in themselves, their ancestors, predecessors, or those whose estate they had in certain lands. The extraordinary were persons especially commissioned by the king, in times of imminent danger, to take care of and defend a particular district, and to preserve the peace within the limits thereof. The general authority of all these conservators was the same, being that which the (petty) constable has at this day. But none might award process, or take recognizance for the surety of the peace, beside the king, the great officers already named, and judges of record; though all might take such surety by obligation. See 2 Hawk. P. C. 43, 44, 45. (new edition) and the authorities there cited.

* By 24 G. 2. c. 55. in case any person, against whom a warrant shall be issued, shall escape into, or be in any other county, &c. it shall be lawful for any justice of that county, &c. upon proof on oath of the hand-writing of the justice who granted the warrant, to indorse his name thereon, which shall be a sufficient authority to the person bringing the warrant, and all others to whom it was originally directed, to execute the same in such other county, &c. But even under this act a constable is not compellable to go out of his district.

Comb. 204. He is an officer of the court of quarter sessions, Officer of the Sessions over whom they have power*.

C H A P. II.

OF HIS QUALIFICATION.

8 Rep. 41.
b,

THE common law requires, that every constable should be *idoneus homo*, i. e. apt and fit to execute the said office; and he is said in law to be *idoneus* who has these three things, honesty, knowlege, and ability; honesty, to execute his office truly, without malice, affection, or partiality; knowlege, to know what he ought duly to do; and ability, as well in estate as in body, that he may intend and execute his office, when need is, diligently, and not for impotency or poverty to neglect it; for if poor men should be chosen to this office, who live by the labour of their hands, they would rather suffer felons and other malefactors to escape, and neglect the execution of their office in other points, than leave their labour, by which they, their wives and children live: and the commonwealth consists

* This power seems to be given to the justices of the peace by the second clause of their commission: " We have also assigned you, and every two or more of you (of whom, &c.) our justices to enquire the truth more fully, by the oath of good and lawful men of the aforefaid county, . . . of all and all manner of felonies, &c. And also of all sheriffs, bailiffs, stewards, CONSTABLES, keepers of gaols, and other officers, who in the execution of their offices *about the premisses*, . . . have unduly behaved themselves . . . or have been . . . careless, remis, or negligent in our aforefaid county."

in the well-ordering of particular towns, and order will not be well observed in them but where the officers are *idonei*, i. e. honest, knowing, and of ability. . . . And if one be elected constable who is not *idoneus*, he, by the law, may be discharged of his office, and another man who is *idoneus* appointed in his place.

Bacons L. T. 183. The petty constables in towns ought to be of the Better fort. better sort of resiants; save that they ought not to be aged or sickly; but men of able bodies, in respect of the keeping watch and toil of their place; neither ought they to be in any mans livery.

Dalt. J. P. 58. For constables chosen out of the meaner fort, they Meaner fort. are either ignorant what to do, or dare not do what they should, or are not able to spare the time to execute this office: they are therefor to be able men, Able men. and to be chosen of the abler sort of parishioners; and are not to be chosen either by the house or other custom.

1 Mod. 42. He ought not to be the keeper of a public Publican. house*.

Freeman, 256. And must be an inhabitant of the place for which Resiant. he is chosen.

* Such persons are expressly prohibited in Westminster, by 29 G. 2. c. 25.

C H A P. III.

OF HIS ELECTION.

4 Inst. 265. **H**E is chosen, by the common law, at the leet, or, Leet or
 2 Salk. 502. where there is no leet, at the tourn; ourn.
 Comb. 416. times by the jury, and sometimes by the steward,
 2 Jones 212. according to ancient and particular usage. If he be
 Salk. 175. present, when chosen, he is to take the oath in court;
 L. Ray. 70. if absent, he may be sworn before a (single) justice
 71. of the peace. But in the latter case he ought to have
 Strange, special notice of his election, and a time and place
 1119. should be appointed for his taking the oath.
 5 Mod. 130,
 131.

13 & 14. In case a constable dye, or quit the precinct, two Two jus-
 C. 2. c. 12. justices may make and swear a new one, till the lord of tices.
 Comb. 328. the manor shall hold a court leet, or till the next quarter
 Strange, sessions, who may either approve of the constable so
 798. made, or appoint another. Also, if he continue above
 1050. 1213. a year in office, the quarter sessions may discharge Quarter ses-
 Bullstr. 174. him, and put another in his place until the lord shall sions.
 Styles, 362. hold a court. But justices of the peace, either in or
 out of the quarter sessions, cannot in any other case
 discharge a constable chosen in the leet *.

A man--

* The following persons are exempt from being compelled to serve this office :

1. Attorneys of the Courts of Kings Bench and Common Pleas. (Noy, 112. Cro. Car. 389.) 2. Barristers (as it seems. 1 Mod. 22. 3. The president and fellows of the college of physicians, in London. (32 H. 8. c. 40.) but no other physicians; nor they or others elsewhere. (1 Mod. 21.

omb. 285. A mandamus may be granted to the steward of a Mandamus.
court leet to swear a constable.

Strange, 920. A person may be indicted for not taking upon him Indictment.
the office of constable.

5 Mod. 130. In the leet or tourn where one is elected constable, Fine or
and refuses to be sworn, he may, if present, be fined amercia-
for the contempt; if absent, amerced or subjected to ment.
a penalty for non-acceptance of the office according to
the order.

Vide tamen 1 Sid. 431. 2 Keble 578.) 4. Freemen of
the company of surgeons of London, examined, approved,
and exercising the science of surgery. (5 H. 8. c. 6. 32 H.
8. c. 42. 18 G. 2. c. 15. and *vide* Comyns, 312) 5. Free-
men of the mystery of barbers of London. (5 H. 8. c. 6. 32 H.
8. c. 42. 18 G. 2. c. 15.) 6. Dissenting teachers. (1. W. &
M. c. 18.) 7. Apothecaries practising in, or within 7
miles of, London, free of the company; or in the country,
having served 7 years. (6 & 7 W. 3. c. 4.) 8. The original
proprietor or first assignee of a certificate for prosecuting certain
felons to conviction (commonly called a Tyburn ticket) if a
parish or (as in London) a *ward* office (within the *parish* or
ward in which the felony happened) to be only once used. (10 &
11. W. 3. c. 23). But note, this is no exemption from serving
the office for a *manor*, nor, as it should seem, for a *vill* or *town-
ship*. (2 Bur. 1182.) 9. A parliament manservant. 2. (Mod.
13.) 10. Naturalized foreigners. (5 Bur. 278.) 11. Persons
serving in the militia. (26 G. 3. c. 107. § 130.) And 12. In
Westminster, persons aged 63. (31 G. 2. c. 17 *.) But not
persons being, 1. masters of arts (5 Viner, 429); nor, 2. Justices
of the peace in another county (Strange 698.); nor, 3.
officers of the guards (1 Lev. 233); nor, 4. officers or watch-
men of the custom-house (1 Sid. 272. 1 Keble 933.); nor,
5. tenants in antient demesne. (1 Vent. 344.)

* This act, in the index to the different editions of Ruffheads
statutes, is referred to as a general law, and yet Mr. Serjeant Running-
ton, the last editor, professes to have compiled a new one.

And

5 Mod. 128. Allen, 78. And if the steward certify what person has been chose, which certificate is carried to a justice of peace, the justice may send his warrant to compel him to appear before him and be sworn. And the Kings Bench has granted a writ in such case. Certificate.
Warrant.

Cro. Car. 567. 12 Mod. 130. But one cannot be committed till he obey an order of court requiring him to take the office. Order of court.

5 Mod. 96. 1 Keble, 418. And the indictment must set forth that he was chosen by a sufficient authority, and summoned before a justice of peace to take the oath; and *debito modo electus* will not do. Pleading.

2 Jones, 212. Though the justices of the peace have not originally the making of the constable, it is matter of the peace within their general jurisdiction, and they may examine it in their sessions. Sessions.

Strange, 1213. An information in the nature of a *quo warranto* is grantable against one to shew by what authority he exercises the office of constable. *Quo war-
ranto.*

C H A P. IV.

OF HIS POWER AND AUTHORITY.

1 Roll. Rep. 238. **T**HE constable hath as good authority in his place as the chief justice of England hath in his. Chief Jus-
tice.

2 Hale P. C. 90. Where a felony is committed he may *ex officio* (without a warrant) arrest and imprison the felon till he can conveniently be conveyed to a justice of peace, or to the common jail. And it is all one wherever the felony was committed, if the felon be within his precinct. Arrest of
felon, *ex
officio.*

1 Hale P. C. And if felon resists or flies, whether after arrest or Killing
 481. 489. before, and cannot be taken, he may kill him; and felon.
 2 Hale P. such killing is not felony, nor causes any forfeiture.
 C. 90.

Crompt. J. Where a felony has been actually committed, the Arrest on
 P. 153, b. constable upon probable grounds of suspicion, even suspicion
 2 Hale P. from information of others, may lawfully apprehend
 C. 9. the suspected person, and carry him before a magi-
 11 Mod. strate. And so may a private person do, without a
 248. constable.
 Douglas, 345-
 Leadwith v. Catchpole, E. 23 G. 3. B. R.

Crompt. J. P. Now probable causes of suspicion are very many, Causes of
 87. 154. as, for instance, common fame; hue and cry levied; suspicion
 Owen, 121. having part of the goods found upon him; being in-
 12 Rep. 92. dicted of the like; refusing to shew cattle charged
 2 Hale P. to be stolen.
 C. 81.
 3 Bulstr.
 287.

2 Hale P. C. In case of a felony committed, or in danger to Breaking
 82. 90. 94. be committed (as if *A.* wounds *B.* so that he is in open doors,
 danger of death) the constable, either upon complaint, &c.
 or upon a justice's warrant, or hue and cry, may break open the doors to take him, if, upon demand and notice, he will not yield himself, or entrance be refused. And, in that case, if the constable kill the felon, who cannot be otherwise taken, it is no felony.

Clayton, 44. If *A.* lose goods, and charge *B.* with stealing Arrest in-
 them; and the constable searches *B.*'s house but finds discretion.
 none of the goods, yet upon the charge, and at the request of *A.* he may arrest *B.* but this is discretionary, since he has found no cause of suspicion on his search.

Keilwey, 34. If the constable, having arrested a man for suspicion Dismissal
 of felony, finds that no such felony hath been committed, or detainer.
 the opinion of Keble, Conisby and Frowike
 was,

was, that he might let his prisoner go. But, by their opinions, if a man be killed in fact, and one is arrested for that felony, or for suspicion thereof, although the constable afterward finds that the prisoner is not guilty, still he may not let him go, but he ought to be delivered by due course of law.

4 E. 3. c. 10. He may carry one that he has arrested for felony Common
 13 E. 4. 9. to the common jail, and the jailor is bound to re- jail.
 17 E. 4. 5. ceive him.
 1 Hale P. C.

595. He may imprison to prevent a felony, by his Imprisoning
 Moore, 284. office; as if he see two with weapons drawn, ready to to prevent
 Pop. 13. fight, in preservation of the peace, and to prevent felony.
 manslaughter, which might ensue, he may set both
 in the stocks. Or if a man in fury be purposed to
 kill, maim, or beat another, the constable seeing it
 may arrest and imprison him till his rage be passed,
 for the conservation of the peace.

Fr. Faux Where one beats another almost to death, and Arrest in
 Imprison- hue and cry is raised, the constable may arrest danger of-
 ment, pl. 6. the party, and, if he refuse the arrest, may take felony.
 Cromp. J. P. power to arrest him; and may beat him till he obey
 241. the arrest; and may imprison him till he perceive
 whether the other will live, and may then let
 him at large.

Moore, He may arrest and imprison one for a felonious Felonious
 284. intent; as where a man had led away an infant of intent.
 Pop. 13. two years old into a church, and there left it to
 perish for want of sustenance, and the constable
 took him, and set him in the stocks. Also if a man
 lay an infant which cannot help itself upon a dung-
 hill, or in the open field, so that the beasts or fowls
 may destroy it, or where no one is bound by law to
 take it up but he who brought it thither, whereby
 the

the infant might perish, the constable seeing it may commit the party so doing to prison.

Cromp. J.P. 131. 155. 201. If he see one making affray, or assaulting another, Affray, &c. or breaking the peace, or hear, or know, one to menace; or threaten to kill, wound, maim, or beat another, he may take and set him in the stocks, or commit him to prison, or to jail, till he find surety Surety of the peace, for keeping the peace, or is bound to his good behaviour.

10 E. 4. 13. Br. Peace, pl. 2. Br. Suertie, pl. 23. He may take surety of the peace by obligation in Obligation. his own name, but not otherwise; and may certify it at the sessions*.

Cromp. J.P. 131. 4 Inst. 265. Cro. Eliz. 375. 376.

Cromp. J.P. 141. He may take aid of his neighbours to arrest Aid of neighbours. another, and they are compelled to assist him by law; and, upon affray and such like, he may raise the people of the realm to cause the peace to be observed.

Cro. E. 375. Br. Faux Imprif. 6. He may commit during affray in his own view, Commitment for affray. but not after affray, to compel the party to find surety of the peace, as he cannot take any mans oath that he is in fear of his life. But he may, upon complaint, arrest the party, and bring him before a justice of the peace, to find surety, or for appearance.

Cromp. J.P. 130, b. 2 Hale P. C. 95. If men be making affray in a house, and the doors Affray within doors. are shut, the constable may enter and see the peace kept. And if manslaughter, or bloodshed, is likely to ensue, and entrance upon demand is refused, he may break open the doors to keep the peace and prevent the danger.

Cromp. J.P. 130, b. And if he who made the affray flies to a house and Affray and flight. shuts the door, the constable may follow and take

* According to Lord Bacon, he was to send it to the Exchequer of Chancery, whence process should be awarded to levy the debt, if the peace was broken, L. T. 111.

him by fresh suit, or otherwise, where the other party is in danger of his life.

Cromp. J. P. 130. And if he perceive that persons are about to make affray, he may command them to disperse upon pain of imprisonment; and if it appear likely to be a great affray may commit them to prison for a short time to prevent it. Impending affray.

22 E. 4. 35. But he may not set one who hath broke the peace in the stocks, if he can have him to the next jail for the night. Stocks or jail.

2 Hale P. C. 97. He hath power *ex officio* to keep a watch for the purpose to raise or pursue hue and cry upon robberies committed, by the statute of Winton, c. 1; to search for lodgers in suburbs of cities that are suspicious persons, which is to be done every week, or at least once in 15 days, by the same statute c. 4; for such as ride or go armed, by the statute of 2 E. 3. c. 3; for night walkers and persons suspicious, either by night or day, by the statute of 5 E. 3. c. 4. And it is in his power to hold such watches as often as he pleases, and the watchmen are his ministers and assistants, and are under the same protection with him, and may act as he doth, and regularly he ought to be in company with them in their walk and watch*.

2 Hale P. C. 95. If there be disorderly drinking or noise at an unseasonable time of night, especially in inns, taverns, or alehouses, the constable, or his watch demanding entrance and being refused, may break open the Disorderly house.

* A watchman hath a double protection of the law, *viz.* 1. As an assistant to the constable when he is present or in the watch. 2. Purely as a watchman set by order of law; and the law takes notice of his authority; and the killing of a watchman in the execution of his office is murder. 2 Hale, P. C. 97.

doors, to see and suppress the disorder; as is constantly done in London and Middlesex.

1 Roll R. 238. He may imprison one who insults, assaults, or makes affray upon him, or opposes him, though but verbally, in the execution of his office; and may also beat another in his own defence.

Br. Faux Imprif. 41. 131. Clayton, 10. Owen 98. He may take a madman and put him in prison, and shall not be charged though he dye there.

3 Lev. 208. If an inhabitant refuse to watch in his turn, the constable may fet him in the stocks.

5 E. 4. 2. Br. action fur le case. 76. Cromp. J. P. 201. If an innkeeper will not lodge a man, the constable, upon complaint, may oblige him *.

2 E. 4. 8. Cromp. J. P. 153, b. Br. Trespas, 432. 12 Mod. 567. He may apprehend night walkers †. And may arrest and commit lewd persons, who resort to houses where bawdry is used, to make them find security for their good behaviour.

5 Rep. 556. If he arrests on a general warrant, *scil. coram aliquo justiciario* (before some justice) he may carry his prisoner to what justice he will.

2 E. 3. c. 3. He may arrest persons coming before the kings justices with force and arms, or who bring force in affray of the peace, or go or ride armed ‡.

He

* *Quare* How? He may present him, indeed, at the sessions, or leet: but the book should seem to imply something more; as the man may be lost or starved for want of a lodging. Innkeepers are, in such case, likewise, subject to an action for damages at the suit of the party grieved (Godb. 346. Palm. 374. 2 Roll R. 345.) and it is a great pity their insolence is not now and then corrected by one or other of these methods.

† And so may his watchmen, and commit them to custody till the morning, 2 Hale P. C. 98. Br. *Faux Imprisonment*, 39. And so, in short, may any man. Br. *Faux Imprisonment*, 15.

‡ This is to be understood of going or riding armed with harness

- Cromp. J.P. 201. He may make a deputy to execute his office in Deputy.
 Bacon L.T. 187. his absence; and such deputy may execute warrants,
 directed to the constable, and do all other things per-
 Moore, 845. taining to the office of constable, though he be not
 3 Bul. 78. sworn*.
 1 Roll. R. 274.
 1 Roll. A. 591. Sid. 355. 1 W. & M. c. 18. § 7. 3 Burr. 1262.
- Comb. 309. He may command his neighbours to assist him in Neighbours,
 the execution of any authority or duty vested in him
 by the common law; but not by particular statute,
 unless in special cases.
- Brownl. 211. By virtue of a warrant, he may break open a house Breaking
 1 Bulfr. 146. to take a person for treason or felony; but for no open doors.
 other cause.
- 11 Mod. 248. Where he has a warrant he is tyed up to that war- Warrant.
 rant, to act only as it directs.
- 5 Eliz. c. 4. He may grant testimonials under his seal licen- Servants in
 ing servants in husbandry, &c. to depart from their Husbandry.
 masters and serve elsewhere.
- 1 Ja. c. 31. He may command infected persons in time of Plague.
 plague to keep the house †.
- 30 G. 3. c. (Annual.) He may apprehend persons suspected of being de- Suspected
 ferters, and bring them before a justice. deferters.

harness and weapons, in an unusual, warlike and terrific manner. Every man has by law a right to carry ordinary arms for the defence of his person and property, and (if necessary) to kill those who offer violence to either.

* But he must be answerable for his deputy upon any miscarriage; unless the deputy is duly allowed and sworn; for then he is constable. Wood, b. 1. c. 7.

† If they refuse, the watchmen or keepers may enforce them; or if they go abroad and converse in company, having any infectious sore, they are to be adjudged felons and suffer death; or, having no sore, to be punished as vagabonds, and bound to their good behaviour.

C H A P. V.

O F H I S D U T Y.

- Cromp. J.P. 231. **T**H E office of constable is to take such as make *affray*.
 affray, and imprison them till they are bound to the peace.
- 5 E. 3. c. 14. If any man have suspicion of evil of *roberdesmen*, *roberdesmen*,
wastours, or *drawlatches*, whether it be day or night, they are to be incontinently arrested by the constable; who is to deliver them, if in a franchise, to the bailiff, if in gildable *, to the sheriff, to be kept in prison till the jail delivery.
- Cro. E. 16. If he have notice that a burglary has been committed, it is his duty to pursue the felon immediately, though in the night.
- 10 H. 4. 7. If constable arrest a felon and carry him to the *escape*.
 county jail, and the jailor will not receive him, the constable ought to keep him till the jail delivery, otherwise it is escape.
- Cromp. J.P. 201, b. If one take a felon in the vill, and carry him *carrying to*
 to the constable, it is his duty to convey him to the jail.
- 2 Hale P.C. 95. 16. 120. As to what the constable is to do with his *demeanour toward*
 prisoner that he hath arrested for felony or otherwise: *prisoners*.
 in case of a sudden affray through passion or excess of drink, he may put the party into the stocks, or in a prison, if there be one in the vill, till the heat of his passion and intemperance is over, though he
- * *Gildable* is such part of a county as is not comprised within any franchise; no other being anciently subject to the jurisdiction of the sheriff, nor liable to *gelds* or *taxes*.
- deliver

deliver him afterward, or till he can bring him before a justice of peace. In other offences, he may convey his prisoners to the sheriff, or his jailor of the county, or, if within a franchise, to the jailor of the franchise; and they are bound to receive them without taking any thing, by 4 E. 3. c. 10. *vide* 5 H. 4. c. 10. 23 H. 8. c. 2. But the safest and best way in all cases is to bring them to a justice of peace, to be by him bailed or committed as the case may require. For till they be bailed or discharged, or the sheriff or jailor hath received them, they are still under the charge of the constable.

2 Hale P. C. Till the constable can conveniently convey the Stocks.
 95. *Ibid.* party to a justice of peace, or to the common jail, as
 119. when the time is unseasonable, or there is danger of a rescue, or the party is sick, he may secure him in the stocks, or in a house, till the next day, or such further time as may be reasonable.

Crompt. J. P. If felons or murderers be in the vill, and the Felons.
 201, b. constable have knowlege thereof, it is his office and duty to assemble people and take them.

Ibid. If a man fly for felony, the constable ought to seize Flight.
 his goods, and keep them safely for the kings use.

1 Mary, Constables are, upon request, to assist the president
 sess. 2. c. 9. of the college of physicians in London, and all persons by him authorized for the due execution of 14 & 15 H. 8. c. and 32 H. 8. c. 40. upon pain of contempt.

5 Eliz. c. 4. In time of hay or corn harvest, the constable is to Harvest
 cause all persons meet for labour, at his discretion, to serve by the day in mowing, reaping, &c. and is to set them in the stocks if they refuse.

43 Eliz. c. The weekly rate for the relief of the poor is to Poors rate.
 2. § 12. be assessed, in case the parishioners disagree, by the churchwardens

churchwardens and constables ; who are, in either case, to levy the rate.

43 Eliz. c. 3. § 35. The churchwardens and constables of every parish are to collect the sums rated, and pay the same over to the high constable.

43 Eliz. c. 7. & 15 C. 2. c. 2. Lewd persons who shall cut or take away corn ^{Malefact-} growing, rob orchards or gardens, break or cut ^{tors.} hedges or fences, pull up fruit trees, or spoil woods, not being felony, being thereof convicted, and not making satisfaction for the damages, shall be committed to the constable or other inferior officers to be whipped.

3 C. 1. c. 3. Persons keeping a common tippling house, or selling ^{Unlicens'd} ale, beer, cyder or perry, without a licence, forfeit ^{ale houses.} twenty shillings, to be levied by the constables or churchwardens, and not having sufficient goods, or not paying within six days, are to be committed to the constable or other inferior officer to be openly whipped.

13 & 14 C. 2. c. 11. Constables are to be aiding to the officers of the ^{Customs,} customs in the execution of this act *.

They

* By 12 C. 2. c. 19. any person under the warrant of the lord treasurer, barons of the Exchequer, or chief magistrate of the port or place, *with the assistance of a constable*, may enter in the day-time into any house where uncustomed goods are suspected to be concealed ; and in case of resistance, break open houses, and seize and secure the goods : and *all officers of justice are to be aiding and assisting*.

By 12 C. 2. c. 23. Gagers shall, by night, *in the presence of a constable*, be permitted, upon request, to enter the house, brewhouse, &c. of any brewer, distiller, &c.

And by 13 & 14 C. 2. c. 11. any person authorized by writ of assistance out of the Exchequer, *may take a constable* inhabiting near the place, and in the day-time, enter any house, shop, &c.

and

22 C. 2.
c. 8.

They are to search and examine if any person use Measures, any other measure than what is agreeable to the standard marked in the Exchequer, called the Winchester measure of eight gallons to the bushel, or strike the same otherwise than even by the wood or brim; or sell or buy by a measure unsealed: and, finding any such unsealed measure, are to seize and break the same; and for that and every other offence are to present the offender at the next sessions.

22 & 23
C. 2. c. 8.

They are to be aiding and assisting to the presi- Kidderminster weavers. dent, &c. of the Kidderminster weavers, as often as required.

2 W. &
M. Sess. 1.
c. 5.

The constable is to be aiding and assisting in the Distress for rent. appraisement and sale of goods distrained for rent, and may swear the appraisers; and is to receive the overplus for the owners use. And

11 G. 2.
c. 19.

Is to aid and assist landlords, &c. seizing as a distress for rent, goods fraudulently carried away and locked up in any house, &c. which (oath being first made before a justice of reasonable ground of suspicion) they are empowered to break open.

6 Ann. c.
31.

Upon the breaking out of any fire within *London Fire*, or *Westminster* all constables and beadles (upon notice thereof) are to repair to the place with their staves and other badges of authority, and be aiding and assisting in the extinguishing of the fire, causing

and in case of resistance break open doors, chests, &c. to seize and bring away any kind of uncustomed goods.

But *quære* whether a constable is obliged to go with the officer; or if he should, whether he need do more than look on. The legislature seems very frequently to confound *the constable with his staff*.

C

people

people to work at the engines *, and preventing goods being stolen; and are to apprehend all ill-disposed persons whom they find stealing or pilfering from the inhabitants, and to give their utmost assistance to help the inhabitants to recover their goods.

3 & 4 Ann.
c. 18.

The justices of peace at the quarter sessions next Jurors. after the 24th of June are to issue their warrant to the head or chief constable of the hundred, requiring him to issue his precepts to the constables, directing them to meet him at some usual or convenient place within fourteen days, *when and where* the constables shall prepare a true list signed by them of the names and abode of all persons within the places for which they serve qualified to serve on juries according to 4 & 5 W. & M. c. 24. between the ages of 21 and 70, according to 7 and 8 W. 3. c. 32. which list the constables at the quarter sessions are to return and give to the justices in open court.

3 G. 2. c.
25.

But it is sufficient if the constables subscribe their lists in the presence of a justice, and attest the truth thereof on oath, and deliver them to the chief constable.

2 G. 2. c.
16.

Every constable to whom notice shall be given of Hue and cry. any robbery is with the utmost expedition to make fresh suit and hue and cry after the felon.

11 G. 2. c.
26.

Any person may seize and detain hawkers of Hawkers of spirits. spirits till he can give notice to the constable, &c. who is to carry them before a justice of the peace.

* Or rather *persuading* them to do so; a constable has no power to *cause* or *force* people to work who are unwilling, nor is it fit he should have it. The law knows nothing of *beadles*.

Where

12 G. 2. c.
29.

Where no rate is made for relief of the poor, the Poors rate. quarter sessions may direct the sum assessed for the purposes of this act to be rated and levied by the constable to be by him paid to the high constable of the hundred.

17 G. 2. c. 5.

Two or more justices are four times a year or Vagrants. oftener (if need be) by their warrant to command the constables, who shall be assisted with sufficient men, to make a general privy search throughout their respective limits for the finding and apprehending of rogues and vagabonds, *viz.* persons threatening to run away and leave their wives or children to the parish; persons unlawfully returning to the parish or place from whence they have been legally removed, without a certificate; persons, not having wherewith to maintain themselves, living idle and refusing to work; persons going about from door to door, or placing themselves in streets, highways or passages, to beg or gather alms, all of whom are to be deemed *idle and disorderly persons*; persons going about as patent-gatherers or gatherers of alms, under pretences of loss by fire or other casualty; or as collectors for prisons or hospitals; fencers, bearwards, common players of interludes, minstrels, jugglers; persons pretending to be gypsies, or wandering in the habit or form of Egyptians, or pretending to have skill in physiognomy, palmistry or like crafty science, or to tell fortunes, or using any subtil craft to deceive and impose, or playing or betting at any unlawful games or plays; persons running away and leaving their wives or children, whereby they become chargeable to any parish or place; petty chapmen and pedlers wandering abroad, not being duly licensed or authorised; persons wandering abroad, and lodging in ale-
C 2 houses,

houses, barns, outhouses, or the open air, not giving a good account of themselves; persons wandering abroad and begging, pretending to be soldiers, mariners, seafaring men, or pretending to go to work in harvest; and all other persons wandering abroad and begging; all of whom are to be deemed *rogues and vagabonds* *; endgatherers offending against 13 G. 1. c. 23. persons apprehended as rogues and vagabonds, and escaped from the persons apprehending them, or refusing to go before a justice or to be examined before him, or to be conveyed by a pass, or knowingly giving a false account of themselves on such examination, after warning given them of their punishment; rogues or vagabonds breaking or escaping out of any house of correction; and persons having been punished as rogues and vagabonds, and discharged, again committing any of the said offences, who are to be deemed *incorrigible rogues*; and every justice on receiving information that rogues and vagabonds, are in any place within his jurisdiction is to issue his warrant to the constable of such place to search for and apprehend them. Such rogues and vagabonds to be brought before any justice or justices of the peace of the same county, &c. who after taking their examination shall order them to be publicly whipped by the constable, &c. or sent to the house of correction; and after such whipping or confinement such justice or justices may by a pass under hand and seal

* By 23 G. 3. c. 88. Whoever shall be apprehended, and any pistol, hanger, or other offensive weapon found upon him, with intent feloniously to assault any person; or having upon him any picklock, crow, or other implement, with intent feloniously to break and enter into any dwelling-house, shall be deemed a rogue and vagabond.

cause them to be conveyed to the place of their settlement, and with the pass shall deliver to the constable a note or certificate ascertaining how they are to be conveyed, and what allowance he is to have for conveying them. Whereupon the constable is to convey them agreeably to the pass, the next direct way to the place where they are ordered to be sent if in the same county, &c. but if in some other county, &c. shall deliver them to the constable of the first town in the direct way with the pass and duplicate of examination, taking his receipt. And such constable shall without delay apply to some justice in the same county, &c. who shall make the like certificate as before, and deliver it to the said constable, who shall convey the persons unto the first parish, &c. in the next county, &c. in the direct way, and so from one county to another, till they come to the place to which such persons are sent.

49 G. 2.
c. 21.

If the constable hear any person swear or curse, he is, if a stranger, to seize him and carry him before the next justice, &c. or, if known to him, make information before such justice, &c. to be convicted and punished *, Curfing and swearing.

24 G. 2. c.
55.

Where, under an indorsed warrant, he apprehends the offender, he is to carry him before the justice who indorsed it; and if the offender find bail, is to receive the recognizance, examination, &c. and deliver them over to the clerk of assize or clerk of the peace of the county where the offender is required to appear; and, if the offender be not bailed, is to carry Indorsed warrant.

* Q. For what offence?

him before a justice of the county where the offence, was committed *.

25 G. 2.
36.

If two inhabitants of any parish or place paying scot and bearing lot give notice in writing to the constable of any person keeping a bawdy house, gaming house or other disorderly house in such parish or place, he is to go with them to a justice of the peace, and upon their making oath that they believe the contents of the notice to be true, and entering into a recognizance to give or produce material evidence, enter into a recognizance in £. 30. to prosecute such person for such offence at the next sessions or assizes. The expences of prosecution to be paid by the overseers of the poor.

Disorderly
houses.

27 G. 2.
c. 20.

Constable making a distress under a justice of peace's warrant, shall, if required, shew the same to the party, and suffer a copy to be taken.

Warrant of
distress.

29 G. 2. c.
30.

Every constable or beadle within his district, and every watchman on duty, is to apprehend persons reasonably suspected of having, carrying, or conveying, after sunset and before sunrise, any lead, iron, copper, brass, bell-metal, or solder, suspected to be stolen or

Stealers of
lead, &c.

* This act is very defective; for supposing an offender who has committed a crime in Middlesex to escape from county to county till he gets into Northumberland, the warrant being indorsed by a magistrate of each he passes through, whoever carries the warrant to be last indorsed, and by virtue thereof apprehends the offender, must personally carry either the prisoner or his recognizance back to the original county; and it will not be sufficient that he deliver either to a constable of the next adjoining county, and so on; nor, in case he does deliver his prisoner to such constable, will the warrant be any authority to him to carry the body forward. Therefor let the constable in any case take heed how he acts.

unlawfully come by, and carry it and the party before two or more justices.

26 G. 3. c. 107. § 21. The lieutenant and (or) deputy lieutenants are to Militia.

issue their orders to the chief constable to issue an order to all constables to return to the deputy lieutenants lists in writing of all men dwelling within the parish, &c. between eighteen and forty-five, distinguishing their rank and occupation, having first affixed a copy of such list on the church door; and on the day appointed for return of the lists the constables are to attend and

§ 24. verify the return on oath; and the deputy lieutenants at a subsequent meeting are to issue an order to the chief constable requiring him to give notice to the constable of each parish, &c. of the number of men appointed to serve, and at another meeting are to issue an order to the chief constable to direct the constable to give notice to every man chosen to serve in the militia to appear at the next meeting, when the constable is to attend and make oath of the service of the notice.

§ 69. And the constables are to cause the notice they receive from the chief constable of the time and place of exercise to be fixed on the church door.

§ 78. And constables, &c. are to billet militia-men, when called out to annual exercise, in inns, livery stables, alehouses, &c. upon application by the lieutenant, colonel or commanding officer; and are also to provide lodging for the serjeants, corporals and drummers at other times.

§ 80. And when the militia is called out any justice of peace, being required by the order of the lieutenant, or a deputy lieutenant, or the colonel or chief officer of the regiment, &c. is to issue his warrant to the

chief constable, or to the constables of the parishes, &c. through which the militia is to march, to provide carriages and drivers.

§ 98. And in case of actual invasion, or imminent danger thereof, or in case of rebellion, the lieutenant or deputy lieutenants are to issue orders to the chief constable, who is to forward the same to the constables, and they on receipt thereof are to give notice to the militia men to attend at the time and place mentioned in the order.

13 G. 3.
c. 78.

On the 22d of September in every year, the constables, churchwardens, surveyor of the highways, and householders, are to assemble and make a list of ten inhabitants having an estate in the parish, &c. of £. 10 a year, or personalty of the value of £. 100, or being occupiers of house or land of £. 30 a year, to serve the office of surveyor of the highways; and the constable is three days after to transmit a *duplicate* of the list to a justice of peace, and return the *original* to the special sessions for the highways in the week after the Michaelmas general quarter sessions, and is also within three days to give notice to the persons named in the list, that they may appear at the special sessions to accept the office; ten days notice of the time and place of holding the same being to be given to the constable by the justices. And the constable is, upon requisition of the justices, to return an account in writing of the sum which an assessment of sixpence in the pound has raised or will raise within the parish, &c.

22 G. 3. c.
58.

Constables, beadles, and watchmen, are to apprehend those suspected of conveying, between sun-set and sun-rise, any goods or chattels suspected to be stolen, and carry them before a justice.

Suspected
thieves.

The

30 G. 3, f.
(Annual.)

The constables are to quarter and billet the Soldiers, officers and soldiers in the kings service in inns, livery stables, alehouses, victualing houses, and the houses of sellers of wine, brandy, &c. by retail to be drank in their own houses or places thereto belonging (except tavern-keepers free of the vintners company). And the high and petty constables within the city and liberties of Westminster, and places adjacent, when required, are to billet and quarter the officers and soldiers of the foot guards in such like houses, in and about the said city and liberties, and places adjacent (except the city of London); and when any order shall issue for the quartering or billeting of officers or soldiers within the said city and liberties of Westminster, and places adjacent, the high constable is to deliver out precepts to the petty constables of each parish, &c. to billet and quarter such officers and soldiers of the foot guards, and such petty constables shall billet and quarter them equally and proportionably. And these petty constables shall at every general quarter sessions for Westminster, and parts adjacent, make and deliver to the justices upon oath, signed lists of all houses liable to receive soldiers, with the number billeted in each house. And Justices (being duly required) are to issue their warrants to the constables to make provision of carriages for troops on march.

1 Salk. 381. Though the constable is not named in 3 and 4 W. Warrants. & M. c. 10. nor appointed to be the officer to execute the warrants, yet the justices may command him to execute them *.

A constable

* The reason given is, that "as at common law the constables

1 Salk. 381. A constable must either return his warrant, or certify what he has done upon it *. Presentments.

Dalton, J. P. 474. He should present all offences within his own knowledge, which concern the peace, as defaults of watching, disorderly houses, affrays, &c. &c. at the leet, tourn, or quarter sessions. And such presentment is as available as one made by twelve men. Fitz. J. P. 6.

1 Vent. 336. But he is not obliged to present a highway sworn before him by two witnesses to be out of repair; even though demanded so to do by the quarter sessions; and may tell them plainly that he will not present it †.

Freeman, 256. He is not discharged of his office till his successor be sworn; because the district cannot be without an officer. Discharge.

C H A P.

bles were subordinate officers to the conservators of the peace, so they are now the proper officers of the justices." But the premises are false, and of course the conclusion bad: they were conservators of the peace themselves.

* He ought not to return the warrant, but keep it for his own justification.—See 24 G. 1. c. 44.

† N. B. Although it be said in the pamphlet, entitled, "The Duty of Constables, &c." Gloucester, 1790, that they "as well as other parish officers are to take care, as much as in them lies, that the sabbath be not profaned," the constable is no more concerned in preventing such profanation (except in levying the penalty or inflicting punishment under the justice's warrant) than any other person; and as that part of the act (29 C. 2. c. 7) which makes it penal for a man to exercise his trade or calling on (what is called) the Lords day, favours a little too much of bigotry and Calvinism, it will be most commendable, and perhaps most adviseable, if he in all such cases wait for the warrant. What is innocent one day cannot well be criminal another.

* * Constables

C H A P. VI.

OF HIS PROTECTION, INDEMNITY, ALLOWANCES,
ADVANTAGES, AND REWARDS.

Cromp. J. P. 231. **T**HE constable shall have aid of the country to pacify affray. Aid of the country.

He

* * * Constables are usually summoned by the sheriff to attend at the quarter sessions and assizes to make presentments, &c. which though not warranted by any express law, must be allowed a very ancient usage; but the following practice seems to be perfectly unjustifiable. The grand inquest for the county of Middlesex, previous to their sitting, and before they are sworn, issue a warrant, under their hands and seals, to the high constable, commanding him to summon the petty constables, who, on making default are presented by the inquest and compelled to *appear* to the presentment in the crown office and take a copy of it, which is attended with an expence of between 20 and 30 shillings, and *here* the proceedings uniformly stop. And, this is done every term, but surely without the privity of the Court of Kings Bench, which can never sanction so illegal and oppressive a conduct. No grand jury has the least power by law to require the attendance of a single person for any purpose whatever, even after it is sworn, and yet here is one which assumes that power even before it exists. The warrant is sent to the high constable, who is no officer of the Court of the Kings Bench, and has no business to obey it. And yet if any one thus irregularly called upon does not appear he will be subject to the above *fine* in the crown-office. For though the court would doubtless quash the presentment, yet the getting it quashed would cost him a great deal more; he is therefor obliged to submit to an unconstitutional

Sty. 393. He is not suable out of the county for what he does **Action.**
in the execution of his office.

7 J. r. c. 5. If he be sued for any thing done by virtue of his **General**
office, he, and all who assist him, may plead the gene- **issue.**
ral issue, Not guilty, and give the special matter in **Double**
evidence, and on a verdict for the defendant or de- **costs.**
fendants, or on the plaintiffs becoming nonsuit or
discontinuing, the defendant or defendants shall have

Cromp. J. P. double costs. And so of a deputy constable.
201.

2 Ven. 45.) But in this case the judge who tries the cause must
Douglas, order the *postea* to be marked, and certify that the de-
294. fendant was acting in the execution of his office.

1 Hale P. C. If in the execution of his office, after competent **Murder.**
9. 460. notice that he is constable, he, or any that come to
his assistance, be killed, it is murder; although the
party killing do not know his person *.

Coming

tional and oppressive measure, because the remedy is worse than
the disease. See the warrant in the Complete Constable, 1725.
p. 149. If it be necessary for the constables to make their pre-
sentments to the grand inquest, the court of Kings Bench
should issue its writ for that purpose to the sheriff.

* But then, as has been already observed, he must be acting
in his own district or division. For if the constable of *A*, come
into the vill of *B*. to suppress any disorder, and in the tumult be
killed, this is only manslaughter, because he had no authority in
B. 1 Hale P. C. 459. The constable of St. Margarets parish
in Westminster, having a search warrant directed to the constables
of that parish, came into the parish of St. Paul, Covent-
Garden, and took a woman in the street near the theatre, and
carried her to the round-house; where he was assaulted and
killed by some who wanted to rescue her; and this killing ad-
judged only manslaughter: 1. Because it was a sudden action
without precedent malice. 2. Because the constable had no au-
thority at all in Covent-Garden; nor, supposing he had any,
was the woman guilty of any disorderly act; and it is not a
constables

1 Hale P. C. 461. Coming to appease a sudden affray in the day-time Notice.
in the place where he is constable, it seems every
man

constables suspecting that will justify his taking up any person, but it must be just grounds of suspicion; and it would be hard that the liberty of the subject should depend on the will of the constable, or his not liking a womans looks be any cause of suspicion. 3. The prisoners had a sufficient provocation; for if one be imprisoned upon an unlawful authority, it is a sufficient provocation to all people out of compassion, much more when it is done under a colour of justice; and WHERE THE LIBERTY OF THE SUBJECT IS INVADED, IT IS A PROVOCATION TO ALL THE SUBJECTS IN ENGLAND. (By HOLT, C. J.) 2 L. Ray. 1300, 1301.

There are other instances of a constable, or his assistant, being killed, where he has been too officiously or imprudently, because ignorantly acting as such, and exercising an authority not given him by law; which of course will in such case afford him no more protection than a common man. See the trial of William Power for the wilful murder of John Wilkinson, Sessions paper, 1788-9. p. 820, where Gould, J. having consulted two of his brethren, in directing the jury, said, "the thing being over, it was unwarrantable in these people to seize this man thus quiet, without having an authority from a justice of peace; he was therefore illegally assaulted and arrested by these men: when a man therefore is deprived of his liberty, and does an act that causes the death of the assailant in any manner whatever, certainly by law it reduces the offence to manslaughter;" and so of course the jury found. The deceased had sent for the constable, and given him charge of the prisoner, for having drawn a knife on him twice, and threatening his life, and in helping the constable to force him away, was unfortunately stabbed. See also Leaches Cases in Crown Law, 211. These little accidents should operate to make every constable more familiar with his actual powers, which, wherever there may be danger, he ought always, for his greater security, to execute with sufficient assistance or properly armed; since the hanging of his murderer (though it be all the law can do) will hardly restore him to life, or recompence his family for his loss;
let

man is bound to take notice that he is constable: but it is not so in the night-time, unless there be some notification that he is constable. But whether it be day or night, it is sufficient notice if he declare himself to be the constable, or command the peace to be kept in the king's name, or the like.

Cromp. J. P. 130. If two men are combating, and the constable come to part them and is hurt, he shall have action of trespass; and if he hurt them, they shall not have action

2 Hale P. C. 97. against him. And so of those who aid him; every man who is assisting to the constable in the execution of his office having the same protection that the law gives to the constable.

Bulstr. 174. If he be removed without just cause, the court of Kings Bench will by rule of court order him to be restored to his place. Unjustly removed.

29 G. 2. c. 21. If he be sued for seizing or prosecuting persons who swear or curse in his hearing, he may plead the general issue, and give the special matter in evidence, and if he get a verdict, or plaintiff be nonsuit, or discontinued, he is to have treble costs. Cursing and swearing.

Strange, 711. A justice of peace's warrant is a sufficient justification of a constable in a matter within the jurisdiction of such justice. Warrant.

24 G. 2. c. 44. No action shall be brought against a constable, or

let him therefor learn to protect himself; and let others, also, when he is usurping an illegal authority, be taught to protect themselves against him.

At present, by 29 G. 2. c. 25. the Westminster constables are to be appointed out of the different parishes, for the whole city and liberty. In London, also, by ancient custom, the constables, though appointed in particular wards (of which there are twenty-six) have power to serve warrants and execute their office throughout the city.

any

any one acting by his order or in his aid, for any thing done in obedience to a warrant under the hand or seal of a justice of peace, until demand of the perusal and copy of such warrant, and refusal or neglect for six days. And if, after demand and compliance, an action be brought without making the justice a defendant, the jury shall give a verdict for the defendant or defendants, notwithstanding any defect of jurisdiction in such justice. And if such action be brought jointly against justice and constable, the jury, on proof of the warrant, shall find for the latter. And no action shall be brought against a constable unless commenced within six months*.

Any

* Note, The above act extends only to actions of tort: and therefor where an action for money had and received was brought against an officer who had levied money on a conviction by a justice of the peace, the conviction having been quashed, it was holden, that a demand of a copy of the warrant was not necessary. *Bullers N. P. 24.* And although this act may afford the constable protection in a civil suit, yet if the warrant be plainly illegal, as, for instance, to apprehend a man for *adultery* or *incest*, it seems the party may legally resist, and if in defence of his liberty he kill the constable, such killing is not murder; but if on the other hand the constable should kill him, he shall be adjudged guilty of murder.

☞ Of the above description, perhaps, are the warrants put into the hands of an uninformed constable, who supposes every thing to be legal which comes from a justice of peace, who may possibly at the same time be as ignorant as himself, for the searching after and *IMPRESSING OF SEAMEN*; a practice in direct violation of every constitutional principle, and certainly unsupported by any positive law. Let the constable therefor who too officiously engages in a business so deservedly unpopular, seriously reflect on the risk he runs; let him dread the consequences of a spirited resistance. He murders if he

2 G. 3. c. 20. Any person endeavouring by rewards or menaces Militia list. to prevail on the constable to make a false return of a militia list, forfeits £. 20. And refusing to tell his name or the name of his lodger, £. 10.

Moore, 847. He and his assistants may, under a presentment in Common scold. the leet and the stewards warrant, justify punishing a common scold according to law (*i. e.* putting her in the ducking-stool).

1 Hale P. C. 96. The charges of sending malefactors to jail were Charges of conveying malefactors. by the common law to be born by the vill in which they were apprehended. But now every person not having goods or money within the county where he is taken sufficient for that purpose, on application by any constable, or other officer who conveyed him, any justice of the peace for the same county shall upon oath examine into and ascertain the reasonable ex-

3 J. 1. c. 10.
27 G. 2. c. 3.

he kill; it is justifiable homicide, or at most manslaughter, if he be killed. The law, very properly, encourages and invites all men to repress an act of illegality and violence, and the rather, as we have just seen, if it be done under colour of justice. See the case already cited in Lord Raymonds Reports; and that of Hopkins Hugget, in Sir John Kelyngs: Cases of much greater consequence and authority than the flimsy reasoning used in defence of preps-warrants. Observe also what is said by Lord Hale on this subject, in his History of the Pleas of the Crown; and consider whether the life, liberty, and happiness of the subject are to be blown away by an insidious side-winded act of parliament. It is no place here to enter into a discussion of the arguments used by Sir Michael Forster and Mr. Butler on this subject, which, however, might be easily refuted upon the most solid and legal, as well as constitutional, principles. The practice is *very far from ancient*, but were it ever so, "NO DEGREE OF ANTIQUITY CAN GIVE SANCTION TO A USAGE BAD IN ITSELF." 3 Bur. 1767.

pences to be allowed him; and forthwith, without fee or reward, by warrant under his hand and seal, order the treasurer of the county to pay the same, which he is required to do as soon as he receives such warrant, except in Middlesex, where such expences are to be paid by the overseers of the poor of the parish or place where the person was apprehended.

17 G. 2. The county treasurer is to pay the constable the **Vagrants.**
 c. 5. rates or allowances ascertained by the justice's certi-
 26 G. 2. ficate, for conveying rogues and vagabonds (see be-
 c. 34. fore, p. 21.)

Strange, 42. A *mandamus* is grantable on 1 G. 1. c. 34. (Mu- **Soldiers.**
 93. tiny Act) to allow a constable extraordinary charges in providing carriages, &c.

27 G. 2. The constable making a distress under a justice's **Distress.**
 c. 20. warrant, may deduct the reasonable charges of taking, keeping, and selling the distress, out of the money arising by such sale.

18 G. 3. c. Every constable is every three months, and within **Account.**
 fourteen days after he goes out of office, to deliver to the overseers of the poor an account entered in a book, kept for the purpose, and signed by him, of all sums by him expended and received on account of the parish, &c. which overseers are within fourteen days to lay the same before the inhabitants, and, if approved, are to pay the money due out of the poor rates; but, if disallowed, are to deliver the book back to the constable, who may produce it before a justice of peace, giving reasonable notice to the overseers; which justice is to examine the account, determine objections, settle the sum due, and enter it in, and sign the account; and the overseers are to pay such sum out of the poors rate; but may appeal (giving notice) to the quarter sessions.

3 W. & M. c. 11. Burr. S. C. 27. 30. 238. 520. 634. 19 Viner, 379. Strange, 444. Serving for himself and on his own account for the Settlement. space of a year, he gains a settlement in the parish in (or in part of) which he so serves.

17 G. 2. c. 5 If he apprehend and convey (to any justice or justices of the peace) any rogue or vagabond (see before, p. 19.) such justice or justices shall reward him by making an order upon the high constable to pay him ten shillings within a week after demand: and, where no high constable, he shall pay himself, and be allowed it in his accounts. Vagrants.

30 G. 3. c. (Annual.) He is entitled to twenty shillings for every defencer he apprehends, to be paid, under a justices warrant, out of the land tax. Deserters.

C H A P. VII.

OF HIS RESPONSIBILITY AND PUNISHMENT.

12 Mod. 347. Gib. 30. 2 Hawk. P. C. 81. **A** CONSTABLE must at his peril take notice that his warrant is by one in the commission of the peace. Since (before 1 G. 3. c. 23) even the lord chief justice's warrant for apprehending a person was void by the kings demise, and the constable imprisoning one by force thereof, liable to an action. Nor can he justify an arrest by force of a justice's warrant for a matter appearing to be out of his jurisdiction. Warrant.

Clayton, 44. 12 Mod. 344. And though his warrant be legal, yet if he be guilty of a misdemeanour in executing it, (as where, upon a search-warrant, a constable pulled the clothes from off a woman in bed, to search under her smock) this will make all bad from the beginning. Misdemeanour. Illegality *ab initio*.

Owen, 121. Arresting one possessed of money who dyes, he is chargeable with the money. And so where he takes from a felon money of which he had robbed another, even though he be afterward robbed of it himself.

1 Salk. 381. Neglecting a duty incumbent on him either by Neglect of
2 Roll R. common law, or by statute, he is for his default in-
78. dictable. duty.

Cromp. J. P. On affray made in his presence, if he do not endeavour to pacify it, he shall be fined : but not if the affray be at a distance, and he is only told of it. Affray.
130, b.

6 Mod. 83. If he will not return his warrant, or certify what he has done under it, (for he ought to keep the warrant for his own justification,) the sessions may fine him *. Not return-
1 Salk. 381. ing war-
24 G. 2. rant.
c. 44. But the court of Kings Bench will not grant a *mandamus*.

1 Hale P. C. If he wilfully lets a felon escape out of the stocks, and go at large, it is felony. Escape.
596.

2 Bur. 867. It is a misdemeanour in him to discharge an offender brought to the watch-house by a watchman in the night †. Offender brought to the watch-house.

He

* It is said in 5 Mod. 96. that a constable may be fined by the leet, but not by the sessions ; considering him, it should seem, as an officer of the former court, in which he is elected, and not of the latter. And it is to be observed that the commission of the peace gives the justices power to enquire of the misbehaviour of constables *by good and lawful men*, and not to punish them in a summary way. *Ideo quære.* And *vide* Gib. 192.

† And, *per* Wilmot J. though without a positive charge. The principle of this doctrine is not altogether apparent. The watch are by law assistants to the constable, not the constable servant to the watch. The watchman may be drunk, the charge frivolous, (as that in the case was for “ walking the streets *to pick up men*,”) or the like. The only reason for charging the constable seems to be the actual offence of the party; not the bare delivery by the watchman. In many cases, as affrays for

- Hollst. 174.** He may for just cause be removed by the authority **Removal.**
2 Hawk. P. which elected him:
C. 63.
- 5 Eliz. c. 4.** Not setting one in the stocks who refuses to work **Labourers.**
 in hay or corn harvest (see before, c. 15.) he forfeits
 forty shillings.
- 43 Eliz. c.** If he fail to make payment of the weekly parish **Poors rate.**
3. § 6. rate towards the relief of sick, hurt and maimed
 soldiers and mariners (see before, p. 16.) he forfeits
 twenty shillings.
- 43 Eliz.** Not executing, by himself or some other, the **Malefactors**
c. 7. § 2. punishment limited by these statutes, (see before, **in cases, &c.**
3 C. 1. c. 5. p. 16.) he is to be sent to jail until it is done. **Unlicensed**
§ 3. alehouses.
- 4 J. 1. c. 5.** Neglecting the due correction of a person convict- **Drunkards,**
§ 3. ed of drunkenness (who, if unable to pay five shillings,
 is to be committed to the stocks for six hours) given
 in charge to him by the precept of any mayor, &c.
 he forfeits ten shillings to the use of the poor.
- 9 & 10 W.** Refusing or neglecting, upon due notice or his **Hawkers**
3. c. 27. own view, to be aiding and assisting in the execution **and pedlers.**
 of this act, (whereby hawkers and pedlers refusing to
 shew their licence are to forfeit £ 5.) he is to for-
 feit forty shillings.
- 3 & 4 Ann.** Not returning the list of persons qualified to serve **Juries.**
c. 18. on juries at the quarter sessions, he forfeits £ 5.
- 8 G. 2. c.** Refusing to make fresh suit and hue and cry (see **Hue and**
16. before, p. 18.) he forfeits £ 5. **cry.**
- 11 G. 2. c.** Refusing or neglecting to be aiding and assisting in **Hawkers of**
26. the execution of 11 G. 2. c. 26. 9 G. 2. c. 23. 10 **spirits.**
 G. 2. c. 19. he forfeits £ 20.

instance, or even a supposed felony, he may lawfully discharge
 his prisoner, whether arrested by himself or others; and why
 not a man taken by the watch? It is nevertheless a perilous
 privilege, and ought to be cautiously exercised. But to say he
 shall in no case whatever use his discretion seems too much.

- 12 G. 2. c.
29. § 17. Refusing to account for or pay over money re- Poors rate.
ceived for the purposes of this act (see before, p. 19.)
he is to be committed.
- 17 G. 2. c.
5. § 5. Refusing or neglecting his best endeavours to ap- Vagrants.
prehend or convey to a justice any rogue or vaga-
bond (see before, p. 19.) he forfeits from ten shillings
to £ 5.
- 17 G. 2. c.
5. § 5. If (where there is no high constable) he refuse to
pay the reward of ten shillings for taking up vaga-
bonds on demand, he is liable to distress for twenty
shillings, out of which it is to be paid.
- 17 G. 2. c.
5. § 18. If he counterfeit or alter any certificate, receipt,
or note, used in the conveyance of rogues and vaga-
bonds, he forfeits £ 50. Or if he will not receive
or convey them, or does not deliver them to the pro-
per person, he forfeits £ 20.
- 17 G. 2. c.
5. § 22. If he be defective or remiss in the execution of this
act he forfeits from ten shillings to £ 50. to the use
of the poor, or in case of no distress is to be sent to
the house of correction.
- 19 G. 2.
c. 21. Wilfully omitting the performance of his duty in Curfing and
swearing.
seizing or informing of persons who swear or curse in
his hearing, he is to forfeit forty shillings, or be sent to
the house of correction *.

If,

* Both he and the justice ought rather to be sent thither, for putting so ridiculous an act into execution. It must be confessed however that the pious editor of "The Duty of Constables," Gloucester, 1790, is of a very different opinion; for, says he, "This vice, which is a scandal to a christian country, a due exertion of your office might prove the means of checking, and by degrees that reformation may be produced by the fear of punishment, which the commands of the Supreme Being, alas! are too weak to effect."—Alas! and if a man were to stand cursing and

- 24 G. 2. c. 55. If, where under an indorsed warrant he has apprehended an offender who shall give bail before the justice who indorsed it, or any other of the same county, &c. he do not deliver over the recognizance, examination, or other proceedings received from such justice, to the clerk of the assizes or clerk of the peace of the county, &c. where such offender is required to appear, he forfeits £ 10. Indorsed Warrant.
- 25 G. 2. c. 36. § 7. If he refuse or neglect to go before a justice or enter into recognizance for the purpose of indicting a disorderly house, or be wilfully negligent in carrying on the prosecution, he forfeits £ 20. to each of the inhabitants giving notice. (See before, p. 22). Disorderly houses.
- 23 G. 3. c. 78. Neglecting or refusing to make a list of persons to serve the office of surveyor of the highways (see before, p. 24.) or not returning it, or not giving the notice or serving the warrant directed by the act, or not returning the amount of the sixpenny assessment, he forfeits forty shillings; or refusing to execute a justice's warrant under the act, he forfeits from forty shillings to £ 10. Highways.
- 26 G. 3. c. 107. § 30. Refusing or neglecting to return the lists of persons liable to serve in the militia, or to comply with the orders of the deputy lieutenants, &c. or being guilty of fraud or partiality in the return, he may be committed by them for a month, or fined £ 5. Militia.

swearing for a day together, who (except himself) would be the worse for it? If the Supreme Being have prohibited this practice (which remains to be proved) he will undoubtedly adapt a fit punishment to it in another state. The only object of criminal law is to prevent offences injurious to a society; a description within which a few ridiculous and insensible phrases can never fall. Bigots always confound *sins* with *crimes*, though no two things can be more essentially different.

30 G. 3. c.
(Annual)

If he presume to quarter or billet any officer or ^{Soldiers.} foldier in a private house, without the consent of the owner, *such owner is to have his remedy at law against him!* And refusing to execute warrants for providing carriages, he forfeits from twenty shillings to forty shillings; quartering wives, children or servants, he forfeits to the party grieved twenty shillings; or refusing or neglecting (for two hours) to billet, or receiving money to excuse persons, from forty shillings to £ 5; and not delivering to the quarter sessions for Westminster *and parts adjacent* signed lists of houses liable to receive soldiers, with the number billeted in each house, he forfeits £ 5.

C H A P. VIII.

OF THE HIGH CONSTABLE.

Crompt. J. P.
201.

2 Hale P. C.

96.

3 Keble,

231.

1 Salk. 331.

Fortescue,

128.

1 Roll A.

535.

Bulstr. 174.

3 Keble,

197.

THE high, chief, or head constable is the con- ^{Quality.} stable of a hundred, rape, lathe, wapentake or such like division, but it is doubtful whether he be a conservator of the peace.

He is as much the officer of the justices of the peace as the constable of a vill or parish.

He is elected at the leet (or turn) of the hun- ^{Election.} dred, or by the justices of the peace *. And suit and service to a leet is not sufficient to excuse a man from serving the office without special custom.

* In Westminster a high constable is to be elected annually, and is not to serve for more than three years together. 29 G. 2. c. 25.

- 1 Roll A. 535. And if *A.* serve for a year, and the jury for the hundred according to the custom present *B.* and the steward refuse to swear him, but continue *A.* a writ out of the Kings Bench may be directed to the steward to swear *B.* and if there be good cause to refuse him, it may be returned to the court.
- 5 Eliz. c. 4. He may hold petty or statute sessions (for the hiring of labourers and servants of husbandry) according to ancient usage. Power.
- 1 Salk. 381. Cro. Eliz. 375. 376. It is doubtful whether he can arrest for breach of the peace, or take surety of the peace even by obligation; much less a mans oath that he is in fear of his life.
- 1 Black. R. 350. 3 Bur. 1262. He is said to be an officer within the mutiny act for billeting of soldiers. And may occasionally make a deputy, whose acts in his principals absence will be good. Duty.
- 13 E. 1. c. 6. He is to present those who in upland towns harbour strangers for whom they will not answer; and also such sheriffs or bailiffs as do not follow the cry of the country.
- 3 G. 2. c. 25. And is to deliver the lists of persons qualified to serve on juries, which he shall receive from the constables at the quarter sessions, attesting the receipt on oath.
- 8 G. 2. c. 16. He is on receiving notice of any robbery to make fresh suit and hue and cry after the felons; and is to defend any action brought by one who has been robbed against the hundred; and is to give public notice of being served with process.
- 12 G. 2. c. 29. And is to collect the county rate; and pay it over to the county treasurer, or account for it at the sessions.

And

- 17 G. 2. c. 5. And was to pay to the petty constable the rate or allowance ascertained by a justice of peace's certificate for the conveyance of vagrants; which was to be allowed him by the county treasurer, on passing his accounts. But such rate or allowance is now to be paid immediately by the said treasurer.
- 26 G. 2. c. 34.
- 19 G. 2. c. 21. If he hear any person swear or curse, he is, if a stranger, to seize him and carry him before the next justice, &c. or if known to him, make information before such justice, &c. to be convicted and punished*.
- 26 G. 3. c. 107. Is to forward, or give notice of the orders of the lieutenant, or deputy lieutenants, to the constables.
- 30 G. 3. c. (Annual.) And in Westminster and places adjacent, when required, *may* billet the foot guards; and on the issuing of any order for that purpose *shall* deliver out precepts to the constables within his division to billet the said guards.
- 3 & 4 Ann. c. 18. If he fail, in obedience to the sessions warrant, to issue his precept to the constables within his hundred to convene and meet him, to prepare lists of persons qualified to serve on juries, he forfeits £. 10. Punishment.
- 12 G. 2. c. 29. If he neglect or refuse to collect, account for, or pay over, the county rate, he is to be sent to jail until it is done.
- 17 G. 2. c. 5. If he refuse or neglect to pay the reward of ten shillings for apprehending vagrants on demand, the justice may levy twenty shillings by sale of his goods, out of which it is to be paid.

* The drawer of this act has thought proper to use the terms "constable" and "petty constable;" which is just as absurd as it would be to speak of the "jury" and "petty jury;" as if the petty constable were the deputy or officer of the high constable.

Wilfully

19 G. 2. c. 21. Wilfully omitting the performance of his duty, in seizing or informing of persons who swear or curse in his hearing, he is to forfeit forty shillings, or be sent to the house of correction.

26 G. 3. c. 107. § 30. Refusing or neglecting to return the lists directed by this act, or to comply with the orders of the deputy lieutenants, he is to be committed to jail for a month, or fined from 40s. to £ 5.

30 G. 3. c. (Annual.) Neglecting or refusing to execute the warrants for providing carriages for soldiers, he is to forfeit from twenty shillings to forty shillings. And if he neglect or refuse (for two hours) to billet soldiers, or receive, demand, or agree for any reward to excuse persons from quartering, he is to forfeit from forty shillings to £ 5. This seems to be intended of "Westminster and parts adjacent." (See p. 40).

Bulstr. 174. 1 Salk. 150. He is removeable by the justices of the peace, if there be cause for it.

8. G. 2. c. 16. No person shall have an action against any hundred Indemnity. for robbery, unless he, before the secondary of the Kings Bench, the filazer of the Common Pleas, or the sheriff of the county, (*inter alia*) enter into a bond to the high constable (who is to defend the action) for securing the payment of his costs; such bond to be delivered over upon request to the high constable; and no process of execution is to be served upon him; and his expences to be paid out of the assessment.

J. P. 57. Mr. Dalton says he had seen a MS. said to be a Privilege. collection of Sir Nicholas Hide of the office of a justice of peace; wherein was said, that it was resolved by all the judges of England, (*Trin. 5 Car. 1.*) that justices of peace at sessions may not compel the constables of hundreds to attend at the quarter sessions, and to

to present offenders upon oath ; otherwise it is as to the affizes, &c.

z Jones, 46. He shall be discharged from serving the office of collector of the poors rate during his office*.

* The high constable (as has been elsewhere mentioned) is generally but ignorantly supposed to have, and in fact frequently found to assume a degree of authority over those who are called petty constables, which is not given him by law. For although some acts of parliament have empowered the justices to direct their warrants to him, commanding him to issue his precepts to the constables, who are subjected to a penalty for disobeying them, yet even this gives him no authority, his office being simply ministerial. And in all cases where the justices make out such general warrant, not being empowered thereto by express statute, it is conceived that the constables, in disobeying the precepts of the constable of the hundred, are not liable to punishment; notwithstanding any "faulty precedent in Burn." See the Introduction, and Bacons Law Tracts, p. 187. and 1 Burns Justice, 397.

A P P E N D I X.

N^o I.

THE CONSTABLES OATH.

YOU shall swear, That you will well and truly serve our Sovereign Lord the King in the office of constable for the township of C. within this manor [hundred or county] for the year now next ensuing, or until you shall be thereof discharged by due course of law: You shall see the kings peace kept, and keep all such watch and ward as are usually accustomed, and ought to be kept; and you shall well and truly do and execute all other things belonging to the said office according to the best of your knowlege.

So help you God.

N^o II.

COMMAND OR PROCLAMATION FOR RIOTERS TO DISPERSE.

OUR Sovereign Lord the King charges and commands all persons here assembled, immediately to disperse themselves, and peaceably depart to their habitations, on pain of imprisonment.

N^o III.

N^o III.FORM OF AN OBLIGATION TO BE TAKEN BY A
CONSTABLE FOR KEEPING THE PEACE.

KNOW all men by these presents, That I *A. B.* of *C.* in the county of *D.* labourer, am held and firmly bound unto *E. F.* yeoman, constable of the township [manor, &c.] of *C.* afore said, in the sum of £. 40, to be paid to the said *E. F.* or his certain attorney, executors, administrators or assigns, for which payment to be well and faithfully made I bind myself, my heirs, executors and administrators, firmly by these presents, sealed with my seal. Dated this first day of July, in the 30th year of the Reign of our Sovereign Lord George the Third, by the Grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, and in the year of our Lord 1790.

THE condition of the above-written obligation is such, That if the above-bounden *A. B.* shall [personally appear at the next general quarter sessions of the peace to be holden in and for the county of *D.* to do and receive what shall be then and there enjoined him by the court, and in the mean time shall] keep the peace [and be of the good behaviour] toward the king and all his liege people, and especially toward *G. H.* of *C.* in the said county, yeoman, then the said obligation to be void, or else to remain in full force and virtue.

Signed, sealed, and
delivered in the
presence of

N^o IV.

N^o IV.

OATH OF THE APPRAISERS OF GOODS DISTRAINED FOR RENT, TO BE ADMINISTERED BY THE CONSTABLE.

YOU shall swear that you will faithfully appraise and value the goods now taken in distress, and mentioned in the inventory to you shewn, as between buyer and seller, according to the best of your skill and understanding.

So help you God.

N^o V.

APPOINTMENT OF A DEPUTY.

I *A. B.* constable of *C.* in the county of *D.* do hereby make, substitute, and appoint *E. F.* of the same place, yeoman, my true and lawful deputy in the office aforesaid so long as I shall hold the same : *or thus*—during the continuance of my will and pleasure (*or for any particular purpose*). Dated, &c.

THE

T H E

SONG of a CONSTABLE:

Made by JAMES GYFFON,

Constable of *Alburye* [in *Surry*],

Anno 1626.

To the tune of "*Jump to me Cossen.*"

(*Now first printed.*)

I A constable haue tooke myne oath;
By which shall plaine appeere
The troth and nothing but the troath,
Whoseuer my song will heere.
One greate constable of England was,
Another late should haue ben;
But litle ones now is found will serue,
So they be but honnest men.
A constable must be honest and just;
Haue knowledge and good reporte;
And able to straine with bodie and braine,
Ells he is not fitting for 't.

Some parish puttes a constable on,
Alas! without vnderstanding,
Bycause they'd rule him when they haue done,
And haue him at their commaunding.
And if he commaunds the poore they 'le grutch,
And twit him with partial blindnes;
Againe, and if he commaunds the rich,
' They 'le threaten him with vnkindnes:

To

To charge or compell 'um, hee's busie they 'le tell 'um;
 In paying of rates they 'le brawle,
 Falls he but vnto, do that he should do,
 Ile warnt you displease them all.

Whip he the roagues *, they 'le raile and they 'le curse :
 Soldiers as rude cause they are
 Sent to the treasurer with their passe †,
 And may not beg euery where.
 If warrantes do come, as often they do,
 For money, then he it demaundes,
 To eu'yre one with 's rate he does go,
 Wherein they are leuied by landes :
 They 'le say then he gathers vp money of others,
 To put to vse for increase ;
 Ells he gathers it vp, to run away wu't :
 What terrible wordes be these !

Hearing a presse for souldiers theyle start,
 Ells hide them selues when we come ;
 Their wiues then will faye, to presse wee yee maye :
 Our husbands are not at home ‡.

Coyne

* By 39 Eliz. c. 4. since repealed.

† See 43 Eliz. c. 3. §§ 8. 13.

‡ This idea of pressing the wife for the husband is the subject of a humorous old song (latinized by Bold) beginning

“ I am a cunning constable, &c.”

of which the second stanza is as follows :

Hol who's at home ? Lo ! here am I !
 Good morrow, neighbour. Welcom, sir.
 Where is your husband ? Why truly
 He's gone abroad, a journey far.

Coyne for magazens sent for in haft ;
 Much ado was care they yeilded,
 Yet's gather'd and paid ; and I am afraid
 They will not in haft be builded.
 The justices will set vs by the heels
 If wee do not do as we should ;
 Which if we performe the townsmen will storme ;
 Some of them hang's if they could.

The constable's warnde to th' seffions then,
 Vnwilling some goes, alas !
 Yet there may wit and experience lerne,
 If that he be not an asse.
 There shall he see the justices set,
 Here three of O yeses, and
 Then shall he here the commiffion read,
 Though little he vnderstand*.
 Our free landed men are called for in then,
 To be of the great inquest,
 The chief of our townes, with hoare on their crownes,
 That what should be done knowes best.

Choice men of euery towne in the sheire,
 Three juries their must be more,
 Cald vnto the booke with "here, sir, here !"
 The wifest of twentye before ;

Do you not know when he comes back ?
 See how these cowards fly for life !
 The king for souldiers must not lack ;
 If I mis the man, I'll take the wife.

The pres for *soldiers* has now given place to the equally illegal and much more infamous one for *seamen*. The former was carried on under a form or colour of law, but the latter is executed by a gang of lawless ruffians.

* It was then in Latin.

E

Then

Then there shall he see whom hath transgress
 Punished for his offence,
 There shall he here a number amerc't,
 Along of their negligence :
 What things are amisse, what doings there is,
 Justices charge them enquier,
 Fore clarke of the peace and baylies at least
 A dozen besides the crier.

Verdicts must come from these juries then,
 But howsoeare they endite them,
 Theyle not be tooke till next day by ten,
 Vnlesse that their clarkes do wright them.
 Ruff wordes or smooth are all but in vaine,
 All courts of proffit do favour,
 And though the case be neuer so plaine,
 Yet kissing shall go by fauour :
 Theyle punish the leastest, and fauour the greatest,
 Nought may against them proceede,
 And who may dare speak against one that is great,
 Lawe with a powder indeede !

But now my constableship's neare done :
 Marke hearers, sayers and fingers,
 There is not an officer vnder the sunne
 But does looke through his fingers.
 Yet where I see one willing to mend,
 Not prating nor making excuses,
 Such a one if I can Ile befreind ;
 And punish the grosse abuses.
 My counsel now vse, you that are to chuse,
 PUT ABLE MEN EUER IN PLACE ;
 FOR KNAUES AND FOOLES IN AUTHORITYE DO
 BUT THEMSELUES AND THEIR COUNTRIE DIS-
 GRACE.

E R R A T A.

- p. xxi. *for ordnance, read ordinance.*
p. 4. *for 1 Mod. 42. read 6 Mod. 42.*
for Freeman, 256. read, 12 Mod. 256.
p. 5. *after Styles, 362. add Barnard, 51.*
after (Noy, 112.) add Mar. 30.
p. 6. *for (Mod. 13.) read (1 Mod. 13.)*
p. 26. *for Freeman, 256. read 12 Mod. 256.*
p. 27. *for 20 and 30, read 30 and 40.*
p. 32. *for Forfter, read Foster.*
p. 48. *for eu'yre, read eu'rye.*

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