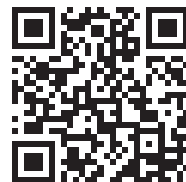

This is a reproduction of a library book that was digitized by Google as part of an ongoing effort to preserve the information in books and make it universally accessible.

Google™ books

<https://books.google.com>



ES



UNIVERSITY
OF CALIFORNIA
LOS ANGELES

SCHOOL OF LAW
LIBRARY



CONSTABLES' GUIDE

THE

LAW OF CONSTABLES

IN PENNSYLVANIA

BY

WILLIAM F. DILL
"
OF THE ADAMS COUNTY BAR

PHILADELPHIA
T. & J. W. JOHNSON & CO.
1901

T
D5806c
1901

COPYRIGHT, 1901,
BY
T. & J. W. JOHNSON & Co.

5-11 1700 Aug, 1700

PREFACE.

A growing demand, in this State, for an up-to-date publication on the subject, led the author to undertake the preparation of this work, which was written primarily for the constables of Pennsylvania. Technical terms have been omitted, or explained, and each duty that may confront the constable has, it is hoped, received due attention. A collection of forms referred to by number in the text will, we trust, be found quite useful.

Every statute governing the constable, and several hundred reported decisions have been referred to, so that the work may be serviceable, as well, to justices and the legal profession generally.

The author wishes to acknowledge the kindness of Hon. William McClean and W. A. McClean, Esqs., of the Adams County Bar, for assistance rendered in the writing of this work.

WILLIAM F. DILL.

Gettysburg, Pa.,

January 30, 1901.

TABLE OF CONTENTS.

CHAPTER I.

CONSTABLES AND HIGH CONSTABLES.

	PAGE.		PAGE.
1 Classification,	1	accept office or per-	
2 High constables,	2	form its duties,	9
3 Term of office,	4	12 To be freeholder or	
4 Scope of office,	4	give bond,	10
5 Constables,	6	13 The bond,	10
6 Qualifications,	6	14 Oath of office,	11
7 Exceptions,	7	15 Term of office,	11
8 Election,	7	16 Vacancy,	11
9 Acting constable to		17 Vacancy, how filled,	12
notify the constable-		18 When the court ap-	
elect,	8	points,	12
10 Persons elected to ap-		19 Term of an appointed	
pear,	9	constable,	13
11 Penalty for refusal to		20 Removal,	14

CHAPTER II.

DEPUTY CONSTABLES.

	PAGE.		PAGE.
21 Nature of the office,	15	26 Deputies to act as po-	
22 Consent of the court		licemen,	19
necessary,	15	27 To wear shield or	
23 When appointed,	16	badge,	20
24 Vacancy,	16	28 Compensation and dis-	
25 Deputation, in general,	17	charge,	20

CHAPTER III.

NATURE AND SERVICE OF THE VARIOUS WRITS.

	PAGE.		PAGE.	
29	Remarks,	22	42	Service upon foreign
30	Summons,	23		corporations,
31	How served,	23	34	
32	The return,	26	43	Service upon insurance
33	Time in which service			companies,
	must be made,	26	34	
33a	Service of affidavit of		44	Service upon foreign
	plaintiff's claim,	28		insurance company,
34	Service upon non-resi-		35	
	dents of the county,	29	45	Service upon co-
35	The return,	30		operative associa-
36	Service upon agents of			tions,
	non-residents, not		36	
	found within the		46	Service upon partner-
	county,	30		ship associations,
37	Service upon agents of		36	
	permanent non-resi-		47	Service upon railroad
	dents,	31		and canal companies,
38	Service upon non-resi-		37	
	dents, in general,	31	48	Service upon a county,
39	Service upon a corpo-			37
	ration,	32	49	Service upon a town-
40	Service upon a Penn-			ship,
	sylvania corporation		38	
	when office is out of		50	Service upon a bor-
	the county,	32		ough,
41	Service when corpo-		38	
	rate property is loca-		51	Service upon a school
	ted in county where			district,
	action is begun,	33		38
			52	Service upon a city,
				38
			53	Service of a subpoena,
				39
			54	Service of a scire facias,
				40
			55	Domestic attachment,
				40
			56	Service of,
				40
			57	Attachment, how made,
				41
			58	Exemption,
				42
			59	Duties following at-
				tachment,
				43
			60	The return,
				44

TABLE OF CONTENTS.

vii

	PAGE.		PAGE.
61 Attachment against non-residents,	45	85 Service of, in civil cases,	60
62 Service of,	46	86 The arrest,	62
63 The return,	46	87 The return,	62
64 Attachment against fraudulent debtors,	47	88 Warrant of arrest,	63
65 Service of,	48	89 Warrant of arrest,	63
66 The return,	49	90 Service of,	63
67 Attachment-execu- tion,	50	91 What constitutes an arrest,	64
68 Service of,	51	92 When an arrest may be made,	65
69 The return,	52	93 In what places an ar- rest may be made,	65
70 Exemption,	52	94 What violence may be used,	66
71 Wages,	52	95 Showing warrant,	66
72 Search warrant,	53	96 Arrests without a war- rant,	67
73 Service of,	54	97 Felonies and misde- meanors,	68
74 From whom goods may be taken,	55	98 Service outside the county,	69
75 What goods may be seized,	55	99 Care of the prisoner,	70
76 Registered bottles,	56	100 Property of the pris- oner,	72
77 Registered brewers' barrels,	56	101 Escapes,	72
78 Milk cans, butter tubs, etc.,	56	102 An arrest after an es- cape,	73
79 Game and fish,	57	103 Rescues,	73
80 The return,	57	104 The return,	73
81 Attachment for a wit- ness,	58	105 Privileged from service of legal process,	74
82 The return,	58	106 Mittimus,	78
83 Capias,	58		
84 Service of,	59		

CHAPTER IV.

EXECUTION, LEVY AND SALE.

	PAGE.		PAGE.		
107	Remarks,	79	of particulars and receipt,	85	
108	Service of,	80			
109	What may be levied upon,	80	119	Liability of constable on delivery of an execution,	85
110	Indemnifying bond,	81	120	Return to the levy,	86
111	Exemption,	82	121	Notice of sale,	87
112	When the exemption shall not be allowed,	82	122	The sale,	87
113	Time of making the levy,	82	123	Distribution of the proceeds of sale,	89
114	Forcible entrance,	83	124	Labor claims,	89
115	Care of the goods after levy,	84	125	What labor claims are preferred,	89
116	Duties subsequent to a levy,	84	126	Claimants to give notice,	90
117	Constable to endorse time of levy on execution,	84	127	Landlord's claim for rent,	92
118	Constable to give bill		128	Return to execution,	94
			129	Capias-execution,	95

CHAPTER V.

LANDLORD AND TENANT.

(a) DISTRESS; (b) RECOVERY OF POSSESSION.

(a) DISTRESS.

	PAGE.		PAGE.		
130	Landlord's warrant,	96	134	Manner of entering to make distraint,	99
131	Who may distrain,	97	135	What may be distrained,	101
132	Time of distraint,	98	136	What may not be distrained,	101
133	Where distraint may be made,	98			

TABLE OF CONTENTS.

ix

	PAGE.		PAGE.
137 How a distress is made,	103	145 Duties in general,	108
138 Care of goods after distress,	104	146 Local laws,	109
139 Return after distraint,	105	(b) RECOVERY OF POSSESSION.	
140 Appraisement,	106	147 Proceedings to recover possession,	110
141 The right to replevy,	107	148 Writ of possession,	111
142 Exemption,	107	149 Writ of execution,	111
143 Sale,	108	150 The return,	112
144 Duties after sale,	108	151 Local law,	112

CHAPTER VI.

ELECTION DUTIES.

	PAGE		PAGE.
152 Township elections,	113	157 Constables to report disturbances, penalty,	116
153 Division or erection of new townships,	114	158 Betting on elections,	116
154 Delivery of certificates of election,	114	159 Notice of election of inspectors,	116
155 Constables to attend elections,	115	160 Mode of increasing number of justices or aldermen,	117
156 Duties at the polls,	115		

CHAPTER VII.

DUTIES IN RELATION TO VIOLATION OF THE LIQUOR LAWS.

	PAGE.		PAGE.
161 Remarks,	119	163 Monthly visitations,	120
162 Return places where liquor is sold,	119	164 Furnishing liquor to certain persons,	120

	PAGE.		PAGE.
165 Sale, furnishing or giving of liquor on election days,	121	166 Sale of liquor near soldiers' encampments,	121

CHAPTER VIII.

CRIMES AND OFFENSES.

	PAGE.		PAGE.
167 Remarks,	123	173 Gambling,	127
168 Constables to be fire, game and fish wardens,	123	174 Trespassing upon trains,	128
169 Forest fires,	125	175 Constables in boroughs to arrest in certain cases without a warrant,	129
170 Time that minors may be employed,	126	176 Constable's return,	129
171 Vagrants,	126		
172 Diseased cattle,	127		

CHAPTER IX.

MISCELLANEOUS DUTIES.

	PAGE.		PAGE.
177 When sheriff is a party to a suit,	135	182 Canada Thistles,	137
178 Court duties,	135	183 Polluting water,	137
179 Delivering transcript of justice or clerk of court,	136	184 Jury trial before justices.	138
180 Mercantile License Tax,	136	185 Duty of the constable,	138
181 Sheep-dogs,	136	186 Care of the prisoner,	138
		186* Justice's inquest,	139

CHAPTER X.

ACTIONS AGAINST CONSTABLES AND THEIR SURETIES.

	PAGE.		PAGE.
(a) ACTIONS AGAINST CONSTABLES.		194 Escapes, in general,	147
187 Introductory,	140	195 Illegal fees,	147
188 Neglect of duty,	141	196 Limitation of ac- tions,	148
189 Suits for acts done in obedience to war- rant,	141	197 Where actions may be heard,	149
190 Liability as to exe- cutions,	143	198 Actions against con- stables in general,	149
191 Arrests without a warrant,	146	199 Service of process upon constables,	150
192 Escapes by negli- gence,	146	200 Costs of suit,	150
193 Escapes due to re- fusal to execute process,	146	(b) ACTIONS AGAINST SURETIES.	
		201 Actions against sure- ties,	150

CHAPTER XI.

FORMS.

	Form No.
Affidavit of plaintiff's claim, service of return to,	8a
Appraisalment of goods distrained, return to,	50
Appraisalment of goods levied upon, form of,	38a
Attachment-execution, service of, return to,	22
Attachment against a non-resident, return to,	22
Attachment against a fraudulent debtor, return to,	22
Attachment upon a witness, service of, return to,	25
Bond, bail, after attachment or levy,	20

	Form No.
Bond, bail, under <i>capias</i> or warrant of arrest,	26
Bond, constable's official,	1
Bond, for witness's appearance,	24
Bond of indemnity in attachment proceedings,	18
Bond of indemnity in execution proceedings,	18
Bond of indemnity in distress proceedings	18
Canada thistles, notice to destroy,	59
<i>Capias</i> , return to,	27
<i>Capias</i> , when bail is taken, return to,	28
<i>Capias</i> , when defendant is not found, return to,	29
<i>Capias</i> , when defendant is sick, return to,	30
<i>Capias</i> , when defendant is rescued, return to,	31
Consent of tenant for distrained goods to remain on the premises,	47
Deputy constable, deputation of, between terms of court,	5
Deputation, special, of another constable,	6
Distress, warrant of, when all property is exempted, return to,	51
Distress, warrant of, notice of sale under,	52
Domestic attachment, service of writ of, return to,	21
Election, township, notice of,	54
Election, for division of a township, notice of,	55
Election, for erection of a township, notice of,	56
Execution, writ of, return to,	34
Execution, writ of, when defendant has no goods, return to,	35
Execution, writ of, where property is pledged, return to,	36
Execution, writ of, when defendant pays claim and costs, return to,	37
Execution, writ of, when exemption is demanded, return to,	38
Execution, notice of sale under,	39
Execution after sale, return to,	43
Fraudulent debtors, service of attachment upon, return to,	22

TABLE OF CONTENTS.

xiii

	Form No.
Gambling device, seizure of, return to,	58
Information against persons for refusal to assist an officer in service of process,	33
Inventory of property attached,	22a
Juror, notice to,	60
Labor claim, notice of	41
Landlord's claim for rent, under execution proceedings, notice of,	42
Landlord's warrant,	46
Landlord's warrant, notice of sale under,	52
Landlord's warrant when all goods are exempted, return to,	51
Non-residents, service of attachment upon, return to,	22
Non-residents, service of summons upon, return to,	9
Notice to tenant of distraint,	48
Oath of appraisers, under execution proceedings,	19
Oath of appraisers, under distress proceedings,	49
Petition for the appointment of a constable,	3
Petition of surety of constable in case of misconduct,	4
Possession, writ of, return to,	53
Receipt, justice's receipt for money paid to him,	44
Receipt, defendant's receipt for overplus paid to him,	45
Resignation of constable,	2
Sale, adjournment of, under writ of execution,	40
Sale, notice of, under writ of execution,	39
Sale, notice of, under distress warrant,	52
Subpœna, service of, return to,	17
Search warrant, return to,	23
Soldiers' encampment, information for arrest at,	57
Summons, writ of,	7
Summons, service of, return to,	8
Summons, certificate on copy of,	8
Summons, service of, upon non-residents, return to,	9
Summons, service of, upon a corporation, return to,	10

	Form No.
Summons, service of, upon a corporation, when corporate property is within county, return to,	11
Summons, service of, upon a co-operative association, return to,	12
Summons, service of, upon a partnership association, return to,	13
Summons, service of, upon a county, return to,	14
Summons, service of, upon a city, return to,	14
Summons, service of, upon a borough, return to,	15
Summons, service of, upon a school district, return to,	16
Summons in distress proceedings,	48
Venire, return to,	61
Warrant of arrest, return to,	27
Warrant of arrest, when bail is taken, return to,	28
Warrant of arrest, when defendant is not found, return to,	29
Warrant of arrest, when defendant is sick, return to,	30
Warrant of arrest, when defendant is rescued, return to,	31
Warrant of arrest, when bail is taken before another justice, return to,	32
Warrant of arrest, demand for certified copy of,	62
Warrant of arrest, certified copy of,	63

CHAPTER XII.

FEES.

	PAGE
202. Fees in general,	196
Act of February 17, 1899, P. L. 3-5.	

LAW OF CONSTABLES.

CHAPTER I.

CONSTABLES AND HIGH CONSTABLES.

	PAGE.		PAGE.
1 Classification,	1	accept office or per-	
2 High constables,	2	form its duties,	9
3 Term of office,	4	12 To be freeholder or	
4 Scope of office,	4	give bond,	10
5 Constables,	6	13 The bond,	10
6 Qualifications,	6	14 Oath of office,	11
7 Exceptions,	7	15 Term of office,	11
8 Election,	7	16 Vacancy,	12
9 Acting constable to		17 Vacancy, how filled,	11
notify the constable-		18 When the court ap-	
elect,	8	points,	12
10 Persons elected to ap-		19 Term of an appointed	
pear,	9	constable,	13
11 Penalty for refusal to		20 Removal,	14

Classification.

1. There are three classes of constables in Pennsylvania: (*a*) high constables, (*b*) constables, and (*c*) deputy constables. The latter are the assistants of the constables and are subject to the same laws, while the powers and duties of the high constable and the constable differ so widely as to make it expedient to define the duties of each.

High constables.

2. (a) High constables are elected in boroughs and cities, and are not primarily court or county officials, but are mere executive officers of the burgess and town council, and, as such, are required to serve their notices and execute their legal commands.¹ The duties of the high constable, in addition to those prescribed by the legislature, are such as are prescribed by municipal ordinance or by the charter and by-laws of the municipality.

The high constable shall give bond with surety as required by the town council; he shall have the power and authority of the constables of the several townships in the proper county; he shall serve the notices prescribed by this act² and issued by the burgess and town council, and attest the service of the same by affidavit in writing, signed by him and deposited with the secretary of the town council. The salary³ and also the amount of the security to be given by the high constable shall be fixed by the town council,⁴ and the burgess is the judge of the sufficiency of the bond required.⁵ If any person duly elected as high constable and having received notice thereof (by certificate from the judges of

¹ 2 Bacon's Ab'g. 350; Doylestown High Cons., 16 C. C. 90.

² P. & L., Boroughs, 208; 1851, P. L. 320, § 13.

³ P. & L., Boroughs, 208; 1851, P. L. 320, § 3.

⁴ P. & L., Boroughs, 210; 1834, P. L. 163, § 15.

⁵ In re Burgess, etc., 8 Luz. L. Reg. 113.

the borough election), shall refuse or neglect to qualify, or having taken upon himself such duties shall refuse or neglect to discharge the same according to law, he shall forfeit the sum of \$20, provided that no person elected to the said office shall be liable to a fine for neglecting or refusing to serve more than once in four years.⁶

Before entering upon the duties of his office, the high constable shall take and subscribe an oath or affirmation before some justice of the peace.⁷ It shall be the duty of high constables of all boroughs to give notice of the annual borough elections by setting up six advertisements in the most public places in the proper borough ten days previous thereto.⁸

Constables (including high constables) of the several boroughs of this commonwealth, in addition to the powers already conferred upon them, shall and may, without warrant and upon view arrest and commit for hearing any and all persons guilty of a breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness, or who may be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens or violating any ordinances of said borough, for the violation of which a fine or penalty is imposed.⁹

6 P. & L., Boroughs, 203; 1834, P. L. 163, § 6.

7 P. & L., Boroughs, 205; 1834, P. L. 163, § 7.

8 P. & L., Boroughs, 228; 1834, P. L. 163, § 14.

9 P. & L., Boroughs (Sup.), 40; 1897, P. L. 121.

Term of office.

3. The qualified voters of every borough shall on the third Tuesday of February, 1896, and "triennially" thereafter, vote for and elect a properly qualified person for high constable to serve for three years.¹⁰

The term of the high constable shall begin on the first Monday of March, next succeeding his election, and expire on the first Monday of March three years thereafter, unless sooner terminated by death, resignation or otherwise, except in cities of the first class, where the term is fixed at five years, to begin and end on the first Monday of April.¹¹

Scope of the office.

4. There is nothing to prevent a borough from electing one person to act both as constable and high constable.¹² In such a case, however, the person so elected must not only give such bond as required by the town council, and to be approved of by the burgess, and take the oath of office before some justice, in order to satisfy the statutory requirements demanded of high constables, but he must also fulfill all the legal requirements relating to constables. Any person, in fact, who is elected to the office of high constable, by conforming to the same laws as govern constables, shall have the same power

¹⁰ P. & L., Constables, 1 ; 1895, P. L. 375.

¹¹ P. & L., Cities, 165 ; 1889, P. L. 277, Art. IV, § 16.

¹² Com. v. Schaffer, 7 C. C. 24.

and authority as constables of the several townships in the proper county. A high constable, accordingly, before assuming the duties of a constable, must first be confirmed, and sworn into office by the court of quarter sessions of the proper county. After his confirmation by the court, he is, in effect, an ordinary constable with the added duties of a ministerial officer of the borough.¹³ Unless seeking to qualify himself to act as a constable, the court of quarter sessions has no jurisdiction over the high constable as such, unless the charter of the borough so provides.¹⁴ Consequently, if a high constable never qualifies himself to act as a constable, he is not bound to execute writs issued by a justice, or appear in court to make returns,¹⁵ but is answerable only to the burgess and town council. A bond, therefore, taken before and approved by the town council is not binding on the sureties of a high constable, who has not qualified to act as a constable, for the misconduct and negligence of such high constable while in the performance of the duties of a constable.¹⁶

The duties of a high constable are almost entirely regulated by city and borough ordinances, and for

¹³ *McBride v. Com.*, 2 Watts, 448; *Com. v. Atticks*, 16 C. C. 147.

¹⁴ *Doylestown High Cons.*, 16 C. C. 90.

¹⁵ *Com. v. Schaffer*, 7 C. C. 24; *Doylestown High Cons.*, 16 C. C. 90.

¹⁶ *McBride v. Com.*, 2 Watts, 448.

that reason this treatise is confined to the powers and duties of constables, except where high constables are specially mentioned.

(*b.*) CONSTABLES.

Remarks.

5. The office of constable was established, probably, by King Alfred, more than a thousand years ago. Then, as now, it was an office of trust and great responsibility. The peace and safety of a community is largely entrusted to the constable, whose duty it is to preserve order and enforce the authority of the law. "Constables," says Blackstone, "are guardians of the peace within their jurisdiction and may apprehend all breakers of the law, and bring them before the proper authorities to answer for their conduct." The duties of a constable are of a two-fold nature: (*a*) To enforce the laws, as arresting a person for an unlawful act; (*b*) To assist other officials in the execution of their legal business, as the serving of any writs issued by justices of the peace.

Qualification.

6. Any qualified elector (voter) of the township, borough, or ward, for which he shall be chosen is eligible to the office of constable.¹⁷

¹⁷ P. & L., Twp. Officers, 5; 1834, P. L. 537, § 84.

Exceptions.

7. No person shall be eligible or capable of serving as constable or deputy constable, who having previously served as a constable, shall have been convicted, within seven years, of refusing or neglecting to pay over money collected by him upon an execution.¹⁸

Then, too, no person convicted of embezzlement of public moneys, bribery, perjury, or other infamous crime, shall be capable of holding any office of trust or profit in this commonwealth.¹⁹

Another exception is, where any person while serving as a deputy constable, having purchased, directly or indirectly, any goods taken in execution and sold by his principal (the constable who secured his appointment to act as deputy) or any one while serving as a constable having purchased, directly or indirectly, any goods taken in execution and sold by any other constable of his township, borough, city or district, shall, upon conviction for so purchasing, be ineligible to the office of constable or deputy constable for the seven years following the conviction.²⁰

Election.

8. On the third Tuesday of February, 1896, and "triannually" thereafter, the qualified voters of every borough and township, and where a borough is

¹⁸ P. & L., Constables, 28; 1820, 7 Sm. L. 308, § 7.

¹⁹ Const. of Pa., Art. II, § 7.

²⁰ P. & L., Constables, 31; 1820, 7 Sm. L. 308, § 6.

divided into wards, of every ward in this commonwealth, shall vote for and elect a properly qualified person for constable in each of said districts, and the person so elected shall serve for three years.²¹

In cities of the second and third classes the qualified voters of each ward shall, on the third Tuesday of February, 1890, and triennially thereafter, elect a proper person for constable therein to serve for three years.²²

In Philadelphia each ward elects its constables on the third Tuesday of February next preceding the expiration of the constables' terms of office, to serve for five years.²³ As many constables are elected in each ward as there are magistrates.²⁴

Where boroughs have been divided into wards under the act of May 14, 1874, constables in such boroughs must be elected under the act of May 10, 1878, and they cannot be elected by the council.^{24*}

Acting constable to notify the constable-elect.

9. Each acting constable in this commonwealth shall, within five days after the election for a constable has been held, give notice in writing to the person who shall be chosen of his election. The

21 P. & L., Constables (Sup.), 1 ; 1895, P. L. 375.

22 P. & L., Constables, 2 ; 1889, P. L. 83.

23 P. & L., Constables, 3 ; 1864, P. L. 60, § 2 ; Barr's Petition, 8 C. C. 64.

24 P. & L., Constables, 3 note ; 1858, P. L. 158.

24* *Comfort v. Cumberland Co.*, 23 C. C. 414.

inspectors and judge of each election district make out a certificate of election, which the acting constable is required to deliver to the constable-elect, or to leave the same at his usual abode, within five days after his election.²⁵

Persons elected to appear.

10. Every person elected to the office of constable in any township, borough, or ward must appear on the first day of the next court of quarter sessions of the proper county, to accept or decline the office; and if any person so elected and duly notified of his election, shall neglect or refuse to so appear, he shall forfeit \$40 to the township, to be levied by order of the court.²⁶

Penalty for refusal to accept office or perform its duties.

11. If any person, who shall be elected and appointed a constable, or who shall be appointed as such by the court, as provided by law, and who shall possess a freehold estate in his own right, *clear* of *all* incumbrances, of the value of at least \$1,000, shall neglect or refuse to take upon himself the said office, or shall not procure a deputy to undertake the duties thereof, he shall be fined in the sum of \$40, by the court, for the use of the proper township. No person, however, shall be liable to the

²⁵ P. & L., Elections, 7; 1840, P. L. 683.

²⁶ P. & L., Constables, 5; 1834, P. L. 537, § 107.

penalty who shall have served personally or by deputy in the office of constable of the same township within fifteen years of his said election or appointment, or having been elected or appointed within that time, shall have paid the said penalty within the period aforesaid."

To be a freeholder or give bond.

12. When it shall appear to the satisfaction of the court that the person elected constable possesses a freehold estate in his own right, *clear* of all incumbrances, of the value of at least \$1,000, a bond is not required. But when he does not possess such freehold estate, he shall give a bond (as Form No. 1) to be approved by the court.

The bond.

13. When the person elected constable does not possess a freehold estate of the value of at least \$1,000, or when he possesses an estate exceeding that value, but encumbered however slight, he shall give a bond, with at least one sufficient surety, to be approved of by the court. The bond shall be in the sum of not less than \$500, nor more than \$3,000, as the court shall direct, to be taken by the clerk of court, in the name of the commonwealth. Such bond shall be held in trust for the benefit of such persons who may sustain injury from the con-

27 P. & L., Constables, 8, 9; 1834, P. L. 537, § 110.

stable while acting in his official capacity by reason of neglect or breach of duty.²⁸

Oath of office.

14. The constable shall, before entering upon the duties of his office, take and subscribe an oath or affirmation before some person having authority to administer oaths, to support the Constitution of the United States and that of this commonwealth, and perform the duties of his office with fidelity until legally discharged.²⁹

Term of office.

15. The term of the constable shall begin on the first Monday of March, next succeeding the election, and expire on the first Monday of March three years thereafter, unless sooner terminated by death, resignation or otherwise; except in cities where the term is fixed at five years, to begin and end on the first Monday of April.³⁰

Vacancy.

16. A vacancy in the office of constable shall exist in any one of the following contingencies :

²⁸ P. & L., Constables, 6, 10; 1834, P. L. 537, §§ 108, 112.

²⁹ P. & L., Twp. Officers, 8; 1834, P. L. 537, § 86.

³⁰ P. & L., Twp. Officers, 4; 1879, P. L. 94; P. & L. Cities, 165; 1889, P. L. 277, Art. IV, § 16.

- (a) Resignation.³¹
- (b) Removal from office by the court.
- (c) Removal from the borough, ward, or township for which he was elected or appointed.
- (d) The election of any one convicted of any offense mentioned in § 7.
- (e) Conviction for any offense entailing dismissal from office or imprisonment.
- (f) Death of the incumbent.

Vacancy, how filled.

17. In the event of a vacancy in the office of constable for any of the foregoing reasons, the proper practice is to present a petition³² to the court of quarter sessions of the proper county, setting forth the existence of the vacancy, the cause thereof, and naming a person suitable for the office; which petition shall be signed by a goodly number, if not a majority of the electors of such township, borough, or ward, praying the court to appoint the person named therein to fill such vacancy until his successor shall be elected according to law; whereupon the court, if no objection is made, will make the appointment.

When the court appoints.

18. In case of failure to elect, insufficiency as to estate, or security offered, neglect or refusal to as-

³¹ See Form No. 2.

³² See Form No. 3.

sume the duties of the office, in the event of vacancy in office by resignation, death, or otherwise, the court shall appoint a suitable person possessing a freehold estate (see § 12) or who shall give the required security to serve as constable.³³

The court has power to appoint a constable in a new ward in cities of the third class under acts of 1834, and May 4, 1889, the office being considered vacant on formation of the new ward.³⁴

Term of an appointed constable.

19. In case of a vacancy in the office of constable, in cities of the second and third classes, the court shall fill the same by appointment for the unexpired term.³⁵ While in boroughs and townships there is a conflict of opinion as to the proper construction of the Act of 1895, June 26, it being held that there is no legal ground for the election of constable oftener than once in three years, the act of 1834 having been necessarily modified or amended by substituting the word "triannual" for "annual," an appointment, therefore, to fill a vacancy in the office of constable should be made for the unexpired term of three years.³⁶

33 P. & L., Constables, 7; 1834, P. L. 537, § 109.

34 Allentown Constable, 7 North. 187.

35 P. & L., Constables, 2; 1889, P. L. 83.

36 Davis' Case, 3 D. R. 677, 589; Tyson's Bond, 2 D. R. 633; English's Case, 16 C. C. 129, contra; Rudy's Case, 9 C. C. 467; Green Township Constable, 11 C. C. 287; Carr's Case, 1 D. R. 262; Dauphin Borough Case, 4 D. R. 35.

Removal.

20. On petition³⁷ setting forth the complaint of the surety of any constable verified by affidavit, the court of quarter sessions shall have the power to investigate the official conduct of such constable, and where the court shall be satisfied that from habits of intemperance or neglect of duty any constable is unfit and incompetent to discharge his official duties, the court may decree the removal of such constable from office, unless he give such additional security as the court may direct, and thereupon appoint a suitable person to fill such vacancy, who shall either be possessed of a freehold estate or give security as required by law of a regularly elected constable; and such appointee shall serve until the next succeeding election for constable and until a successor be duly qualified, and in case any constable who has not given security (being a freeholder) has so neglected his business, or the situation of his estate is such as to render it unsafe to entrust him with the execution of his legal duties, the court shall also have power to require him to give security, and in default thereof to be removed, as in case of intemperance.³⁸

³⁷ See Form No. 4.

³⁸ P. & L., Constables, 19; 1841, P. L. 400, § 14.

CHAPTER II.

DEPUTY CONSTABLES.

	PAGE.		PAGE.
21 Nature of the office,	15	26 Deputies to act as po-	
22 Consent of the court		licemen,	19
necessary,	15	27 To wear shield or	
23 When appointed,	16	badge,	20
24 Vacancy,	16	28 Compensation and dis-	
25 Deputation, in general,	17	charge,	20

Nature of the office.

21. A deputy constable is an assistant of the constable, and the constable is responsible, as a rule, for the unlawful acts of his deputy constable.¹

Consent of the court necessary.

22. No deputy shall be appointed by any constable, either by general or partial deputation, without the approbation of the court of quarter sessions first had and obtained, except the same be made specially in some civil suit or proceeding, at the request and risk of the plaintiff or his agent.²

The approbation of the court, therefore, must first be obtained before the deputy is legally qualified to act in any civil or criminal matter, except in civil

¹ *Miller v. Heck*, 9 Watts, 439.

² P. & L., Constables, 14; 1834, P. L. 537, § 110.

proceedings where the plaintiff or his agent, at his risk, requests some individual specially to act.

When appointed.

23. When the constable is unable, through personal disability, volume of business, or some other good reason, to perform properly the duties of his office, the court will approve of the appointment of a deputy.³ Unless a good reason is shown, the court will make no appointment.⁴ The deputy must reside in the same township, borough or ward as the constable requesting his assistance.⁵ Constables, however, selected by the magistrates in Philadelphia cannot have deputies appointed to assist them.⁶

Vacancy.

24. In the event of death, inability, or refusal of his deputy to act, the constable may, with the approbation of any one of the judges of the court of quarter sessions, appoint another deputy with full authority to act *until* the next regular session of such court; for the acts of such deputy the constable and his sureties shall be liable as in other cases; and in every such case the constable shall file a written copy⁷

3 In re Petition of Schnyder, 2 Leh. V. 424.

4 In re matter of Dep. Constables, 11 Phila. 391.

5 See note No. 3, above.

6 See note No. 4, above.

7 See Form No. 5.

of such deputation in the office of the clerk of the court of quarter sessions of such county.⁸

If for any reason the deputy fails to act, the statute provides for the appointment of another with full authority to act as such “*until* the next regular sessions” of the court of quarter sessions, after which the constable must renew his application to the court for the appointment of a new deputy.

The law being silent as to the term of the deputy, the court will exercise its discretion upon the presentation of a petition, in which should be stated the term for which such appointment is desired, and in its decree of appointment will fix the term and impose such other restrictions as may seem proper.

The constable should procure a copy of this decree for himself as well as for his deputy.

The surety being responsible for the official acts of the constable, should be consulted in the selection of a deputy.

Deputation, in general.

25. A writ issued to a deputy is void. Hence all writs should be issued to the constable, and when so issued can be served by the deputy in the name of his principal.⁹ When served by the deputy, he must endorse upon the back of the writ the manner of such service, also the constable's name, stating the township, borough, ward, or city for which the

⁸ P. & L., Constables, 15; 1834, P. L. 537, § 114.

⁹ See note No. 4, above.

constable acts, together with his own name as deputy. After his appointment, the deputy may serve, within the county, all kinds of process.¹⁰ A writ must be served by the constable to whom it is directed, or his deputy, and not by another constable,¹¹ unless there has been a special deputation.¹² There can be no objection, apparently, to a constable, or a deputy constable, deputizing specially another constable or another deputy constable of the same county, for the policy of the law has been complied with by the court having previously passed upon the fitness of such to act. Service made by any one deputized by a constable (except in a civil case, at the request and risk of the plaintiff or his agent), the court not having approved such deputation, is void; so, too, the erasure by a constable of his own name in a writ directed to him, and the substitution of the name of another constable is not a deputation, and the service of a writ by the substitute is unlawful.¹³ If the deputizing constable simply signs the deputation as "B, constable of the Eighth ward," and does nothing more to establish his official relation, the deputation is incomplete and the service irregular.¹⁴ When a deputation is made, the constable or deputy should sign, as such, adding

10 *McCormick v. Miller*, 3 P. & W. 230.

11 *Snapp v. Com.*, 2 Pa. 49; *Gordon v. Camp*, 3 Pa. 349.

12 See Form No. 6.

13 *Farley v. Newton*, 1 Sup. Ct. 300.

14 *Dolph v. Tooley*, 13 Luz. L. Reg. 193.

the name of his office and the district for which he acts, otherwise the object sought may be defeated.¹⁶ Not only the name of the ward, but also the city or borough should be given. A constable is liable for any unlawful act of a deputy who derives his authority from a special deputy.¹⁶ The fact that a deputy constable has been appointed, does not, in any way, interfere with the constable himself acting.¹⁷

Deputies to act as policemen.

26. Upon the petition of not less than twenty-five taxpayers of any township, directed to the court of quarter sessions of the proper county, representing that the safety of the citizens, etc., makes, in their opinion, necessary the appointment of one or more deputy constables to act as policemen, the court, if it sees fit, shall make as many appointments, and for such length of time, as the court may deem proper. The persons appointed deputies, in such cases, shall possess and exercise all the powers of policemen of the cities of this commonwealth. The keepers of jails, lockups, etc., must receive all persons arrested within the township for which such deputy was appointed.¹⁸ Under this act, constables have no claim on the county for compensation; they are township officers.¹⁹

15 *Warren v. Wells, Arnold v. Wells*, 3 Luz. L. Reg. 111.

16 *Miller v. Heck*, 9 Watts, 439.

17 *McCormick v. Miller*, 3 P. & W. 230.

18 P. & L., Cons. 16; 1889, P. L. 156.

19 *In re Cawley*, 5 Kulp, 455.

To wear shield or badge.

27. Deputies appointed to act as township police, shall, when on duty, wear a shield or a badge with the words "township police," *and* the name of the township for which they were appointed, inscribed thereon.²⁰

Compensation and discharge.

28. Deputy constables, when appointed by the court to act as township police, shall be paid such compensation as may be approved of by the court of quarter sessions, and may be discharged whenever the court appointing them shall be satisfied that their services are no longer required.²¹

20 P. & L., Cons. 17 ; 1889, P. L. 156, § 2.

21 P. & L., Cons. 18 ; 1889, P. L. 157, § 3.

CHAPTER III.

NATURE AND SERVICE OF THE VARIOUS WRITS.

	PAGE.		PAGE.
29 Remarks,	22	action is begun,	33
30 Summons,	23	42 Service upon foreign	
31 How served,	23	corporations,	34
32 The return,	26	43 Service upon insurance	
33 Time in which service		companies,	34
must be made,	26	44 Service upon foreign	
33a Service of affidavit of		insurance company,	35
plaintiff's claim,	28	45 Service upon co-opera-	
34 Service upon non-resi-		tive associations,	36
dents of the county,	29	46 Service upon partner-	
35 The return,	30	ship associations,	36
36 Service upon agents of		47 Service upon railroad	
non-residents, not		and canal companies,	37
found within the		48 Service upon a county,	37
county,	30	49 Service upon a town-	
37 Service upon agents of		ship,	38
permanent non-resi-		50 Service upon a bor-	
dents,	31	ough,	38
38 Service upon non-resi-		51 Service upon a school	
dents, in general,	31	district,	38
39 Service upon a corpo-		52 Service upon a city,	38
ration,	32	53 Service of a subpoena,	39
40 Service upon a Penn-		54 Service of a scire facias,	40
sylvania corporation		55 Domestic attachment,	40
when office is out of		56 Service of,	40
the county,	32	57 Attachment, how made,	41
41 Service when corpo-		58 Exemption,	42
rate property is loca-		59 Duties following at-	
ted in county where		tachment,	43

	PAGE.		PAGE.
60 The return,	44	85 Service of, in civil cases,	60
61 Attachment against non-residents,	45	86 The arrest,	62
62 Service of,	46	87 The return,	62
63 The return,	46	88 Warrant of arrest,	63
64 Attachment against fraudulent debtors,	47	89 Warrant of arrest,	63
65 Service of,	48	90 Service of,	63
66 The return,	49	91 What constitutes an arrest,	64
67 Attachment-execution,	50	92 When an arrest may be made,	65
68 Service of,	51	93 In what places an ar- rest may be made,	65
69 The return,	52	94 What violence may be used,	66
70 Exemption,	52	95 Showing warrant,	66
71 Wages,	52	96 Arrests without a war- rant,	67
72 Search warrant,	53	97 Felonies and misde- meanors,	68
73 Service of,	54	98 Service outside the county,	69
74 From whom goods may be taken,	55	99 Care of the prisoner,	70
75 What goods may be seized,	55	100 Property of the pris- oner,	72
76 Registered bottles,	56	101 Escapes,	72
77 Registered brewers' barrels,	56	102 An arrest after an es- cape,	73
78 Milk cans, butter tubs, etc.,	56	103 Rescues,	73
79 Game and fish,	57	104 The return,	73
80 The return,	57	105 Privileged from service of legal process,	74
81 Attachment for a wit- ness,	58	106 Mittimus,	78
82 The return,	58		
83 Capias,	58		
84 Service of,	59		

Remarks.

29. The constable-elect, having appeared on the

first day of the next court of quarter sessions, accepted the office, having given the required bond with surety (if not a freeholder of sufficient estate), and having taken the oath of office, is from that time a lawfully constituted constable. After these compulsory duties are performed, the constable is in a position to assist justices and magistrates in the execution of their legal business by serving legal notices upon the witnesses and parties sued. Such notices are called "writs," and executing or serving them is called "service" or "service of process." Since the powers and duties of the constable differ under the various writs, a careful study of each is necessary for intelligent action.

Summons.

30. In civil cases, the writ most commonly used is the *summons*,¹ which is a notice to the defendant to appear at the time and place named in the writ.

How served.

31. The statute² provides that the service on the defendant shall be (a) "by producing the original summons to and informing him of the contents thereof" (b) or "leaving a copy of it at his dwelling-house, in the presence of one or more of his family or neighbors, at least four days before the time of hearing."

¹ See Form No. 7.

² P. & L., J. of P., 56; 1810, 5 Sm. L. 161, § 2.

The first is known as "personal service" and the second as "service by copy," and each of these methods of service must be strictly adhered to. Where the summons was "returned on oath" without returning that it had been served, it was held to be "not void" but only irregular.³ A service of a summons "personally on the defendant at his dwelling-house by leaving a copy of the original summons and making known the contents thereof" is a sufficient service.⁴ The mere handing of a copy of the writ is not a good "personal service" without informing the defendant of the contents thereof.⁵ "Service by leaving a copy of the original summons at the dwelling of the defendant with a member of the family" is a good return. It may be left in the presence of a neighbor.⁶ The return should, however, set forth the name of the member of the defendant's family, or such person should be otherwise sufficiently designated and identified.⁷ A return showing that the summons was served by leaving a true copy at the defendant's dwelling-house in the presence of his father, without anything to show that the defendant's father was a member of the

3 *Sloan v. McKinstry*, 18 Pa. 120; *Fritz v. Fisher*, 5 Clark, 350.

4 *Snyder v. Carfrey*, 54 Pa. 90.

5 *D. L. & W. R. R. Co. v. Plymouth Borough*, 6 Kulp, 91.

6 *Bar v. Purcil*, 2 Phila. 259; *Thatcher v. Beam*, 14 C. C. 109.

7 *Regan v. Timothy*, 7 C. C. 65.

defendant's family, is insufficient.⁸ If there is a service by copy the writ must be left at the defendant's dwelling-house. It will not answer if the copy is left at the defendant's store, shop, mill, or any other business place.⁹ A dwelling-house at which the summons may be served means one in which the defendant there resides, although he may be temporarily absent therefrom.¹⁰

Where the defendant resides in the family of another, the copy, when the defendant cannot conveniently be found, must be left with an adult member of that family. When left at the defendant's dwelling-house, the statute requires that it be left "in the presence of one or more of his family or neighbors." So placing a copy on the mantel, clock, or elsewhere about the house, would be a good service, if an adult member of the defendant's family were present and refused to receive the copy.

Summons in Trespass for damages to the plaintiff's real or personal property, *Summons in Trover* and *Trespass*, and *Summons for a Penalty*, are all served in the same way, as designated above.

Constables and their deputies cannot know too well, or be too careful in the service of legal papers,

8 *Hoffa v. Weidenhamer*, 22 C. C. 528.

9 *Bar & Gold v. Purcil*, 2 Phila. 259; *Thatcher v. Beam*, 14 C. C. 109.

10 *McEwen v. Horton*, 1 C. C. 498; *Johnson v. Aylesworth*, 3 Pitts. 237.

for any error made in the service may be sufficient ground for setting aside the proceedings, and the party injured can look to the constable for damages incurred by reason of the irregular service. The justices and the courts will, without much hesitation, refuse to proceed with a suit where an unlawful service is shown to have been made.¹¹ An imperfect service is ground for *certiorari*.¹²

The return.

32. After the summons has been served, the next step is for the constable to make his return¹³ thereto to the justice who issued the writ. The return must show by which of the two methods the service was made, if made at all, and if no service could be made, that fact should be stated.

The return must be in writing,¹⁴ showing both the time and manner of service, and be endorsed on the back of the writ. After the service is made, the constable should deliver the summons with his return endorsed thereon to the justice and make oath to the correctness thereof.

Time in which service must be made.

33. The law limits the time within which con-

¹¹ Com. *v.* Dalling, 2 Pars. 285; Fraily *v.* Sparks, 2 Pars. 232; City *v.* Cathcart, 10 Phila. 103; Mulligan *v.* Riley, etc., 1 Kulp, 79.

¹² Lewis *v.* Lewis, 2 D. R. 34.

¹³ See Form No. 8.

¹⁴ Shover *v.* Funk, 5 W. & S. 457.

stables must serve summons. In all cases the constable is governed by the time set by the justice, for the hearing, which is called the return-day, and the summons must be served a certain number of days before the time for hearing, or return-day, as it is called. A summons in a suit against a resident of this state, must be served "at least four days before the time of hearing," and the justice must fix the time for the hearing "not more than eight nor less than five days after the date of the summons."¹⁵ Right here it will be well for constables to fix in mind, once for all, the established law in this state, for counting days. It is this: that whenever a certain number of days is allowed to do an act, the day *from* which the counting is made, is to be excluded.¹⁶ The statute, in other words, expresses the same in this way: "Time in all cases shall be so computed as to exclude the first and include the last day of any prescribed or fixed period, or duration of time; provided, that whenever the last day of such period shall fall on Sunday, or on any day made a legal holiday by the laws of Pennsylvania, or of the United States, such day shall be omitted from the computation."¹⁷

If a summons, therefore, in a suit against a resident is dated January 1st, and the time set for the

¹⁵ P. & L., J. of P., 56; 1810, 5 Sm. L. 161, § 2.

¹⁶ *Cromelieu v. Brink*, 29 Pa. 522; *Black v. Johns, etc.*, 68 Pa. 83.

¹⁷ P. & L., Time, 1; 1883, P. L. 136.

hearing is fixed for the 6th of January, the constable must serve the summons "at least four days before the time of the hearing," and, in computing the number of days, he must exclude the day *from* which he counts, or, in other words, he must exclude the 6th day of January and count back four days, beginning with the 5th day of January. The service then must, to be lawful, be made not later than the 2d of January. Accordingly, the constable can be sure he is safe when he excludes the day on which the hearing is to be held, and makes his service at least four days (in case of a resident) before, counting from and including the day preceding the hearing.

In the case of a non-resident, the summons must be served at least two days before the return-day thereof; therefore, one of the first things the constable should ascertain is whether the person named in the summons is a resident, or a non-resident, and govern himself accordingly.

If, for any reason, a summons has not been served in time the constable should so make his return, in order that another summons may be issued and served within the proper time.

Service of affidavit of plaintiff's claim.

33a. Under the act of July 7, 1879, P. L. 194, § 2 (P. & L., Justices of the Peace, 62), the plaintiff, in an action before a justice may file, at any time before the summons issues, an affidavit stating the

amount he verily believes to be due from the defendant, together with satisfactory evidence showing the amount so due.

It shall then be the duty of the justice to make a copy of such affidavit, duly certify the same, and deliver it to the constable to whom the summons is issued, which certified copy of affidavit shall be served by the constable *at the time and in the manner* that service is made of the summons in the case.

Accordingly, the plaintiff's affidavit must be served in the same manner as the summons, and at the same time. (For return, see Form No. 8a.)

The foregoing remarks relate to service upon individuals, while the following will be devoted to service upon corporations, counties, non-residents doing business in the county, etc. The service differs somewhat from that required in case of individuals.

Service upon non-residents of the county.

34. Where any resident of this commonwealth shall engage in business in any other county than the one in which he resides, and not being in the county at the time of issuing of the writ, it shall be lawful for the constable to serve the summons, or any process issued pending the suit, upon the agent or clerk of such defendant, at the *usual* place of business or residence of such agent or clerk, and to have the

same effect as if served upon the principal personally.¹⁸

The return.

35. Under this act, the return¹⁹ must set forth four things: (*a*) That the defendant is a non-resident of the county; (*b*) that he is engaged in business in the county; (*c*) that the person upon whom the writ was served was the defendant, or his agent or clerk; (*d*) that the service was made at the usual place of business (name kind of business), or residence of such agent or clerk.²⁰ Service by leaving a copy with the defendant's partner is not good.²¹ If the defendant is within the county, service, of course, must be made upon him, and not upon his agent or clerk.

Service upon agents of non-residents not found within the county.

36. The service and return²² are made in the same manner as in the two preceding sections. But see local laws as to service on clerks, agents, or managers of persons or companies in manufacturing pig metal or iron, or in mining in Mercer, Arm-

18 P. & L., Practice, 12; 1852, P. L. 574.

19 See Form No. 9.

20 Boyle v. Burke Bros., 8 C. C. 501; Lehigh Val. Ins. Co. v. Fuller, etc., 81 Pa. 398.

21 Bumpus v. Hardenburg, 3 D. R. 27.

22 P. & L., Practice, 13; 1856, P. L. 219.

strong, Indiana, Somerset, Bedford, Clinton, Cambria, Lawrence, and Clarion counties, and as to service upon railroad and canal companies doing business in Clarion county.²³

Service upon agents of permanent non-residents.

37. When any person, not being a resident of this state shall engage in business in any county of this state, a lawful service is made by serving process upon any clerk or agent of such person at the *usual place of business* or *residence* of such agent or clerk, with like effect as served personally upon the principal.²⁴ The defendant must be a permanent non-resident to authorize service under this act.²⁵ The return to such process is made in much the same manner as in § 35, and should state that the defendant is a permanent non-resident.

Service upon non-residents, in general.

38. The several preceding sections explain the manner of making service on a non-resident of the county or state doing business within the county. The manner and time within which service must be made upon residents has been set out fully in the preceding sections, and now our attention will be given to service upon non-residents. A summons

²³ P. & L., Practice, 13; 1856, P. L. 219; Price's Index to Local Laws.

²⁴ P. & L., Practice, 14; 1858, P. L. 403.

²⁵ Lanahan v. Collins, 6 W. N. C. 253.

must be served in one of the two ways set forth in § 31, but the time in which service must be made differs as to residents of the state, and non-residents. In case of non-resident plaintiffs, the service must be made "at least two days before the time set in the summons for the defendant's appearance,"²⁶ and the day set for the hearing is to be excluded in counting the number of days."

Service upon a corporation.

39. Service upon a corporation incorporated in this state shall be made upon the president or other principal officer, or upon the cashier, treasurer, secretary, or chief clerk.²⁷ In an action against a corporation it is necessary to serve the summons at the place where the corporation is located.²⁸

Constables must remember that a corporation and its members are totally distinct, in the eyes of the law, and service upon a member is bad unless he is an officer as set forth above. The return should be similar to Form No. 10.

Service upon a Pennsylvania corporation when chief officers reside out of the county.

40. In actions for damages, occasioned by a trespass, or injury done by a corporation, if the chief officers, or any of them, shall not reside in the

²⁶ P. & L., J. of P., 63; 1842, P. L. 339, § 25.

²⁷ P. & L., Practice, 7; 1836, P. L. 568, § 41.

²⁸ Brobst v. Bank of Pa., 5 W. & S. 379.

county in which such trespass or injury shall be committed, the summons shall be served upon any officer or agent of the corporation at any office or place of business of the corporation within the county, or if there be no such office or place of business, the summons shall be served upon the president or other principal officer, cashier, treasurer, secretary, or chief clerk, in any county or place where they may be found.²⁹ Return is similar to Form No. 10.

Service when corporate property is located in county where action is begun.

41. When any action is commenced by any person against any corporation in any county in which the property of the corporation is wholly or in part situated, it shall be lawful *if* the president, secretary, treasurer, or chief clerk do not reside or cannot be found in such county, for the constable to whom the process is directed to serve the same on any manager or director in such county. In case no director or manager can be found in such county, it shall be lawful for the constable to go into any county (in Pennsylvania) to serve the process³⁰ Service outside the county is void unless the corporation had property within the county where the suit was commenced at the time the suit was begun. It is not enough that the corporation had property

29 P. & L., Corporations, 82; 1836, P. L. 568, § 42.

30 P. & L., Corporations, 83; 1856, P. L. 388.

in the county when the cause of action arose.³¹ (See Form No. 11 for return.)

Service upon foreign corporations.

42. When any foreign (incorporated outside of Pennsylvania) corporation shall have an agency or transact business in any county of this state, service shall be made upon the president, cashier, agent, chief or any other clerk, or upon any director or agent of such company within such county.³² This act only applies to foreign corporations having an office or transacting business within the state.³³

Service upon insurance companies.

43. Service on an insurance company incorporated in this state or elsewhere may be made in any county of the state where property insured by any such company is located. Service shall be made upon the president, or other chief officer, or any agent of the company.³⁴ This act contemplates suits upon the contract of insurance only.³⁵ In cases of life, accident and stock insurance, suits may be brought in the county where the insured resides.³⁶

31 *Hawn v. Pa. Canal Co.*, 154 Pa. 455.

32 P. & L., For. Corp. 12; 1851, P. L. 354, § 6.

33 *Phillips, etc., v. Library Co.*, 141 Pa. 462.

34 P. & L., Insurance, 74; 1889, P. L. 198.

35 *Greevy v. Accident Asso.*, 2 D. R. 542.

36 *Quinn v. Fidelity Ben. Asso.*, 100 Pa. 382.

Service upon foreign insurance companies.

44. No foreign insurance company shall do business in this state until it has filed with the insurance commissioner of this state a duly authenticated written agreement that any legal process affecting the company served on said commissioner or party designated by him or agent specified by the company, shall have the same effect as a personal service, and if said company ceases to maintain such agent, process may thereafter be served upon said commissioner ; so long as the liability of said company to any resident of this state continues, such agreement cannot be revoked or modified, except that a new one may be substituted so as to require or dispense with the service at the office of the said company within this state, and that such service according to the agreement shall be sufficient personal service on the company. The term process shall be construed to mean and include any writ, rule, order, notice or decree, execution, etc., to which said company may be a party by themselves or jointly with others. All writs, rules, orders, notices or decrees shall be directed to the sheriff, constable, or other legally authorized officer, who shall have power by writing endorsed on or attached to such process to depute the sheriff, constable, or other officer of the county where the state agent designated as aforesaid to receive service, may reside, to serve the same on him ; and in default of an agent of this county said officer

may in like manner deputize, and so on until the process has been finally served.³⁷

Process cannot be served on agents who merely solicit risks.³⁸

Return should be similar to Form No. 10.

Service upon co-operative associations.

45. Every co-operative association shall have a regular business office, where service shall be made by leaving a true copy of such process with any director, officer, clerk, or agent. In case such office shall be kept closed against such service, then service shall be made by giving a copy of such process to any of its directors or officers, if found in the county where such office is located. On failure to obtain service in the above ways then service shall be made by serving a true copy upon any of its directors or officers wherever found in this state. The court will, on failure to obtain service in any of the above ways, provide some means.³⁹ (See form No. 12 as to return.)

Service upon partnership associations.

46. Service shall be made in the county where the association keeps an office upon any agent, chief

³⁷ P. & L., Insurance, 114; 1883, P. L. 134.

³⁸ Liblong v. Ins. Co., 82 Pa. 413; Metro. Ins. Co. v. Cook, 14 C. C. 434.

³⁹ P. & L., Co-op. Asso., 16; 1887, P. L. 365, § 16.

or other clerk, or upon any director or manager.⁴⁰
(See Form No. 13 for return.)

There is a distinction between "partnerships" and "partnership associations." In the former it is necessary to serve each and every co-partner in order to sustain the action against every member. The latter is akin to a corporation in many respects, and the manner of service is of statutory provision and made as designated above.

Service upon railroad and canal companies.

47. In a suit against a railroad or canal company, when property is wholly or in part situated in the county where such suit is brought, it shall be lawful to serve process upon the president, treasurer, secretary, or chief clerk, if to be found therein, and if not, service upon any manager or director thereof is sufficient, and if no manager or director can be found in such county, the officer may go into an adjoining county to serve the same.⁴¹

Corporate property must, however, be within the county *when* the suit is brought.⁴² (See Form No. 10 as to the return.)

Service upon counties.

48. In suits against a county, service shall be

⁴⁰ P. & L., Part. Asso., 17; 1881, P. L. 115.

⁴¹ P. & L., R. R. and Canals, 135; 1842, P. L. 144, § 8.

⁴² *Hawn v. Pa. Canal Co.*, 154 Pa. 455.

made on the commissioners.⁴³ Service need not be made on all the commissioners; service on two, it seems, is sufficient.⁴⁴ (For return see Form No. 14.)

Service upon townships.

49. Service upon townships shall be made upon the supervisors. (See preceding section for references.) The return should be similar to Form No. 14.

Service upon boroughs.

50. To enforce payment of any judgment against a borough, service shall be made upon the burgess, treasurer, or secretary of the town council.⁴⁵ This act seems to relate to execution process only. A borough can be sued only in the courts of the county where it is situated.⁴⁶ (See Form No. 15 for the return.)

Service upon school districts.

51. Service shall be made upon the president, or secretary of the board of directors or controllers.⁴⁷ (See Form No. 16 for return.)

Service upon cities.

52. Service shall be made, it seems, upon the county in which the city is located.

43 P. & L., Counties and Twps., 24; 1834, P. L. 537, § 5; *Eyster v. Rineman*, 11 Pa. 147.

44 *Kleckner v. Lehigh Co.*, 6 Wh. 66.

45 P. & L., Boroughs, 84; 1860, P. L. 589.

46 *Oil City v. McAboy*, 74 Pa. 250.

47 P. & L., Com. Schools, 23; 1854, P. L. 617, § 21.

SUBPÆNA.

Service of a subpœna.

53. After a suit is instituted either of the parties to the suit may obtain from the justice *subpœnas* to be served on witnesses, which are notices to them where and when to appear. A *summons* is a notice to the defendant to appear, while a *subpœna* is a notice to a witness. Service of a *subpœna* is made in the same manner as a *summons*. Still the constable should endeavor to make a personal service, for when service is so made and the witness fails to appear, the justice (as he knows by the return, see Form No. 17, that the witness had notice to appear) can issue an attachment for the witness and have him brought to the hearing. Where the justice does not know for a certainty that the witness had notice, an attachment will not issue. Unlike a *summons*, any private person can serve a *subpœna*. The constable is not bound to serve a *subpœna*, still he can do so at his option.

If the opposing party desires a particular book, letter or other writing to be produced by the witness, it must be mentioned in the *subpœna*, with a command to produce it ; such a *subpœna* is called a *subpœna duces tecum* (bring with you or suffer the penalty). Constables in serving a *subpœna* of this kind must be very careful *to read* or *copy* the part relating to the book, etc., which the witness is to bring to the hearing. Special mention should also be made of it by the constable in order to insure the forthcoming of the book, paper, etc.

Service of a scire facias.

54. A *scire facias* is but a summons and should be served in the same manner.⁴⁸ The return, of course, should be made in the same way as for a summons. (For which see § 32.)

DOMESTIC ATTACHMENT.**Domestic attachment.**

55. Justices are authorized⁴⁹ to issue a writ of *domestic attachment* against the personal property of a *resident* debtor who absconds, absents or conceals himself without satisfying his debts.

Service.

56. The constable on receiving the writ proceeds, at once, to where the goods of the debtor are, shows his authority, and if the debtor is about the premises, reads to him the writ, and then proceeds to attach so much of the debtor's goods as the officer deems sufficient to pay the debt and costs, being sure to be on the safe side, for the debtor may remove out of the state what are not attached, and the officer may have to make up the deficiency, if the proceeds of the sale are not sufficient to pay the debt and costs. The constable attaches the debtor's goods in whose-soever's hands they may be.

If said goods are in the possession of a third party, who is called the *garnishee*, a *summons* is in-

48 *Buchanan v. Specht*, 1 Phila. 253.

49 P. & L., Dom. Attach., 45, 51; 1752, 1 Sm. L. 218.

serted, at the time the writ is issued, and the officer serves the *summons* on the *garnishee*, who is warned by the writ not to dispose of or remove the same, but to appear in answer to the summons to show cause why the debtor's goods should not be sold. When a third party claims title to the goods, then, if the constable proceeds to attach the goods he does so at his own risk, and if it turns out that the third party, in reality, had the title to the goods, the constable will be liable in an action of trespass. A constable, in all such cases, can demand an indemnifying bond⁵⁰ from the plaintiff, thus proceeding at plaintiff's risk, before taking any steps in making the attachment. If the plaintiff refuses to give the bond, the officer need not go further; if the bond is given he, of course, must proceed to make the attachment.⁵¹

Attachment, how made.

57. For an attachment to be valid, the officer must be within view, and have undisputed control over the goods with power of removal. His right to attach, or to take possession of the goods must be undisputed, otherwise the constable is not in full control. He need not see every article that he attaches, as he may attach all the furniture in the house after seeing the parlor furniture only, but he must have it within his power to gain access to all

50 See Form No. 18.

51 *Hall v. Galbraith*, 8 Watts, 222.

the furniture in such a case. As he proceeds to attach the various articles, the constable should designate, to those present, what articles he attaches and make a memorandum of each. The attachment displaces the possession of the defendant and clothes the attaching officer with a special property in the goods. An attachment accomplished through fraud or violence is absolutely void.⁵² Cumbersome articles, such as machinery bolted to the floor, need not be removed. It is sufficient if the constable obtains full control of them.⁵³

Exemption.

58. The wife and family (if any) of such debtor shall be entitled to retain for their own use⁵⁴ property to the value of \$300, exclusive of all wearing apparel of the wife and family, and all Bibles, school books, and sewing machines in use in the family. The debtor himself, it seems, is not entitled to the exemption,⁵⁵ nor is the wife's right to the exemption affected by her husband's waiver.⁵⁶ The demand for exemption on the part of the wife or family need not be in writing,⁵⁷ but any words which ought to apprise the officer that the statutory exemption is the

52 Wade, Attachments, 129.

53 46 Mich. 249.

54 P. & L., Dom. Attach., 19; 1836, P. L. 606, § 20.

55 McCarthy's Ap., 68 Pa. 217.

56 Hess v. Beates, 78 Pa. 429.

57 Com. v. Springer, 13 W. N. C. 305.

thing claimed,⁵⁸ if made by the wife or her child of proper age,⁵⁹ must be heeded by the constable, otherwise he is a trespasser.⁶⁰ The request for the exemption must be made by the wife or the debtor's children within a reasonable time, so as not to delay the plaintiff or put him to unnecessary costs,⁶¹ unless there are special circumstances, such as ignorance of the attachment, to excuse delay.⁶²

If the exemption is so demanded, the constable must then summon three disinterested and competent persons to appraise and set aside \$300 worth of personal property exclusive of wearing apparel, Bibles, school books, and sewing machines in use in the family. The appraisers, of course, must first be sworn⁶³ or affirmed by the constable or a justice. If there is any property remaining of the debtor which was not exempted, the constable can then proceed with his attachment as though no demand for exemption had been made, being careful not to attach any of the exempted property.

Duties following the attachment.

59. The property attached is in possession of the law, and the constable is responsible for it if re-

58 *Diehl v. Halben*, 39 Pa. 213.

59 *Wilson, etc., v. McElroy*, 32 Pa. 82.

60 *Wilson v. Ellis*, 28 Pa. 238; *Freeman v. Smith*, 30 Pa. 264.

61 *Morris v. Shaffer*, 93 Pa. 489; *Williams v. Krumbhaar*, 132 Pa. 455.

62 See note No. 58 above.

63 See Form No. 19.

moved, stolen, or injured, unless he is deprived of the goods by an act of God, as a hurricane, an accident, as fire, or an act of enemies of the country.⁶⁴ The constable must look out for his own interests after the attachment, and can remove the goods if he deems such expedient. The debtor or the garnishee may be willing to enter into a bond,⁶⁵ with sufficient security, for double the value of the attached goods, conditioned that he will surrender the goods on demand, or settle the claim and pay the costs. The constable, to secure himself, should do one of two things: either take the goods into his actual possession or take a bond for their forthcoming on demand.

The return.

60. The return⁶⁶ should show clearly how the service of the writ was performed; whether a personal service, or service by copy was made upon the defendant, or whether the defendant was absent, and there was no one upon whom to serve a copy. Our statutes are silent as to how service should be made in domestic attachment. The attachment in itself may be sufficient notice to the defendant, still he should be given a knowledge of the contents of the writ, if only to inform himself as to the time and place of hearing. An inventory of the goods

64 Clevenger's Estate, 1 Lanc. L. R. 277.

65 See Form No. 20.

66 See Form No. 21.

attached should be endorsed on the back of the writ, or on a paper pinned thereto, and a copy of the inventory (see Form No. 22a) should be delivered to the defendant, or some adult member of his family, or an adult member of the family in which he resides, or the person in possession of the goods. In all writs of attachment the constable must be sure to give the *hour*, day and date of the attachment, so that a later attachment does not take precedence. If there is a *summons* in the writ for the garnishee, the return must show the time and manner of the service of such upon the garnishee.

The officer may have still one more thing to do in making his return: If he has attached any cattle, or other chattels necessary to be maintained at expense, or any perishable goods, he should so inform the justice, in order that such may be sold, at once. After the return is made, the justice selects two trustees to take charge of any such goods, and the constable has nothing more to do after delivering the goods to the trustees unless he has taken a bond for the forthcoming of the goods, on demand. In such a case, the constable should assign the bond to the trustees.

ATTACHMENT AGAINST NON-RESIDENTS.

Remarks.

61. Justices shall issue attachments against non-residents in certain cases. The service and return differs somewhat from domestic attachment.

Service.

62. Every such attachment is returnable not less than two, nor more than four days from the date thereof; so the constable should serve the writ immediately, by attaching (see § 57) so much of the defendant's goods as will be sufficient to pay the debt demanded and the costs. The constable must deliver to the debtor a *copy* of the writ with an inventory (see Form No. 22a) of the property attached, if he can be found in the county; if not so found, then by leaving a copy of the writ and inventory with the person in whose possession the said property may be found.⁶⁷

The return.

63. The constable shall state *specifically* the manner in which he has served such attachment, and it shall be his duty to take the property attached into his possession, unless the defendant, or some other person for him, shall enter into a bond⁶⁸ with sufficient surety, in at least double the amount of the plaintiff's claim and costs, conditioned that, in the event of the plaintiff recovering judgment against him, he will pay the debt and costs at the expiration of the stay of execution given by law to freeholders, or that he will surrender up the property attached to any officer having an execution against him on any judgment recovered in such attachment. If the constable has

67 P. & L., J. of P., 108, 109; 1874, P. L. 123, §§ 2, 3.

68 See Form No. 20.

been unable to make a personal service of the attachment on the defendant, the justice then issues a summons against the defendant. The summons should be served personally on the defendant, if he can be found in the county. If the defendant cannot be so found "after diligent inquiry" the constable should make his return⁶⁹ accordingly, being sure to insert in his return the words "after diligent inquiry" if such be true. The words "diligent search" are insufficient.⁷⁰

Although the act is silent as to the return, including an inventory of the property attached, such should be endorsed on the writ, or on a paper attached thereto. The time and the manner in which service was made should be endorsed also on the back of the writ. The writ and the inventory need not be served at the same time.⁷¹ It is sufficient if they are served on the same day. Only goods capable of manual seizure by the officer can be attached under the act.⁷² A non-resident, however, is not entitled to the benefit of the exemption laws of this state.⁷³

ATTACHMENT AGAINST FRAUDULENT DEBTORS.

Remarks.

64. In certain cases a justice shall issue a writ of

69 See Form No. 22.

70 *Thomas v. Morasco*, 5 D. R. 133.

71 *Steckel v. Dazien*, 2 Leh. V. 416.

72 *Griffith, etc., v. Hughes*, 6 C. C. 534.

73 *Snow v. Dill*, 6 W. N. C., 330; *Collom's Ap.*, 12 W. N. C. 309.

attachment against a defendant who is about to remove from the county any of his property with intent to defraud his creditors, or has, or is about to assign, dispose of or secrete any of his property with like fraudulent intent.⁷⁴

Service.

65. Every such attachment is returnable not less than two nor more than four days from the date thereof, so the constable should serve the same immediately by attaching (see § 57) so much of the defendant's property not exempt by law (see § 136 (g) (i)) as will be sufficient to pay the debt demanded and the costs of the proceeding. The constable must deliver to the defendant a *copy* of the writ of attachment, and an inventory (see Form No. 22a) of the goods attached, if he can be found in the county. If not so to be found, then by leaving a copy of the same at his place of residence with some adult member of his family, or the family where he shall reside, or if he be a non-resident of the county and cannot be found, then by leaving a copy of the writ and inventory with the person in whose possession the property may be. It shall be the duty of the constable to take the property attached into his actual possession unless the defendant or some one for him shall enter into a bond⁷⁵ to secure the forthcoming of the attached goods.

74 P. & L., J. of P., 101-4; 1842, P. L. 339, § 27-30.

75 Thomas v. Morasco, 5 D. R. 133; See Form No. 20.

The return.

66. The constable shall state *specifically* in his return the manner in which he has served such attachment. If a personal service was not made, then the justice issues a summons to be served on the defendant. If the defendant, after diligent inquiry, cannot be found in the county, the return⁷⁶ should contain the words "after diligent inquiry," the defendant could not be found in the county. "Diligent search," it is decided, is insufficient.⁷⁷

The defendant, his wife, or children of proper age, may demand the benefit of the exemption law, if the original judgment was on a contract.⁷⁸ As to the constable's duties in reference to exemption, see § 58. The debtor himself, it must be remembered in this connection, is entitled to the benefit of the exemption law. If the plaintiff obtains judgment against the defendant and a writ of execution is issued upon the attachment, the constable's duties are the same as in case of an ordinary execution as to the levy, sale, distribution of the proceeds of sale and the return of sale. (For which see Chapter IV.)

The attachment issues only against goods capable of manual seizure,⁷⁹ so debts due, notes, money in

⁷⁶ See Form No. 22.

⁷⁷ *Thomas v. Morasco*, 5 D. R. 133.

⁷⁸ *Waugh v. Burket, etc.*, 3 Gr. 319.

⁷⁹ *Wolbert v. Fackler*, 32 Pa. 452; *Griffith, etc., v. Hughes*, 6 C. C. 534.

bank, and other evidences of property cannot be attached in this proceeding. The constable in his return must state specifically what he has attached and the manner in which he executed the writ.⁸⁰ The provisions of the act as to service of summons must also be strictly followed.⁸¹ In a case in which a garnishee was in possession of the money and the constable attached it, without taking it into his possession, or taking a bond for its forthcoming, the court decided that plaintiff's judgment could not stand.⁸² The constable in such a case would be liable for the loss suffered by the plaintiff in consequence of his negligence. The property, however, of non-residents cannot be attached under this act.⁸³

ATTACHMENT-EXECUTION.

Remarks.

67. Attachment in execution issues only upon a judgment previously obtained upon which an execution has been issued and a return of "no goods" has been made by the constable.⁸⁴ Then the plaintiff can have an attachment against the defendant's stock (paper), debts, deposits of money belonging

80 *Wolbert v. Fackler*, 32 Pa. 452; *Moraski v. Stegmaier*, 4 Kulp, 444.

81 *Robert, etc., v. Wright*, 2 C. C. 175; *Spettigue v. Hutton*, 9 C. C. 156.

82 *McNamara v. Roderick*, 1 D. R. 610.

83 *Vansykel's Ap.*, 13 Pa. 128; *Roberts v. Wright*, 2 C. C. 175.

84 *Miller v. Snyder*, 133 Pa. 23.

to, or due the defendant, or goods that he has pawned or pledged.⁸⁵

Service.

68. The constable must serve a copy of the writ upon the defendant, and upon every person and corporation within his proper county, named in the writ of attachment, as well as upon the garnishee, in like manner as a summons is by law to be served. Personal service both upon the defendant and the garnishee must be made in order to be effective.⁸⁶ Service, however, need not be made upon non-residents outside of the county;⁸⁷ but service made upon a non-resident while in the county is good.⁸⁸ Several garnishees may be included in the writ,⁸⁹ and service must be made upon each, personally.

When the service is made upon the garnishee, the constable must declare in the presence of one or more creditable witnesses of the neighborhood that he attaches the goods and effects of the defendant in the hands of the garnishee.⁹⁰ The constable, therefore, should take one or more creditable parties with him when he makes service upon the gar-

85 P. & L., J. of P., 52, 138-41; Executions, 56-65.

86 *Freeland v. Ellsworth*, 3 Luz. L. Reg. 45; *Everhart v. Norton*, 1 Kulp, 449.

87 P. & L., Executions, 57; 1845, P. L. 188, § 4.

88 *Reynolds v. Lochiel Iron Works*, 1 D. R. 409.

89 *Cornelius v. Simpson*, 3 Phila. 35.

90 *Huber v. Ruter*, 1 C. C. 323.

nishee and state in very clear language that he attaches the goods and effects of the defendant in the hands of the garnishee.

The Return.

69. The return⁹¹ should be endorsed on the back of the writ in the same manner as in a summons.

Exemption.

70. The claim for exemption must be so made as to occasion no delay, nor cause the plaintiff costs that otherwise might be avoided.⁹² It is too late if the exemption is not demanded until the day of the hearing. As for general duties in reference to exemption see § 58. The debtor in these proceedings is entitled to the exemption unless the judgment was obtained for a tort.

Wages.

71. Wages of any laborers, or the salary of any person in public or private employment shall not be liable to attachment in the hands of the employer,⁹³ and this preference cannot be waived by the wage earner.⁹⁴ This act does not include the profits of a contractor who employs others.⁹⁵

In case of a writ of execution being placed in the

⁹¹ See Form No. 22.

⁹² *Morris v Shaffer*, 93 Pa. 489.

⁹³ P. & L., Executions, 63; 1845, P. L. 459, § 5.

⁹⁴ *Cunliffe v. Rinehart*, 2 W. N. C. 79.

⁹⁵ *Heebner v. Chave*, 5 Pa. 115; *Smith v. Brooke*, 49 Pa. 147.

constable's hands to levy upon and sell the defendant's property so attached, the levy, sale, distribution of proceeds and the return should be performed in the same manner as in an ordinary execution. (For which see Chapter IV.)

SEARCH WARRANT.

Remarks.

72. When any person shall be accused before a magistrate, upon oath or affirmation, of the crime of burglary, robbery, or larceny, and the said magistrate shall have issued his warrant to apprehend such person or persons or to search for such goods as have been described, on oath or affirmation, to have been stolen goods, if any shall be found in the custody or possession of such person or persons, or in the custody or possession of any other person or persons, for his, her, or their use, and there is probable cause, supported by oath or affirmation, to suspect that other goods which may be discovered on such search are stolen, it shall and may be lawful for the said magistrate to direct the said goods to be seized, and to secure the same in his own custody, unless the person in whose possession the same were found shall give sufficient surety to produce the same at the time of his or her trial.⁹⁶

A search warrant is not to be granted without oath made before the justice of a felony committed, and that the party complaining has probable cause to

⁹⁶ 1791, 3 Sm. L. 41.

suspect that the stolen goods are in a certain place and showing the reason for such suspicion.⁹⁷

The warrant should also command that the goods taken, together with the party in whose possession they are found, be brought before some justice of the peace, to the end that, upon further examination of the facts, the goods and the prisoner may be disposed of according to law.

The constable must see, at his peril, that the warrant describes "as nearly as may be" the place to be searched and the specific articles to be seized.⁹⁸ Before serving the warrant the constable should endeavor to have the party from whom the goods were stolen accompany him to the place, so that the stolen goods may be better identified and to guard against any mistakes being made in the seizure. The warrant usually directs that service be made in the daytime, but where there is more than probable suspicion that the goods will be removed, service should be made in the night time.

Service.

73. The officer should explain the nature of his business and show his warrant before proceeding to seize the goods. But in no case should he part with the possession of the warrant, for it contains his authority to institute a search. If the doors are locked, the constable should explain the object of

⁹⁷ 2 M'Kinney's Justice, 195.

⁹⁸ Const. of Pa., Art. I, Sec. 8.

his visit. If admittance is then refused the constable may break open the door. Once inside, he can break open inner doors, boxes, trunks, etc., when they are not opened at his command.

From whom goods may be taken.

74. The articles described in the warrant may be seized in the thief's possession or in the possession of another when held for the *thief's use*. If the stolen goods have been sold to an innocent purchaser, the constable, of course, can not seize the goods under the writ. Just when an officer is justified in seizing stolen goods in the possession of some party other than the thief, is a difficult question, and no general rule can be laid down, other than that the constable should act cautiously, and only seize the stolen articles when there are good grounds for belief that the goods are, in reality, for the use of the thief, and the party is holding them merely as a makeshift.

What goods may be seized.

75. Such articles as are particularly described in the warrant, and only those, should be seized. The only exception to this rule is where the constable, in his search, finds articles, such as burglars' tools, that will assist in the conviction of the criminal, in which case he is justified in not following the warrant. If the warrant describes the goods, as "jewelry and

other effects," it has been held⁹⁹ that such description is sufficient, but this decision may well be doubted, for the words "and other effects," are too general, and a constable would be justified in refusing to serve the warrant until a better and more particular description of the stolen goods is given in the warrant.

Registered bottles.

76. It being a misdemeanor to refill or traffic in registered bottles, the constable may receive a warrant to search for such on the premises, in the wagons, etc., of offenders, and it is his duty to seize and bring the same with the body of the person in whose possession they are found before the justice issuing the warrant.¹

Registered brewers' barrels.

77. When registered barrels are being concealed or the trade-mark being obliterated, a constable may receive a search warrant, to search the premises of offenders and seize such and take them into his possession and take the body of the person in whose possession they were found before the justice issuing the writ.²

Milk cans, butter tubs, etc.

78. A search warrant issues to the constable to

⁹⁹ Moore v. Coxe, 10 W. N. C., 135.

¹ P. & L., Bottles, 7; 1853, P. L. 643, § 3.

² P. & L., Brewers' Bbls., 3; 1865, P. L. 58, § 3.

seize milk cans, butter tubs, or boxes, in which produce is shipped, after demand has first been made for the same. The constable is authorized to search the premises of offenders, and take into his possession such goods and deliver them to the owner and take the body of the offender before the justice issuing the writ.³

Game and fish.

79. If any one is suspected, upon probable cause, of having fish or game concealed in his possession during periods prohibited by the fish and game laws, a justice "shall issue his warrant and cause search to be made in any house, market, boat, car, vehicle, or building."⁴ In the absence of any provision in the act as to the disposal of such, it would be proper for the officer to bring, both the fish or game, if convenient, and the body of the person in whose possession they were found, before the justice issuing the writ.

The return.

80. The return should show that the stolen goods were seized and delivered into the possession of the justice issuing the writ, or that the stolen goods were not found after search.⁵

(For a general discussion of search warrants, see 1 M'Kinney's Justice, 194, 629.)

³ P. & L., Crimes, 458; 1889, P. L. 84, § 4.

⁴ 1878, P. L. 160, § 35.

⁵ See Form No. 23.

ATTACHMENT FOR A WITNESS.

Remarks.

81. A writ of attachment is issued by a justice when a witness who has been legally and *personally subpoenaed* to appear at the time and place designated in the *subpoena*, fails to appear at the time and place so named. The constable should show his writ, being sure to retain possession, and compel the party named in the writ to go with him, unless he furnishes such bail as will satisfy the constable, that he will be present at the time and place mentioned in the writ. If the offender does not give a bond for his appearance (see Form No. 24), it may be necessary to confine him until the time arrives for bringing him before the justice. The constable is commanded to have the offender present at the time stated in the writ, and he must see that the command is obeyed and govern himself accordingly.

The return.

82. The return should clearly show how the writ was served. Whether a bail bond (see Form No. 24) was taken to secure the presence of the witness, or that his body was attached as commanded by the writ, and that the witness is present at the time designated, or that he cannot be found in the county (see Form No. 25).

CAPIAS.

Remarks.

83. A *capias* issues in certain civil cases, as in

actions for fines, penalties, for moneys collected by a public officer, for misconduct or neglect in office, etc., and in a few criminal proceedings,⁶ to arrest the person named in the *capias*, and take him before the justice issuing the same, unless he give bail with sufficient surety to insure his presence at the time and place named in the writ. A *capias* is about the same as a warrant, except it is rarely used; in fact, it is so much like a warrant that the two terms are often used interchangeably. The chief difference is that a *capias*, as a general rule, issues in civil cases only, while a warrant issues rarely except in criminal cases only. In criminal cases, a *capias* is governed by the same rules as a warrant (see §§ 88-104). While in civil cases, a *capias* is executed in much the same manner, still there are some differences that require special attention.

Service.

84. The constable serves the *capias* by arresting the defendant and taking him forthwith, which legally implies within a reasonable and convenient time before the justice who issued the writ. If, however, it be necessary, the constable may confine the defendant in a house, or other place of security, or place him in jail, until he obtains assistance, or during the night, if the arrest is made so late that he cannot get to the office of the justice within reasonable office hours. There must not, however, be any

6 1 M'Kinney's Justice (4th ed.), 736.

unnecessary delay in taking the prisoner by the most direct route and in the most convenient time to the justice who issued the writ. If for any reasonable cause the defendant cannot be brought immediately before the justice, or if he is desirous of going to the justice without being in custody, or if the hearing to which the prisoner is taken is postponed, the constable is authorized to take a bail-bond (see Form No. 26) for the prisoner's appearance. The constable is answerable for the sufficiency of the bail-bond. When the *capias* is handed to the constable, he should always inquire of the justice for what amount bail should be required in case bail is offered. The bail-bond should be for a sum double the amount of the debt, interest, and costs.

Service of a *capias*.

85. In all civil cases service must be peaceable. The constable cannot break an outer door or window for the purpose of arresting the defendant; nor if refused admittance can he raise the latch or turn the knob and enter; but once having gained peaceable admittance, he may break open inner doors. The law, however, will not permit him to use any unnecessary violence. If the constable can once touch the body of the defendant, even if he has to reach through an open window or any other opening, he may afterwards break open the outer door to secure him. In fact, wherever the defendant has been arrested and escapes, the constable may make

fresh pursuit, and break open outer as well as inner doors to retake him.

When the defendant is in the house of another person, the officer cannot, in general, break open the house to arrest the defendant. But if the defendant flee to the house of another, to avoid the officer, or if the owner of the house purposely secrete him, the outer door may be broken open to arrest the fugitive.⁷ In such case and in all others, the officer should ask admittance, and make known the object of his visit, before he breaks open an outer door. When, however, the defendant does not enter the house of another for the purpose of evading process, or the owner does not connive with him in that purpose, the officer must not make a forcible entrance, or even raise the latch,⁸ if admittance is denied him. The difference between the officer breaking open the inner doors of the defendant's house, and those of another person to make the arrest is this: the justification of the officer for breaking the inner doors of another to arrest the defendant, depends upon the fact whether the defendant *was actually in the house*, at the time. But where the inner doors of the defendant's own house are broken open, the officer will be justified, although the defendant was not there, if he were honestly seeking the defendant.

The protection which the law gives to the outer

7 2 M'Kinney's Justice, 387. 8 2 M'Kinney's Justice, 387.

doors and windows of the defendant's house does not extend to a store, or other out-buildings, disconnected and standing separate and apart from the dwelling house, such may be broken open to make an arrest. If the defendant is in the barn or other out-house of another it may be broken open, but if the defendant is not therein, the constable will be liable as a trespasser. So, a constable should feel reasonably sure that he will find the defendant inside before breaking into the house or building of another.⁹

The arrest.

86. For discussion of what constitutes an arrest, etc., see § 91.

Return.

87. The return should show (*a*) that the defendant was duly brought before the justice (see Form No. 27), or (*b*) that a bail bond was taken for the defendant's appearance (see Form No. 28), or (*c*) after diligent search and inquiry the defendant could not be found (see Form No. 29). If the defendant is dangerously sick and should not, under medical advice, be removed, the return should be so made. (See Form No. 30.) The defendant's physician should be consulted from time to time as to defendant's condition, so that he can be arrested before he escapes. If, after arrest, the defendant is

⁹ 2 M'Kinney's Justice (4th ed.), 380.

rescued, the return should be so made. (See Form No. 31.)

WARRANT OF ARREST.

Remarks.

88. Formerly the jurisdiction of a constable was limited to criminal proceedings only, and to this day his more important and extensive powers are connected with criminal matters; such being largely due to the wide discretionary powers entrusted to him, for a constable may not only arrest all violators of the law, but may, in certain cases, break open doors to make an arrest, and, when necessary, he can demand such assistance as he deems necessary to enforce the law.

Warrant of arrest.

89. Except in rare cases, the writ that issues to arrest a criminal and take him into custody, is a warrant of arrest, which is executed by arresting the criminal and taking him before the justice who issued the writ, when he is either discharged, bound over for his appearance at court, or committed to jail.

Service.

90. The officer to whom the warrant is directed shall execute the same by arresting the person named therein, and take him before a justice or alderman, and keep him in custody until he be duly discharged, bailed, or committed to jail. Warrants issue only

in the county where the cause of action arises.¹⁰
(For arrests outside the county see § 98.)

What constitutes an arrest.

91. An arrest is the apprehending or detaining a person, in order to be forthcoming to answer an alleged or suspected crime, or offense.

An arrest is complete as soon as the officer touches the person of the offender, or when he submits, either by word or action, without being touched, or if detained by the constable, as by locking him in a room. Where the offender prevented the officer from touching him and threatened the officer with a fork, there was no arrest because no touching or submission. For the same reason, where the officer said to H., "Mr. H., I want you," and H. said, "Wait for me outside the door and I'll come to you." The officer went out to wait, and H. slipped out at another door and ran away, there was no arrest. "Mere words will not constitute an arrest,"¹¹ as we see by this case. But where a constable has a warrant to arrest a man whom he meets on horseback, and says to him, "I have a warrant against you," upon which he submits and turns back and goes with the officer, although the officer did not touch him, the arrest is complete because he submitted to the process; but if he had fled there could be no arrest unless the officer had touched

¹⁰ P. & L., Practice, 63; 1885, P. L. 269.

¹¹ 2 M'Kinney's Justice (4th ed.), 386.

him.¹² If he had gone only a short way with the constable and then ran off, the arrest, nevertheless, was complete, for he submitted for a time, and that is all that is required to constitute an arrest.¹³ As a rule, the constable should manage first to touch the offender before he states that he arrests him, in order to prevent his running away before an arrest is made.

When an arrest may be made.

92. An arrest for a crime may be made at any time of the day or night. In cases of treason, felony, or breach of the peace, an arrest may be made on Sunday.¹⁴

In what places an arrest may be made.

93. Arrests for treason, felony, suspicion of felony, or actual breach of the peace, may be made in all places. If the offender cannot otherwise be taken, doors may be broken open to arrest him. While in misdemeanors unaccompanied by violence, the constable's authority is not as broad as in the above crimes, and the officer would not, it seems, be justified in breaking into a criminal's house to arrest him for a misdemeanor. If the front door be open, or if the constable gains a peaceable entrance, there is no objection to breaking open inner doors

12 1 M'Kinney's Justice (4th ed.), 201.

13 1 M'Kinney's Justice, 201.

14 P. & L., Sunday, 1; 1705, 1 Sm. L. 25, § 4.

of the defendant's house to make the arrest. The house of a third person, however, is not given the same protection, and the constable, after admittance is denied him, may break into the house and search for the criminal, even if guilty of misdemeanor. But if the criminal is not found therein the officer will be liable as a trespasser if he enters against the will of the owner thereof.

What violence may be used.

94. Violence can in no case be used in making an arrest unless it is opposed by resistance.¹⁵ When a constable, therefore, undertakes to make an arrest, the law protects him in the undertaking, and he may use force enough to compel the criminal to submit. If the officer deems his life in danger, or that serious bodily harm will be inflicted upon him, he is justified even in shooting or killing the offender to prevent such. But no more force or violence should be used than is necessary to compel the offender to submit, otherwise the officer will be liable to the aggrieved party.

Showing warrant.

95. If demanded, the warrant should be produced, but the officer must not part with its possession, for it contains his authority to act. There is not so much need of the officer showing the warrant where the offender knows the bearer to be an officer, still

¹⁵ 1 M'Kinney's Justice, 202.

the production of the warrant may prevent any force being used to make the arrest. If the warrant is taken from the officer, he can use enough force to retake it.¹⁶

Arrests without a warrant.

96. The constables of the several *boroughs* of this commonwealth, shall and may, without warrant and upon view, arrest and commit for hearing any and all persons guilty of a breach of the peace, vagrancy, riotous or disorderly conduct, or drunkenness, or may be engaged in the commission of any unlawful act tending to imperil the personal security, or endanger the property of the citizens, or violating any ordinances of said borough, for the violation of which, a fine or penalty is imposed.¹⁷

The above act, it will be observed, extends only to boroughs, yet constables, in general, should arrest without a warrant when a felony or a misdemeanor has been committed in their presence.¹⁸ They are, also, empowered, where a felony has been committed to arrest on reasonable grounds for suspicion of guilt, as where they are informed who the guilty party is, or the person suspected tallies with the description of the felon. Upon a reasonable charge of felony, the constable may justify an arrest without a war-

¹⁶ 1 M'Kinney's Justice (4th ed.), 192.

¹⁷ P. & L., Boroughs, 40; 1897, P. L. 121.

¹⁸ Com. v. Deacon, 8 S. & R. 47; Wakely v. Hart, 6 Binn. 316.

rant, although no felony has been committed. Grounds for suspicion of guilt in *misdemeanors* will not be enough to support an arrest without a warrant. It is preferable, however, in all cases not requiring immediate interference for the constable to act under a warrant.

Felonies and misdemeanors.

97. The powers of the constable differ, as we have seen in the previous sections of this chapter, in felonies and misdemeanors. Under the former the constable may even arrest on suspicion only, while in the latter a warrant is necessary, unless the misdemeanor is committed in the officer's presence.

For an intelligent understanding as to the difference between felonies and misdemeanors, suffice it here to say that misdemeanors are crimes of a lesser grade. A list of felonies is here appended.

Treason, murder, manslaughter, robbery, larceny, burglary, arson, rape, sodomy, buggery, mayhem, counterfeiting, or knowingly passing counterfeit money, assault, with intent to commit murder, by administering poison or causing it to be administered with felonious intent, stabbing, or anything else with intent to kill, or maim and disfigure, the administering of chloroform, or other stupefying drug, the exploding of gunpowder or other explosive substance, or the throwing at any person any corrosive fluid, with intent to burn, maim, or disfigure, or assisting in the commission of a felony, the attempt-

ing or procuring an abortion by use of a drug or any other means; the breaking by day or night of any house, shop, store, stable or store-house with intent to commit a felony; the receiving of stolen goods knowing them to be stolen, attempting to wreck a railroad train, car, or any other conveyance with felonious intent, and attempting to blow up a house with intent to destroy it.

Service outside the county.

98. In executing a warrant outside the county, it is no longer necessary to have the warrant first "backed" by a justice. The constable receives the warrant in the county where the crime was committed and on the strength of the warrant he makes the arrest anywhere in the state. After the arrest is made, the constable, if the offense is aailable one, takes his prisoner before a justice or alderman of the county where the arrest was made, and the prisoner can there enter bail for his appearance at the court of the county where the crime was committed. In case the prisoner refuses to give bail, or the offense is notailable, then the constable brings the prisoner back to one of the justices of the county where the warrant was issued, and, if the prisoner still refuses to give bail, in aailable offense, or if the crime is of such a serious nature that bail will not be accepted, the justice or alderman then issues a writ of commitment to the constable who delivers the prisoner and the writ to the sheriff at the county jail.

A constable cannot serve a warrant in a civil case outside the county. In serving a warrant in a criminal case outside the county, the constable must examine the warrant at his peril, and note whether the warrant is "stamped with the official seal of the officer issuing the same, which seal shall contain the name and official title of said officer and the state and county in which he resides."¹⁹

Unless the prisoner gives bail (see Form No. 32) before a justice or alderman in the county or city where he is arrested, it is the duty of the constable to carry the prisoner back into the county where the crime was committed, and then take him before a justice or alderman, who will either accept bail or issue a commitment. The constable, therefore, will be governed after the arrest by what action the justice or alderman in one of the two counties determines upon. If bail is accepted by a justice or alderman, the constable's duty ends at that time.

Care of the prisoner.

99. When the officer has made an arrest, he should take the prisoner, as soon as possible, before the justice who issued the writ, or some other justice more conveniently reached. The officer, for any unnecessary delay, will be guilty of a breach of duty. But if the arrest is made so late in the day that the prisoner cannot be conveyed to the justice before night, or if there be danger of a rescue,

¹⁹ 1899, P. L. 173, § 3.

or if the party be ill, the constable may, as the case may require, secure the prisoner in some way until the next day, or until it may be safe to take him before the justice. When an arrest has been made, without a warrant, and for some trivial cause, the constable may take the party's word for his appearance before a justice. But as a rule, particularly where an arrest has been made in pursuance of a warrant, the constable will be liable for the appearance of the offender. When the prisoner is brought before the justice, he is still considered to be in the custody of the officer, until he be either discharged, bailed, or committed to prison.²⁰ If the prisoner is discharged or released on bail, the constable has nothing more to do. But if not discharged, or bail is not furnished, or if it is an offense not bailable, the justice will issue a *mittimus*, a writ directing the constable to convey the prisoner to the county jail, and to hand him over to the sheriff for safe-keeping until his case is disposed of.

The prisoner, of course, should be treated kindly, unless the officer has reason to suppose that rougher methods are necessary for compelling submission. The prisoner, if the officer deem it proper, may be handcuffed and tied, and constables act wisely when they so secure their prisoners as not to invite danger to themselves. An officer would be perfectly justified in searching and taking into his possession

²⁰ 1 M'Kinney's Justice, 222.

any dangerous weapons found in possession of the prisoner, and, in short, using any reasonable methods for his safety that in his judgment seem advisable.

Property of the prisoner.

100. From the nature of the crime committed, it may be proper for the constable to search the prisoner or his dwelling for such articles as burglars' tools, stolen property, etc., that may assist in the conviction of the criminal. Under the terms of the warrant the constable should take into his possession at the time of making the arrest anything that will assist in conviction, whether ordered to do so or not, by the justice. Nothing, however, can be taken from the prisoner's possession that will not be evidence against him except dangerous weapons. Where a magistrate, before committing a person for forgery, took from him money which was not asserted to be the property of any other than the prisoner, the court ordered the money to be restored to the prisoner. Any property taken from the prisoner should be handed over to the justice before whom the prisoner is taken.²¹

Escapes.

101. Escapes for which the constable is liable are of two kinds: voluntary and negligent, for a discussion of which see Chapter X.

²¹ 4 Wash. C. C. 710; 1 M'Kinney's Justice, 197.

An arrest after an escape.

102. After an escape the prisoner may be arrested without a warrant wherever found. Doors may be broken open if admittance is denied the officer after explaining the nature of his business. The criminal should be pursued *at once*, and when retaken the officer should use such means to prevent another escape as he deems advisable.

Rescues.

103. A rescue signifies a forcible setting at liberty against the law of a person duly arrested, and the constable should lodge information at once (see Form No. 31) against the guilty parties. If there is any danger of a rescue the constable should take means to prevent it by securing necessary assistance.

The return.

104. The return should show whether the accused was arrested, and is in custody of the officer (Form No. 27), or a bail-bond is given (Form No. 28), or bail taken before another justice (Form No. 32), or the accused is not found (Form No. 29), or that the defendant is too sick to be moved (Form No. 30), or that the prisoner was rescued (Form No. 31).

When any person refuses to assist a constable in making an arrest information should be lodged against the guilty party before some justice. (See Form No. 33.)

Privileged from service of legal process.

105. Certain persons, because of the positions they occupy, or the duties in which they are engaged, or the situations in which they are placed, are partially or wholly exempt from service of process.

Ambassadors, or other public ministers of any foreign state, or any domestic servant of any such public ministers shall be free from service of process.²² This act does not extend to any citizen or inhabitant of the United States who shall have contracted debts prior to his entering into the service of any public minister, nor to consuls and their servants.

Members of Congress shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses and in going to and returning from the same.²³ A member of Congress is privileged from service of process in a civil suit²⁴ during such time as set forth above.

Members of the General Assembly shall in all cases, except treason, felony, violation of their oaths of office, and breach and surety of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the same.²⁵ The ex-

22 U. S. Revised Statutes, Sec. 4063-5.

23 Art. I, Sec. 6, Const. of U. S.

24 Geyer's Lessee v. Irwin, 4 Dall. 107.

25 Art. II, Sec. 15, Const. of Pa.

emption of this section applies only to arrest on civil process.²⁶

Electors (voters) shall in all cases, except treason, felony, and breach or surety of the peace, be privileged from arrest during their attendance on elections, and in going to and returning therefrom.²⁷

Election officers shall be privileged from arrest upon the days of election, and while engaged in making up and transmitting returns, except upon warrant of a court of record or judge thereof, for an election fraud, felony or wanton breach of the peace.²⁸

Freeholders—A freeholder who hath resided within the state for a space of two years and possesses fifty acres of land or more, in fee simple, well seated, and twelve acres thereof, or more, well cleared or improved, or hath a dwelling house worth £50 (about \$250) within the state, *clear of all* incumbrances, or hath unimproved land to the value of £50—is free from arrest in any civil case.²⁹ Where the plaintiff can make an affidavit that the freeholder is about to remove his property out of the jurisdiction of the court in which suit is brought, with intent to defraud his creditors, or that he is so disposing of or concealing his property, as to defraud his creditors, or that he fraudulently contracted the debt for

26 Com. v. Keeper of Jail, 4 W. N. C. 540.

27 Art. VIII, Sec. 5, Const. of Pa.

28 Art. VIII, Sec. 14, Const. of Pa.

29 P. & L., Practice, 53; 1724, 1 Sm. L. 164.

which suit is brought, then such freeholder may be arrested.³⁰

Females shall not be arrested or imprisoned for, or by reason of any debt.³¹

Executors, or any other person sued in a representative capacity, unless such person shall have become personally liable for the debt, or *any person whomsoever*, for any sum of money less than \$5.34, due upon any contract, shall not be arrested upon a *capias*.³²

The parties, witnesses, attorneys, jurors, and all persons, who have that relation to a suit which calls for their attendance, are protected from arrest while going to the place of trial, while attending there for the purposes of the case, and while returning home, are free from arrest on any civil process. Home itself is no protection from service of process in criminal cases, therefore such service, as a rule, may be made anywhere. Service, however, should not be made in the immediate or constructive presence of the court.³³

Persons arrested in any criminal proceeding and discharged on bail, may be arrested for another crime. But if the accused is confined in jail, a warrant of detainer should be delivered to the jailor in whose custody he remains, so that the pris-

30 P. & L., Practice, 61; 1842, P. L. 339, § 3.

31 P. & L., Practice, 57; 1819, 7 Sm. L. 150.

32 P. & L., Practice, 58; 1836, P. L. 568, § 3.

33 Miles v. McCullough, 1 Binn. 77.

oner, if acquitted of the first, will not be discharged before the hearing on the second offense. But once in the custody of an officer, the offender cannot be taken out of his possession by another officer. In civil proceedings, where an arrest is made, the same rules apply as in criminal proceedings. Where, however, no arrest is made, the fact that the party is summoned or subpoenaed in another action does not operate to prevent service of a criminal or civil writ.

Soldiers and sailors, mustered into the service of this state or the United States, shall be free from service or enforcement of civil process during the term for which they shall be engaged in such service, and for thirty days after their discharge therefrom.³⁴

A bankrupt shall be exempt from arrest upon civil process except in the following cases: (*a*) When issued from a court of bankruptcy for contempt or disobedience of its lawful orders; (*b*) When issued from a state court having jurisdiction, and served within such state, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from arrest when in attendance upon a court of bankruptcy or engaged in the performance of a duty imposed by this act.³⁵

34 P. & L., Militia, 130; 1887, P. L. 23, § 127.

35 U. S. Bankruptcy Law (1898).

Mittimus.

106. A *mittimus* (we send) or commitment is a writ directed to the constable to convey, and to the jailor to receive the prisoner and safely keep him in jail. The writ, together with the prisoner, is delivered to the jailor who preserves the writ as his justification for holding the prisoner.

Writ of execution.

See Chapter IV.

Landlord's warrant.

See Chapter V.

Writ of possession.

See Chapter V.

CHAPTER IV.

EXECUTION, LEVY AND SALE.

	PAGE.		PAGE.
107 Remarks,	79	of particulars and re-	
108 Service of,	80	ceipt,	85
109 What may be levied upon,	80	119 Liability of constable on delivery of an ex-	
110 Indemnifying bond,	81	ecution,	85
111 Exemption,	82	120 Return to the levy,	86
112 When the exemption shall not be allowed,	82	121 Notice of sale,	87
113 Time of making the levy,	82	122 The sale,	87
114 Forcible entrance,	83	123 Distribution of the proceeds of sale,	89
115 Care of the goods af- ter levy,	84	124 Labor claims,	89
116 Duties subsequent to a levy,	84	125 What labor claims are preferred,	89
117 Constable to endorse time of levy on exe- cution,	84	126 Claimants to give notice,	90
118 Constable to give bill		127 Landlord's claim for rent,	92
		128 Return to execution,	94
		129 Capias-execution,	95

Remarks.

107. A writ of execution issues after a judgment is first obtained and by virtue of the writ, the defendant's goods are levied upon and afterwards sold. The purpose of the writ, therefore, is to enable the plaintiff to recover his claim out of the proceeds of the sale of the defendant's personal property.

Service.

108. The constable proceeds to attach or levy upon the personal property of the defendant, and the levy should be made forthwith on receipt of the writ, otherwise the defendant may dispose of, or remove his goods out of reach. (For what constitutes a valid levy see § 57.)

What may be levied upon.

109. All the defendant's personal property, as a rule (except all the wearing apparel of the defendant and his family, and all the Bibles and school books in use in the family, and sewing machines used and owned by the family), is subject to levy. Real estate, or anything so connected therewith as to form part of the realty, as machinery necessary to a mill, etc., cannot be levied upon. Such produce of the land as apples *on* the trees, etc., that grow without any special attention, cannot be levied upon, while such produce as grows because of labor bestowed thereon, as grain, etc., may be levied upon, when in *sole* possession of the debtor, because it is personal property. If apples, etc., are picked, then they are personal property, and can be levied upon as such. Money, either in coin or bills, or a bond or note cannot be levied upon on an execution.¹ Such, however, may be reached by an attachment-execution. Where the defendant's property is pledged, only the defendant's interest in such can be levied upon. If

¹ Rhoads *v.* Megohigal, 2 Pa. 39.

the defendant's goods have already been levied upon, a second levy or any number of levies may be made upon the same goods of the defendant, still the first levy will have to be satisfied before any money can be made on the second levy, and so on.

Indemnifying bond.

110. When any person other than the defendant claims the title to goods levied upon by the constable, it is the duty of the latter to inform the plaintiff of that fact, and, if required to proceed any further with the execution of the writ, to demand of the plaintiff a bond of indemnity. The condition of such bond is that plaintiff shall and will from time to time, and at all times thereafter, indemnify and save harmless the said constable, his executors and administrators for and on account of his seizing, levying upon, removing, and selling, by the direction of the said plaintiff, or by virtue of the writ of execution under which he is acting, the goods and chattels of any person whatsoever as, and supposed to be the goods and chattels of the defendant.

If the plaintiff gives the bond, the constable must proceed to make the levy,² and if an action of trespass is brought against the constable he can look to the plaintiff's bond,³ which should be in a sum double the plaintiff's claim.

² Hall v. Galbraith, 8 Watts, 220.

³ See Form No. 18.

Exemption.

111. In this proceeding the defendant himself, his wife, or any one of his children of proper age, may demand the benefit of the exemption law except upon a judgment for a tort, or where the suit is based upon an instrument waiving the benefit of the exemption laws, and the constable must heed this request, otherwise he will be liable as a trespasser. (For a discussion of the constable's duties in this connection, see § 58.)

When the exemption shall not be allowed.

112. No exemption of property from attachment, levy or sale upon execution shall be allowed upon judgment for \$100 or less obtained for wages for manual labor.⁴

No exemption of property from levy and sale or attachment shall be allowed on judgment obtained for board for four weeks or less.⁵

If a judgment is for more than four weeks' board the plaintiff cannot bring his claim within the act by issuing an attachment for part of it.⁶

Time of making the levy.

113. The levy should be made promptly after the writ is delivered to the constable, for until there is a levy made, there is no lien on defendant's

4 P. & L., Execution, 26; 1887, P. L. 4, § 1.

5 P. & L., Execution, 28; 1889, P. L. 23, § 1.

6 Tredinnick v. Jones, 4 Del. Co. 224.

goods, and other creditors may take precedence upon levies made under writs issued subsequently. For any unnecessary delay, the constable will be liable to the plaintiff for any loss suffered. The levy must be made before the return-day—that is, within twenty days from the date of the writ. A constable, therefore, neglecting to make return of his execution on or before the return-day is absolutely fixed for the debt and costs,⁷ and he will not be relieved unless he has sufficient reason for his delay.⁸

Forcible entrance.

114. Under a writ of execution, as in all civil proceedings, the constable cannot break open an outer door, or even turn the knob and enter the defendant's dwelling-house, against his will. If invited in, the constable, of course once inside, can break open inner doors, trunks, boxes, etc., if not opened at his command. The constable can lawfully break into out-buildings, a store, or any other building of the defendant's, other than his dwelling, to make a levy. Even any outer or inner door of a third person may be forced if entrance is denied him, in order to levy upon the defendant's goods. If none of the defendant's property is found therein, the constable will be liable to the owner as a trespasser thereof.

⁷ *Amey v. Kennedy*, 1 Ash. 160; *Burkholder v. Keller*, 2 Pa. 51.

⁸ *Keller v. Clarke*, 6 W. & S. 534.

Care of the goods after a levy.

115. After the levy is made, the constable is responsible for the goods, and should govern his actions accordingly. If the defendant enters into a bond⁹ with sufficient surety, the constable is justified in leaving the property in his possession, until the claim and costs are fully paid, or until time for the sale. If a satisfactory bond is not forthcoming, the constable can take possession and remove the goods to a place of safe-keeping, if he deems it advisable.

Duties subsequent to a levy.

116. The constable shall endorse the name of each article so levied upon, on the execution or a schedule thereto annexed, which levy shall be a lien on such chattels for twenty days after levying upon the same and no longer.¹⁰

Constable to endorse time of levy on execution.

117. Whenever the constable shall levy on the goods and chattels of a defendant, he shall endorse the time of such levy on the execution, and no execution, issued by a justice of the peace, shall be a lien on the property of the defendant before levy made thereon.¹¹

⁹ See Form No. 20.

¹⁰ P. & L., Justice of the Peace, 125; 1810, 5 Sm. L. 161.

¹¹ P. & L., Justice of the Peace, 126; 1820, 7 Sm. L. 308, § 4.

Constable to give bill of particulars and receipt.

118. In all cases where a constable shall collect, or receive the debt, interest and costs, or any part thereof, of any execution, it shall be his duty to make out and deliver to the defendant in such execution, a bill of particulars of his fees and charges, together with a receipt, signed by him for the same if paid, and if any constable shall neglect or refuse, *upon application* to him, made by the party interested, to give such bill or receipt he shall for such neglect or refusal, forfeit the sum of \$10.¹²

Liability of the constable on delivery of an execution.

119. On delivery of an execution to any constable, an account shall be stated in the docket of the justice, and also on the back of the execution, of the debt, interest and costs from which the constable shall not be discharged but by producing to the justice, on or before the return-day of the execution the receipt of the plaintiff or such other return as may be sufficient in law. In case of a false return, or in case he does not produce the plaintiff's receipt on the return-day, or make such other return as may be deemed sufficient by the justice, it becomes the duty of the said justice to begin proceedings against such delinquent constable for the recovery of the

¹² P. & L., Justice of the Peace, 127; 1820, 7 Sm. L. 308, § 3.

amount of the execution improperly returned, with costs.¹³

Return to the levy.

120. After making the levy, the constable must endorse on the writ the time of making the levy, including the hour, day, and date thereof, and also endorse on the execution or on the schedule thereto annexed the specific goods and chattels so levied upon.¹⁴ The return must show precisely what was done—if no goods are found,¹⁵ if the levy is made on property pledged by the defendant,¹⁶ if the defendant paid the debt, interest, and costs.¹⁷

If the defendant, or his wife or his child of proper age, demands the benefit of the exemption law, then it is the duty of the constable to summon three appraisers, who shall first be sworn (see Form No. 19) by the constable or a justice before they proceed to set aside \$300 worth of personal property for the benefit of the defendant or his family. If the exemption covers all or only part of the defendant's goods,¹⁸ it should be made to so appear upon the return.

Where the return consisted simply of the word

¹³ P. & L., Justice of the Peace, 128; 1810, 5 Sm. L. 161, § 12.

¹⁴ See Form No. 34.

¹⁵ See Form No. 35.

¹⁶ See Form No. 36.

¹⁷ See Form No. 37.

¹⁸ See Form No. 38.

“served,” it was held insufficient,¹⁹ as any other return, not showing clearly how the writ was served, would be.

Notice of sale.

121. Unless the defendant is granted an appeal or a stay of execution, with which the constable has nothing to do, he should proceed to advertise²⁰ the sale during at least six days, by not fewer than six handbills to be posted in the most public places.²¹ A constable selling without six days' notice becomes a trespasser.²² It matters not whether the execution creditor consented to such sale.²³ The sale, at all events, must be held within twenty days after the levy, otherwise the lien on the goods is lost.

The sale.

122. At the appointed time and place, the constable should proceed to sell the goods levied upon, unless there are so few bidders present as to necessitate an adjournment²⁴ of the sale. The constable, in each case, should, after the adjournment, proceed to advertise the sale again for such length of time as he thinks best, being sure to hold the sale *within* twenty days after the levy was made, otherwise the

19 *Burkholder v. Kennedy*, 2 Pa. 51.

20 See Form No. 39.

21 P. & L., Execution, 69; 1836, P. L. 755, § 42.

22 *Carrier, etc., v. Esbaugh*, 70 Pa. 239.

23 *Gibbs v. Neely*, 7 Watts, 305.

24 See Form No. 40.

lien on the goods levied upon is lost, and the constable has no right to proceed with the sale

The articles put up at the sale should be, as a rule, sold separately, for sale in mass is void,²⁵ for the policy of the law is to multiply bidders and increase competition. The constable can only do his duty by endeavoring to get the highest possible price for the goods. Where only one bid is offered and taken, and no opportunity given for a second bid, the sale is fraudulent; but where only one bid can be obtained, at which, after reasonable effort to get another, the property is struck down, the sale will be valid.²⁶ It is unlawful for a constable to use the streets for the purpose of conducting a sale,²⁷ or to open forcibly an outer door for the same purpose.²⁸ Sale to the plaintiff, no other person but the constable being present, is illegal and invalid.²⁹ Then, too, if the constable sells any portion of the goods without levy and advertisement of the sale, he is liable as a trespasser to the owner thereof.³⁰ After an appeal is taken the execution is dead, and everything done afterwards in the way of levy or sale under it is void, and the constable will be subject to an action of trespass for acts done subsequent to the

25 *Klopp & Witmoyer, etc.*, 43 Pa. 219.

26 *Swires v. Brotherline, etc.*, 41 Pa. 135.

27 *Com. v. Milliman*, 13 S. & R. 403.

28 *Com. v. Moreland*, 9 W. N. C. 272.

29 *Ricketts, etc., v. Unangst*, 15 Pa. 90.

30 *Ward, etc., v. Taylor*, 1 Pa. 238.

appeal.³¹ Then, again, the constable cannot legally purchase, directly or indirectly, at his own sale, and one deputed by him is subject to the same disability.³²

Distribution of the proceeds of sale.

123. After the proceeds of the sale are paid into the constable's hands, the money must be distributed to the parties entitled thereto. First comes the costs of the justice and the constable, next the labor claims not exceeding \$200, then the landlord's claim for rent, not exceeding one year, and lastly the execution creditor, the plaintiff. That no mistakes be made in the distribution a full explanation will now be given of the nature of the different claims and their relative standing.

Labor claims.

124. After deducting the costs of execution from the proceeds of the sale, labor claims are paid in full unless the aggregate thereof should exceed the amount for distribution, in which event a *pro rata* distribution is made.

What labor claims are preferred.

125. Labor and services rendered by any miner or mechanic, servant girl at hotels, boarding-houses, restaurants, or in private families, or any other servant or helper in and about said houses of entertain-

31 O'Donnell *v.* Mullin, 27 Pa. 199.

32 Crook *v.* Williams, 20 Pa. 342.

ment and private families, porter, hostler, or any other person employed in and about livery stables or hotels, laundryman or washerwoman, seamster or seamstress employed by merchant tailors or by any other person, milliner, dressmaker, clothier, shirt-maker, or clerk employed in stores or elsewhere, hand laborer, including farm laborer, or any other kind of laborer, printer, apprentice, and all other tradesmen hired for wages or salary from any person or persons, chartered company, joint-stock company, limited or other partnership, either as owner, lessee, contractor or under-owner, whether at so much per diem or otherwise, for any period *not exceeding six months* preceding the sale : *Provided*, That the claim thus preferred shall not exceed \$200.³³

Claimants to give notice.

126. Notice in writing of the labor claim (see Form No. 41) must be given to the constable any time before the actual sale of the property levied upon ;³⁴ if not given until after the sale, it is too late,³⁵ even if the constable still retains proceeds of the sale.³⁶ The proof of a preferred claim for wages must be limited to labor performed in the business designated in the notice of the claim,³⁷ and the

33 P. & L., Wages, 1 ; 1891, P. L. 54.

34 P. & L., Wages, 2 ; 1872, P. L. 47, § 2.

35 First Nat. Bank, etc., v. Childs, 10 Phila. 452.

36 Allison v. Johnson, etc., 92 Pa. 314 ; Stichler v. Malley, 94 Pa. 82.

37 Lautz v. Post, 2 C. C. 481.

notice must show that the labor was in and about the business or property from the sale of which the fund arose.³⁸ But wages may be claimed out of the proceeds of any personal property and not merely out of that connected with the business.³⁹

In some counties, a claim for wages is not limited to the wages earned before the levy, but includes wages earned up to the day of sale,⁴⁰ while in other jurisdictions the claim for wages extends only until the time of levy.⁴¹

The courts, it will be observed, demand a very strict observance of the statutory requirements, and the constable need pay no attention to any wage claims made after the sale, or when not made in writing. A mere memorandum handed to the constable, is not sufficient notice;⁴² but the notice must give dates showing that the work was done within six months preceding the sale, the amount claimed, for whom the service was rendered, *the nature* of the work performed, and that a levy has been made on the goods of his employer.⁴³ Each claim, of course, must not exceed \$200, because that is the limit the constable can pay to any one claimant.

38 Assigned Estate of Childs, etc., 135 Pa. 214.

39 Evans' Assigned Estate, 1 Chest. Co. 112.

40 Keeler v. Beishline, etc., 1 C. C. 287; Gray v. Krugerman, 4 C. C. 291; Matsinger v. Cov. Pub. Co., 14 W. N. C. 90.

41 Cen. Newspaper Union v. Gracie, 7 C. C. 188; Schrader v. Burr, 10 Phila. 620.

42 McMillen v. Bank of Corry, 1 W. N. C. 55.

43 Timmes, etc., v. Metz, 156 Pa. 384.

Wages of laborers engaged in lumbering are also included in the list of preferred claims when the notice to the constable is given in writing with full particulars thereof. No more than \$200 due to any such laborer shall be preferred.⁴⁴

Considerable local legislation has been enacted on the preferment of wages, for discussion of which, see P. & L., Wages, § 1, notes.

Landlord's claim for rent.

127. Next in order after labor claims, the landlord comes, subject to certain conditions to which his claim (see Form No. 42) must conform. Goods and chattels in or upon lands and tenements and taken by virtue of an execution and liable to the distress of the landlord, shall be liable for the payment of any sums of money due for rent at the time of taking such goods in execution: Provided that such rent shall not exceed one year's rent.⁴⁵ The goods would have to be both upon the premises and liable to distress,⁴⁶ and there must be an existing tenancy; if the landlord accepts a surrender of the term after the levy, his right to claim rent out of the proceeds is gone.⁴⁷ And so if the tenant dies after levy and before the rent becomes due.⁴⁸ The lessor,

44 P. & L., Wages, 6, 7; 1891, P. L. 44, §§ 1, 2.

45 P. & L., Execution, 74; 1836, P. L. 755, § 83.

46 Grant & McLane's Ap., 44 Pa. 477.

47 Greider's Ap., 5 Pa. 422; Com., etc., v. Contner, 21 Pa. 266.

48 Exceptions, etc., of Acc't of John Ralston, Admin., 2

however, is entitled to arrears of rent out of the proceeds of the goods of a sub-tenant though the latter has paid his rent to his immediate landlord.⁴⁹ Where the sale is held under several levies made at different times, the landlord is entitled to rent down to the time of the latest levy.⁵⁰ The landlord's priority, moreover, is not confined to the last year's rent, but to one whole year's rent, if that much be due, without regard to the time the lease commenced, or the time of the constable's sale.⁵¹ The landlord is entitled to rent only until time of levy, but notice of his claim is valid, if given to the constable before he pays over the proceeds of the sale.⁵² But the landlord cannot claim rent in arrear out of the proceeds of a constable's sale of a tenant's goods which were not, at the time of the levy upon the rented premises and liable to distress.⁵³

If the proceeds of the sale shall not be sufficient to pay both the landlord and the costs of execution, the landlord shall be entitled to receive the proceeds after deducting so much for costs as

Clarke, 224; *Hoskins v. Houston*, 2 Clarke, 489; *Gandy v. Dickson*, etc., 166 Pa. 422.

⁴⁹ *McCombs and Howden's Ap.*, 43 Pa. 435; *Bromley v. Hopewell*, 14 Pa. 400.

⁵⁰ *Leaming's Ap.*, 5 W. N. C. 221; *Espen's Ap.*, 5 W. N. C. 221.

⁵¹ *Parker & Keller's Ap.*, 5 Pa. 390; *Weltner's Ap.*, 63 Pa. 302.

⁵² *Appeal of G. T. Work*, etc., 92 Pa. 258.

⁵³ *Grant & McLane's Ap.*, 45 Pa. 477.

he would be liable to pay in case of a sale under a distress.⁵⁴

In the counties of Schuylkill, Northumberland, Somerset, Carbon, Washington and Dauphin, the landlord of any colliery can only claim rent for one month, together with rent for any fraction of a month due immediately preceding the levy on an execution.⁵⁵

The notice of the landlord's claim should be in writing, it seems, with full particulars showing his right to the amount claimed. There is, however, no statute requiring the landlord's claim to be in writing.

Return to execution.

128. The constable must, at his peril, make a sufficient return to the execution,⁵⁶ showing how much money was made from the sale, and how much was distributed and to whom. The constable should take receipts from all parties for any or all of the proceeds and produce the same to the justice who issued the writ. The better, and probably the safer plan for the constable to adopt is to pay over to the justice, less his own costs, the proceeds of the sale, taking the justice's receipt therefor (see Form 44). The justice then will distribute the fund among the parties entitled thereto. If there be not enough

54 P. & L., Execution, 75; 1836, P. L. 755, § 84.

55 P. & L., Execution, 77; 1859, P. L. 319, § 3.

56 See Form No. 43.

money recovered to pay all the claims, they should be paid in order of their priority. If there be more than enough, the balance must be returned to the defendant, taking his receipt therefor (see Form 45).

Where there are several executions, the constable, if he distributes the proceeds of sale, pays all the claims due under the first, before paying anything on the second execution, and so on. Should there not be enough money received from the sale to pay the costs of the execution, the constable may look to the plaintiff for part or all of his fees.

Capias-execution.

129. In certain cases, a clause of arrest is inserted in the execution commanding the constable to arrest the defendant and convey him to jail, if enough goods to satisfy the execution are not found. Accordingly, if the defendant, after an arrest escapes, the constable who had him in charge will be made liable for the debt, interest and costs of such execution. A good defence, however, could be offered by the constable if he arrested and confined the defendant on a second writ issued at the instigation of the plaintiff. But the fact that the defendant, who escaped is insolvent, would not be a good defence.

CHAPTER V.

LANDLORD AND TENANT.

(a) DISTRESS; (b) RECOVERY OF POSSESSION.

(a) DISTRESS.		PAGE.			PAGE.
			139	Return after distraint,	105
130	Landlord's warrant,	96	140	Appraisement,	106
131	Who may distrain,	97	141	The right to replevy,	107
132	Time of distraint,	98	142	Exemption,	107
133	Where distraint may be made,	98	143	Sale,	108
134	Manner of entering to make distraint,	99	144	Duties after sale,	108
135	What may be dis- trained,	101	145	Duties in general,	108
136	What may not be dis- trained,	101	146	Local laws,	109
137	How a distress is made,	103	(b) RECOVERY OF POS- SESSION.		
138	Care of goods after distress,	104	147	Proceedings to re- cover possession,	110
			148	Writ of possession,	111
			149	Writ of execution,	111
			150	The return,	112
			151	Local law,	112

(a) DISTRESS.

Landlord's warrant.

130. Constables are very frequently called upon to serve a landlord's warrant (see Form No. 46) or distress warrant, as it is sometimes called, whereby the tenant's goods are distrained or levied upon, and afterward appraised and sold, unless the tenant re-

plevy the same within five days exclusive of the day the distraint was made, or after five days, if no sale has been made. The purpose of the distress is to enable the landlord to recover, out of the proceeds arising from the sale of the tenant's personal property, the amount of rent due.

The landlord himself issues the warrant, and for that reason a constable need not accept and serve it, for a constable is not bound to serve the writs of private persons. The writ, therefore, is no protection to the constable, who is the agent of the landlord, if it is irregularly served.¹ As a matter of fact, constables usually serve landlord's warrants because they are obliged to assist in the proceedings subsequent to the distress.

Who may distrain.

131. The landlord himself may distrain or authorize anyone else to do so,² and the authority may be by parol and no particular form of deputation is necessary.³ If the landlord has parted with his ownership or interest in the premises he cannot distrain for rent owing to him.⁴

¹ *Bair v. Warfel*, 5 *Lanc. L. R.* 81; *Wells v. Harnish*, 3 *P. & W.* 30.

² *Franciscus v. Reigart*, 4 *Watts*, 98.

³ *Kerr v. Sharp*, 14 *S. & R.* 399; *Jones v. Gundrim*, 3 *W. & S.* 531.

⁴ *P. & L., Land. and Ten.*, 1; 1772, 1 *Sm. L.* 370; *Wallbridge v. Pruden*, 102 *Pa.* 1.

Time of distraint.

132. The distraint must be made after sunrise and before sunset.⁵ It must not be made on Sunday,⁶ nor until the next day, at least, after the rent becomes due.⁷ The right to distraint, moreover, ceases with the death of the tenant.⁸

Where distraint may be made.

133. The distraint must be made *on* the premises, for the occupation of which the rent is due,⁹ unless the tenant has fraudulently or clandestinely removed his goods from the premises to avoid the distress. Then the goods so removed should be distrained, wherever found, within thirty days, otherwise the landlord's right to distraint the same is lost. The mere removal of the tenant's goods in the daytime, without knowledge of the landlord, is not fraudulent,¹⁰ no lease to the contrary, for the tenant is under no obligation to notify the landlord that he intends to remove his goods. But removal at night would, in itself, be sufficient evidence of fraud.¹¹ A clause in the lease allowing goods removed from the

5 1 M'Kinney's Justice (4 ed.), 201.

6 *Mayfield v. White*, 1 Browne, 241.

7 *M'Kinney v. Reader*, 6 Watts, 34.

8 *Hoskins v. Houston*, 2 Clarke, 489, 224; *Gandy, etc., v. Dickson, etc.*, 166 Pa. 422.

9 *Grant & McLane's Appeal*, 44 Pa. 477.

10 *Grace v. Shively*, 12 S. & R. 217; *Grant & McLane's Ap.*, 44 Pa. 477.

11 *Grace v. Shively*, 12 S. & R. 217.

premises to be followed may refer to fraudulent or clandestine removal and not removal with knowledge or consent of the landlord,¹² or the lease may be so drawn as to cover a removal by day, by night, fraudulent, with the knowledge or consent of the landlord or otherwise,^{13*} and, in such cases, the goods may be distrained wherever found within thirty days after their removal.

If the goods are removed in the sight of the person proceeding to distrain, they may be followed and distrained.¹³ In order to follow goods, in any case, rent must be due at the time of removal.¹⁴ The landlord's right to distrain, no lease to the contrary, is lost (*a*) if the goods of the tenant be once fairly and openly removed, or if (*b*) fraudulently and clandestinely removed and thirty days elapse, or if (*c*) fairly sold, before distrained, to an innocent person for value, although such purchaser be the succeeding tenant and the goods yet remain on the premises.¹⁵

Manner of entering to make distraint.

134. Whatever serves as a barrier to keep people out cannot be forced open in order to make a legal distress. So gates and inclosures must not be

12 *Baer v. Kuhl*, 8 Dist. R. 389; 12 York, 173.

13 *Clifford v. Beems*, 3 Watts, 246.

13* *Goodwin v. Sharkey*, 80 Pa. 149.

14 *Grace v. Shively*, 12 S. & R. 217.

15 *Clifford & Beems*, 3 Watts, 246.

broken open or climbed over.¹⁶ A peaceable and not a forcible entry on the premises should be made. A constable should not so much as turn the door-knob and enter. If he can enter through an open door or open window and once gets inside, he can break open inner doors if necessary, and if once legally inside and forcibly removed, he can then make a forcible re-entry.¹⁷ But if admittance is refused a constable before he once gets inside the house or out-building, he cannot then legally take the law into his own hands and enter against the will of the tenant. The same rules apply to the barn and other outside buildings as laid down for a dwelling—they cannot be broken open. Where a landlord picked a lock after the tenant locked the door, a trespass was committed by the landlord.¹⁸ It is a trespass also to unlock a door with a key not left therein in order to make a distress.¹⁹ Until the question is settled, the constable will be only on the safe side by using no force whatever in effecting an entrance, not even by turning a knob or lifting a latch.

If the constable cannot get inside, then he should distrain what can be found about the premises.

16 Jackson *v.* Gross, Land. and Ten. (2d ed.), par. 1157.

17 2 Taylor, Land. and Ten., §§ 578, 582.

18 Com. *v.* Moreland, 9 W. N. C. 272; Murray *v.* Vaughn, 16 C. C. 657.

19 Murray *v.* Vaughn, 16 C. C. 657; s. c. 2 Dauph. Co. 354.

What may be distrained.

135. As a general rule, all personal property found on the rented premises may be distrained, even the goods of a stranger²⁰ or the wife's separate property.²¹ There are, however, many exceptions to the rule, and these will be discussed in the following section.

Any cattle or stock of the tenant feeding or depasturing upon the rented premises; also, all sorts of corn and grass, hops, roots, fruit, pulse, or other product whatsoever which shall be growing on the rented premises may be distrained, and the purchaser of any such corn, grass, hops, roots, fruit, pulse, or other product, shall have free egress and regress to and from the same where growing, to repair the fences from time to time, and when ripe to cut, gather, cure, and lay up and thresh and carry away the same.²² This statute does not include ripened fruit, but only "growing" fruit.

What may not be distrained.

136. There are so many exceptions to the general rule, that it is more important to know the exceptions than the rule. The exceptions, in fact, have almost eaten up the rule.

One of the best established exceptions in this

²⁰ *Kessler v. M'Conachy*, 1 Rawle, 435; *Kleber, etc., v. Ward*, 88 Pa. 93.

²¹ *Blanche v. Bradford*, 38 Pa. 344.

²² P. & L., Land. and Ten., 4; 1772, 1 Sm. L. 370, § 7.

state is, where the tenant in course of his business, is necessarily put in the possession of the property of those with whom he deals, or of those who employ him, such property, although on the rented premises, is not liable to distress for rent due thereon from the tenant,²³ as the goods of a boarder;²⁴ goods placed in the way of trade in storage;²⁵ goods of a guest for rent due by an innkeeper; grain sent to a mill or on a wharf; goods of the principal in the hands of a factor on commission; goods in custody of the law, as held under writ of attachment.²⁶

The further exceptions to the rule are:

(a) Things which are fixed to the freehold, as doors, windows, etc. Machinery merely bolted to the freehold, it seems, can be distrained.

(b) Things which cannot be returned to the owner in as good a condition as at the time they were taken, as milk, fruit, etc.

(c) Chattels already in custody of the law.

(d) Things in actual use, as a hatchet, with which a man is working, the horse which he is riding. The reason for this arises from the anxiety with which the law guards against incitement to breach of the peace.²⁷

23 *Karns v. McKinney*, 74 Pa. 387.

24 *Riddle v. Welden*, 5 Wh. 9.

25 *Brown, etc., v. Sims, etc.*, 17 S. & R. 138.

26 *Pierre v. Scott*, 4 W. & S. 344; *Howe, etc., v. Sloan*, 87 Pa. 438.

27 3 Black. Com. Ch. 1; 3 Kent. Com. 478.

(*e*) Leased or hired pianos, melodeons and organs are exempt from distress, provided that the owner or his agent shall have given previous notice to the landlord or his agent that the instrument is leased or hired.²⁸

(*f*) Chattels sold in good faith and for a valuable consideration, before seized for rent due.²⁹

(*g*) All wearing apparel of the tenant and his family, and all Bibles and school books in use in the family.³⁰

(*h*) Family pictures or portraits are exempt.

(*i*) Sewing machines belonging to seamstresses or used and owned by private families are exempt.³¹

(*j*) Sewing machines and typewriting machines leased or hired are exempt, provided the owner of such machine, or his agent, or the person leasing or hiring the same, shall give notice to the landlord or his agent that the instrument is leased or hired.³²

How a distress is made.

137. The constable, with the landlord's warrant in his possession, proceeds to the rented premises, and after obtaining a peaceable admittance, is given the power of distraining the tenant's goods, by reason of his acting legally, and in obedience to his warrant.

28 P. & L., Land. and Ten., 5; 1876, P. L. 171.

29 P. & L., Land and Ten., 6; 1849, P. & L. 533.

30 P. & L., Execution, 17; 1849, P. L. 533.

31 P. & L., Execution, 24; 1870, P. L. 35.

32 P. & L., Land. and Ten. (Sup.); 1895, P. L. 282.

To make a legal distress, the constable must be within view of the goods, with the undisputed power to remove them if he chooses to do so. He need not see every petty article he distrains, for he may distrain the furniture in a room without seeing every piece. The mere fact that the constable is acting under a landlord's warrant, and is within view, and has undisputed control over the goods, gives him the right to distrain. The name of each article, as it is distrained, should be called out, so that those present may know what is distrained, and, at the same time, the constable should make an inventory of the articles distrained.

A distress, therefore, consists simply in acting in obedience to a landlord's warrant, after being within view, and in full control of the tenant's personal property. The inventory is made so that the distrained goods can be identified later, and a copy of the inventory is given to the tenant or one of the adult members of his family, so that he will have notice and be bound by the distress.

Care of goods after distress.

138. It is customary to leave the goods on the premises until after the sale. The consent to do so should be obtained in writing³³ from the tenant. If he should refuse to allow the goods to so remain until after the sale, the goods may remain on the premises

33 See Form No. 47.

until after the appraisement,³⁴ when they should be removed and notice given the tenant of the place where the goods are stored.

The goods, however, may be removed after distraint, or, locked up in one of the rooms and the key carried away by the constable, or left in the several places on the premises, or a watchman, with the landlord's consent, placed in charge of them.

Return after distraint.

139. Immediately after the distress the constable must make a copy of the inventory of the distrained goods, and hand the same to the tenant or one of the members of his family; also a written notice³⁵ of distress having been made, with *the cause of such taking*. If the tenant refuses to receive a copy of the inventory and the notice giving the cause of the distress, such should be posted in some conspicuous place on the premises and the tenant will be bound by the same as though he had received the copy of the inventory and the notice of the cause of taking. A mere schedule of the goods levied upon which does not contain notice of the "cause of taking," is not a compliance with the statute.³⁶ The right to make a distress and sell the tenant's

³⁴ McKinney *v.* Reader, 6 Watts, 34; Waitt *v.* Ewing, 7 Phila. 195.

³⁵ See Form No. 48.

³⁶ Snyder, etc., *v.* Boring & Bair, 4 Sup. Ct. 196.

goods is given largely by our statutes, which must be strictly followed.

Any departure from the statutes authorizing a distress makes the constable liable to an action of trespass.³⁷

Appraisement.

140. The notice given the tenant explains that he has five *full* days in which to pay the rent due, or replevy the goods distrained, otherwise they will be appraised and sold. After five full days, exclusive of the day the distress was made, the constable with two reputable freeholders proceed to the premises and the two freeholders, who shall first be sworn or affirmed by the constable³⁸ or a justice shall honestly appraise (see Form No. 50) the goods distrained. Five *full* days must elapse after the distress before the appraisement is held, accordingly, a distress made on the 25th of May and an appraisement held on the 30th of May is bad.³⁹ In computing the five days which must elapse before the appraisement, the day of the seizure is excluded, and if the fifth day thereafter falls on Sunday, it is excluded; wherefore, if goods be distrained on Tuesday, an appraisement cannot properly be made before the

37 Snyder, etc.; *v. Boring & Bair*, 4 Sup. Ct. 196; Richards *v. McGrath*, 100 Pa. 389; *Murray v. Vaughn*, 16 C. C. 657.

38 See Form No. 49.

39 Snyder, etc, *v. Boring & Bair*, 4 Sup. Ct. 196; *Brisben v. Wilson*, 60 Pa., 452; *Starr v. Simon*, 9 C. C. 15.

succeeding Tuesday.⁴⁰ A landlord may not, on account of premature appraisement, make a second distress and levy on the same goods for the same rent while the first proceedings are pending.⁴¹

The right to replevy.

141. The right to replevy the goods distrained is not confined to five days, if no sale has been made. The goods, it seems, can be replevied any time before the sale.⁴²

Exemption.

142. All wearing apparel of the tenant and his family and all Bibles and school books in use in the family are exempt from distress. (For a further discussion of what articles are exempt see § 136.)

If the tenant has not waived the benefit of the exemption law, he is entitled to have appraised and set aside \$300 worth of personal property.

(For a discussion of the manner of demanding the benefit of the exemption law, when the same must be made, by whom, and the constable's duty in this connection, see § 58.) The tenant is entitled to the benefit of the exemption as well as his family.

If the tenant's exemption covers all the property, there can, of course, be no sale, and the return (as Form No. 51) should show the amount exempted.

40 *Davis v. Davis*, 128 Pa. 100.

41 *Pleiffer v. Schubmehl*, 6 Lack. Leg. News, 60.

42 *Starr & Simon*, 9 C. C. 15.

Sale.

143. After the appraisement, six days' public notice (as Form No. 52) must be given of the sale, with a description of the articles to be sold. The goods are sold at public auction for the highest possible price. (For the duties in reference to the manner of conducting the sale, see § 122.)

Duties after sale.

144. The constable should keep strict account of the proceeds of the sale. After paying the costs and the landlord, the remainder, if any, of the proceeds should be turned over to the tenant. Receipts for money paid to any persons should be taken and preserved by the constable, also all papers connected with the proceedings.

Duties in general.

145. Constables should proceed cautiously in acting under a landlord's warrant, for they are personally liable for double the value of the goods distrained for making a distress when there is no rent due;⁴³ and as a constable can justify only by showing rent in arrears, the landlord's warrant is no protection.⁴⁴

The constable is also liable for making an unreasonable distress. Sufficient goods only should be

⁴³ P. & L., Land. and Ten., 13; 1772, 1 Sm. L., 370, § 3.

⁴⁴ Wells v. Hornish, 3 P. & W. 30; McElroy v. Dice, 17 Pa. 163.

taken to pay the rent due and the costs of the proceedings. He should not distrain all the furniture if the furniture in one room will pay the debt and costs. Still it may be necessary to distrain a piano for a very small debt and costs if there is nothing of a lesser value to be distrained. An unreasonable distress should in no case be made.

A second distress may be made to supply the deficiency caused by not taking enough goods on the first distress or mistaking their value. A second distress should rarely be resorted to, and not until the proceedings under the first distress are entirely closed.

Where there is any doubt as to the ownership of the property about to be distrained, the constable should demand from the landlord an indemnifying bond.⁴⁵ If the landlord refuses, the constable, of course, will go no further. It is trespass to enter the house of a stranger to search for and distrain goods fraudulently removed if no goods of the tenant be there found; so the constable, in such a case, is foolish to proceed without first obtaining an indemnifying bond. In fact, the constable should in all cases demand an indemnifying bond before proceeding to execute a landlord's warrant.

Local laws.

146. There are local laws in force in Philadelphia, Pittsburg, and Allegheny which declare that if goods are fraudulently removed from the rented premises,

⁴⁵ See Form No. 18.

with intent to defraud the landlord of his distress, the landlord can have his rent apportioned to the time of such removal, and follow and take the goods as a distress within thirty days from such removal; provided the landlord makes oath or affirmation that he verily believes the goods were carried away for the purpose of defrauding him as aforesaid; and provided further, that goods sold *bona fide*, and for a valuable consideration are excepted.⁴⁶

(b) RECOVERY OF POSSESSION.

Proceedings to recover possession.

147. Where the tenant, after proper notice, refuses to leave and surrender the premises to the landlord at the end of the term,⁴⁷ or where the tenant is in arrears for rent, and there is not sufficient personal property to justify the landlord in making a distress,⁴⁸ the landlord may make complaint before one justice or alderman, under the act of 1863, and before two justices or aldermen, under the act of 1830, and upon good cause shown, a summons issues to the constable to be served on the tenant after the manner laid down in § 31. Upon a hearing of the matter, if the complaint of the landlord is found true and just, a writ of possession and a writ of execution are directed to a constable

⁴⁶ P. & L., Land. and Ten., 10, 39; 1825, P. L. 114, §§ 1, 2.

⁴⁷ P. & L., Land. and Ten., 28; 1863, P. L. (1864), 1125.

⁴⁸ P. & L., Land. and Ten., 34; 1830, P. L., 187.

to be served not sooner than five days after the hearing; in Philadelphia, ten days.

Writ of possession.

148. The *writ of possession* is a command to the constable to put the tenant out of possession of the rented premises, and deliver actual possession of the same to the landlord. The tenant, and his family and all his personal property, on the premises, must be moved off, so that there be nothing left on the premises by which the tenant may still claim possession. The constable may use force enough to remove the tenant and his family. If the constable alone is not able, he may call upon any person or persons to aid him, and they are legally bound to obey. Any unnecessary force or violence should be avoided. The constable is empowered to use just force enough to accomplish his duty. So if the tenant can be led, he should not be pushed out. In executing a writ of possession, doors may be broken open if not opened at the constable's command. The constable will, of course, be certain as to which tenant, and what premises are specified in the writ.

Writ of execution.

149. The writ of execution issues so that the landlord may recover, out of the proceeds of the sale of the tenant's goods, the amount of damage he has suffered by reason of the tenant's refusal to obey the notice to surrender the premises. The service and duties under the writ of execution

are the same as in an ordinary execution (for which see Chapter IV), except that the tenant is not entitled to the benefit of the \$300 exemption upon a judgment obtained against him for damages in proceedings to recover possession by the landlord under the act of December 14, 1863.⁴⁹

The return.

150. The summons and the writ of execution are returned in the manner as laid down in the preceding parts of this book. The return⁵⁰ to the writ of possession must show that the tenant was ousted and the landlord given possession of the premises, unless prevented by sickness of the tenant or a member of his family. A certificate signed by the family physician saying that removal, at that time, of the afflicted one would be dangerous to the health, or hazardous to life, should be obtained by the constable to justify his action in not making the removal.

Local law.

151. A special act relating to Mercer county will be found in Pepper and Lewis' Dig., Landlord and Tenant, 38.

⁴⁹ Smith v. Carter, 17 Phila. 344.

⁵⁰ See Form No. 53.

CHAPTER VI.

ELECTION DUTIES.

	PAGES.		PAGES.		
152	Township elections,	113	157	Constables to report disturbances, penalty,	116
153	Division or erection of new townships,	114	158	Betting on elections,	116
154	Delivery of certificates of election,	114	159	Notice of election of inspectors,	116
155	Constables to attend elections,	115	160	Mode of increasing number of justices or aldermen,	117
156	Duties at the polls,	115			

Township elections.

152. Constables shall give public notice of township elections by ten or more printed or written advertisements¹ to be posted in the most public places, at least ten days before the election. Each notice must contain (a) the names of the offices to be filled; (b) the place where the election is to be held. In case of neglect, refusal, death, or absence of the constable, the supervisor or assessor shall act, in which case five days' notice is sufficient.² Neglect or refusal to give notice of the election as required, subjects the constable to a liability of a fine not less than \$50 nor more than \$100.³

¹ See Form No. 54.

² P. & L., Elections, 100; 1840, P. L. 683, § 1.

³ P. & L., Elections, 333; 1839, P. L. 519, § 97.

Division or erection of new townships.

153. When a vote is to be taken on the *division* of a township into new townships, the court fixes the time for the election, and the constable of the township proposed to be divided shall give at least fifteen days' notice⁴ of the time and place of holding the election by posting not less than six written or printed handbills in the most public places in the township.⁵

Upon return of the commissioners appointed by the court *in erecting a new township*, the court fixes a day certain for holding an election by the election officers of the township from which the largest number of taxables to be embraced in the proposed new township is to be taken, . . . and it shall be the duty of the constable of said township . . . to give at least fifteen days' notice⁶ of the time and place of holding said election, by posting at least six written or printed handbills in the most public places in *each* of the townships which are to be divided by the formation of the proposed new township.⁷

Delivery of certificates of election.

154. The inspectors and the judge of the election make out a certificate of election for each person chosen as a township officer, which certificate shall

⁴ See Form No. 55.

⁵ P. & L., Counties and Twps., 77 ; 1857, P. L. 93, § 2.

⁶ See Form No. 56.

⁷ P. & L., Counties and Twps., 81 ; 1857, P. L. 304, § 2.

be delivered to the person so chosen or left at his place of abode by the constable of the proper ward, township, district, or borough, within five days after the election.⁸

Constables to attend elections.

155. It is the duty of every constable to be present in person or by deputy at the place of holding any public election within his bailiwick for the purpose of preserving the peace.⁹

Duties at the polls.

156. Whenever called upon by any officer of the election, or by any three qualified voters thereof, to clear any window or any avenue to any window at the place of the general election which shall be obstructed in such way as to prevent voters from approaching the same, the constable must comply, and on neglect or refusal to comply with such an order he subjects himself to a fine of not less than \$100 or more than \$1,000.¹⁰

If the persons so obstructing the passage to the polls refuse to clear the way the constable may use force enough to remove them. If the constable is unable to do so alone he should command such persons as he chooses to assist him. If any person refuses to help the constable when commanded to do

⁸ P. & L., Elections, 7; 1840, P. L. 683.

⁹ P. & L., Elections, 182; 1839, P. L. 519, § 111.

¹⁰ See Note No. 9.

so at any election, or any other place for that matter, the constable should lodge information against such person before a justice.¹¹

The presence of a constable is required at elections "for the purpose of preserving the peace," and the constable must faithfully perform his duty.

Constables to report disturbances—Penalty.

157. It is the duty of every constable who shall be present at any disturbance at any public election to report the same at the next court of quarter sessions, and also the names of the witnesses who can prove the same. On refusal or neglect to report such disturbances, the constable shall be liable to a fine of \$100.¹²

Betting on elections.

158. If any person shall bet or offer, either orally or in writing, to make any bet upon the result of any election, it shall be the duty of the constable to lodge information against such person before a justice.¹³ But a wager on the result of a primary election is not within the scope of the act.¹⁴

Notice of election of inspectors.

159. It is the duty of every constable, at least ten days before the day appointed for the election of

¹¹ See Form No. 33.

¹² P. & L., Elections, 183, 184; 1839, P. L. 519, §§ 112, 113.

¹³ P. & L., Elections, 320, 321; 1839, P. L. 519, §§ 115, 116.

¹⁴ Com. v. Wells, 110 Pa. 463.

inspectors, to give public notice, by six or more printed or written advertisements, to be posted in the most public places within his township, ward or district, of the time and place of holding such election.¹⁵

(Inspectors are now, as a rule, if not always, elected at the regular spring elections, so this statute is probably obsolete.)

Mode of increasing number of justices or aldermen.

160. If the qualified voters of any ward, borough, or township, in this commonwealth, shall desire to elect more than the number of justices of the peace or aldermen, prescribed by this law, such qualified voters may, at the times and places of holding constables' elections, express such desire and consent. . . .

And if it shall appear by such election that a majority of the qualified electors within such ward, borough or township, are in favor of electing more justices or aldermen, then such additional number of justices or aldermen, shall at the next constables' election thereafter, be elected and commissioned in the same manner as other justices and aldermen.

Provided, That no election shall be held under this law unless at least fifty qualified voters of the proper ward, borough or township, shall give notice in writing to the constable thereof that they desire

15 P. & L., Elections, 2 ; 1839, P. L. 519.

to vote at the next constables' election thereafter, for such increase, and on receiving such notice, the said constable shall, by at least ten written or printed handbills, put up in the most public places, in said ward, borough, or township, at least twenty days before said election, give notice that at said election a vote will be taken to ascertain whether the qualified voters of said ward, borough, or township, consent to the election of a greater number of justices and aldermen. And it shall be the duty of the officers and others holding such election to make out in true duplicate returns of the same, and file one of the said returns in the office of the prothonotary of the proper county, and in case a majority of the voters are in favor of an increase, the proper constable shall immediately transmit by mail to the governor the other of the said returns, and no such increase in any ward, borough or township shall exceed two.¹⁶

¹⁶ P. & L., J. of P., 18; 1839, P. L. 376, § 4.

CHAPTER VII.

DUTIES IN RELATION TO VIOLATION OF THE LIQUOR LAWS.

	PAGE.		PAGE.
161 Remarks,	119	165 Sale, furnishing or	
162 Return places where		giving of liquor on	
liquor is sold,	119	election days,	121
163 Monthly visitations,	120	166 Sale of liquor near	
164 Furnishing liquor to		soldiers' encamp-	
certain persons,	120	ments,	121

Remarks.

161. In view of the heavy penalties imposed by law for failure of constables to perform their duties respecting violations of the liquor laws, it would seem necessary in this treatise to define their duties in relation thereto.

Return places where liquors are sold.

162. Each constable shall return to the court of quarter sessions all places where intoxicating liquors are sold in his bailiwick, except stores kept by druggists and apothecaries, stating which places are licensed and which are unlicensed, when, if it shall be found that any constable wilfully or negligently omitted to return all such houses and names of proprietors thereof, he shall be guilty of wilfully or negligently making a false return, and the court shall suspend him from office, and direct the district attor-

ney to indict and try said officer, and if found guilty he shall be fined in a sum not exceeding \$500 and undergo an imprisonment, either simple or solitary, not exceeding two years.¹

Monthly visitations.

163. It shall be the duty of each constable to visit at least once in each month all places within his respective jurisdiction where intoxicating liquors are sold or kept for sale, to ascertain whether there are any violations of the liquor laws.

Whenever any constable shall learn of any violations, it shall be his duty to make written returns² of the same to the next court of quarter sessions, with the names of witnesses, if any, and to do whatever is in his power to bring the offender to justice. Failure to perform his duty subjects the constable to the same liability as in the preceding section.³

Furnishing liquors to certain persons.

164. Wilfully furnishing intoxicating drinks by sale, gift, or otherwise, to any person of known intemperate habits, to a minor, or to an insane person, for use as a beverage, shall be deemed a misdemeanor; and the willful furnishing of intoxicating drinks as a beverage to any person when drunk or intoxicated, shall be deemed a misdemeanor.⁴

1 P. & L., Liquors, 46; 1887, P. L. 108, § 11.

2 See § 176.

3 P. & L., Liquors, 47; 1887, P. L. 108, § 12.

4 P. & L., Liquors, 32; 1854, P. L. 663.

Any violation of this or any other liquor law, in his presence, gives the constable authority to arrest the offender and take him before a justice. The constable, however, may prefer to return the name of the offender and the names of the witnesses to the next court of quarter sessions.

Sale, furnishing or giving of liquors on election days.

165. It is unlawful for any person keeping a public house, or drinking-place, either licensed or unlicensed, to sell, furnish or give any intoxicating beverage, on any part of any day set apart for any general or special election, during the time the election polls are required to be kept open.

It is the duty of the constable to make return to the next court of quarter sessions the name of any offender, under penalty of a fine not less than \$50 nor more than \$100.⁵

Sale of liquor near soldiers' encampments.

166. The sale, gift, or furnishing of any intoxicating drinks within three miles of any soldiers' encampment or reunion during the time of holding such, is unlawful. It shall be the duty of the constable of the township, upon written application of the commandant of such camp, to be present in person or by deputy, during such encampment, and to arrest, without warrant, any person guilty of disor-

⁵ P. & L., Elections, 330-33; 1872, P. L. 24.

derly conduct or any breach of the peace, or of intoxication, or whom he may have reason to believe is guilty of violating the law by selling intoxicating liquor, and bring him before a near-by justice of the county. The officer making such arrest shall lodge an information under oath ⁶ in the nature of a return, of the cause of such arrest, and the justice shall then proceed to hear and determine the case the same as if a warrant had issued.

Any person licensed under the laws of this state to sell or dispose of intoxicating liquors at his usual place of business named in the license is not affected by this law.⁷

⁶ See Form No. 57.

⁷ P. & L., Liquors, 24-28; 1875, P. L. 48, §§ 1-3.

CHAPTER VIII.

CRIMES AND OFFENSES.

	PAGE.		PAGE.		
167	Remarks,	123	173	Gambling,	127
168	Constables to be fire, game and fish war- dens,	123	174	Trespassing upon trains,	128
169	Forest fires,	125	175	Constables in bor- oughs to arrest in certain cases with- out a warrant,	129
170	Time that minors may be employed,	126	176	Constable's return,	129
171	Vagrants,	126			
172	Diseased cattle,	127			

Remarks.

167. The constable has special duties to perform, as defined by various statutes, which will now receive our attention.

Constables to be fire, game and fish wardens.

168. Constables shall enforce all the laws enacted for the protection of forests and timber lands from fire, and for the protection and propagation of fish, game, game birds, game mammals, song birds, and birds that devour insects. Constables have authority to arrest without a warrant any one violating the laws governing the above, and such arrests may be made on Sunday. The offender must be taken forthwith before a justice or magistrate. Constables, moreover, shall have

power without a warrant to search any boat, conveyance, fish-box or basket, game-bag or coat, or other receptacle for game or fish, when they have good reason to believe that any of the laws for the protection of such have been violated, and they shall take possession of all birds, animals or fish which have been unlawfully caught, and a search warrant may issue to seize game in the unlawful possession of any one. (For a discussion of the duties under search warrant, see §§ 72-80.) All birds, animals or fish-nets, or fishing appliance seized by any constable, shall be disposed of in such manner as may be directed by the court. Such constable shall not be liable for damages on account of any search, examination, or seizure, or the destruction of any nets or fishing apparatus of any kind, in accordance with the provisions of this act. Furthermore, it shall be the duty of each constable to make special return of all violations of this law occurring in his jurisdiction, to the court, and neglect or refusal of any constable to make a return or to prosecute any offense of which he has personal knowledge or of which he shall have notice in writing from any citizen giving the name of the offender together with the names of the witnesses, shall be guilty of a misdemeanor, and liable to a fine and imprisonment.¹ Every constable should possess and be familiar with the fish and game laws

¹ 1899, P. L. 17.

of this state, for it is his duty rigidly to enforce the same.

Forest fires.

169. Constables are *ex officio* fire wardens, whose duty it is, when fire is discovered in the forests within their respective townships, to take such means immediately, as is necessary for its extinction, and to this end to have authority to call upon any person within their respective township for assistance. The constable shall receive fifteen cents per hour and his assistants twelve cents per hour as compensation for their services. No county, however, shall be liable to pay for this purpose in any one year an amount exceeding \$500. (The state pays one-half the expense thus incurred in extinguishing forest fires.) Constables must make true returns to the court of all violations of laws for protection of forests, and any wilful or negligent failure to do so subjects the constable to liability of expulsion from office, fine, and imprisonment.

“Forest” means any timber or brush land of fifty acres or more. When a smaller area is so near timber or brush lands, containing fifty or more acres, as likely to carry fire to it, then the constable must act as though the fire originated in a tract of fifty or more acres.²

That part of the act relating to the fees to be received by the constable and assistants for extinguish-

² P. & L., Forest, 13-16; 1897, P. L. 9, §§ 1-4.

ing forest fires has already received a death-blow in Warren county,³ and a like fate may await it throughout the state by reason of the title of the act not containing such purpose as set forth in the body of the act. Still, until the act is declared unconstitutional by one of the higher courts, or by a county court controlling the constable, it must be faithfully enforced by the constables generally.

The other provisions of the act must be faithfully adhered to, even in Warren county, for they are set forth in the title of the act.

Time that minors may be employed.

170. No male or female operative under the age of twenty-one years shall, under any contract, be employed in any cotton, woolen, silk, flax, bagging, or paper manufactory in this commonwealth, for a longer period than sixty hours in any one week, or more than an average of ten hours a day during the same period. When complaint shall have been properly made to the constable of a violation of this law, he shall lay the same before a justice of the peace in^o order that the guilty party may be dealt with according to law.⁴

Vagrants.

171. Constables shall arrest vagrants when notice thereof has been given them, or upon their own

³ Baker *v.* Co. of Warren, 22 C. C. 205.

⁴ P. & L., Factories, 5-7; 1855, P. L. 472.

view, and take the vagrant before a justice. Vagrants are those who, (*a*) shall unlawfully return into any district whence they have been legally removed, without bringing a certificate of authority from the district to which they belong, stating that they have a settlement therein; (*b*) All persons who refuse to perform the work allotted to them by the overseers of the poor; (*c*) all persons begging from door to door, or gathering alms in the street, or those begging who have no fixed abode where arrested.⁵

Diseased cattle.

172. No cattle or sheep shall be allowed to run at large, in any township or borough, where any contagious disease prevails among such. Constables are authorized and required to take up and confine such cattle and sheep so found, until called for and until all costs are paid. Refusal to perform the duties of this act makes the constable liable to a fine of \$10.⁶

Gambling.

173. It shall be lawful for a constable to seize any device or machine used for the purpose of gambling, and arrest, with or without a warrant, any person setting up the same. The constable shall make return in writing, describing the nature of the device or machine so seized, and the time, place, and circumstances, under which such seizure was made, to

5 P. & L., Vagrants, 2, 3; 1876, P. L. 154.

6 P. & L., Cattle, 3; 1866, P. L. 101, § 3.

the next court of quarter sessions.⁷ The court, if satisfied that such was used for gambling shall adjudge the same forfeited and order it to be publicly destroyed, and at the same time order such reasonable costs and charges to the seizing officer as the court shall deem adequate, to be paid by the owner or possessor of the illegal device or machine. If the court shall be satisfied that there was probable cause for the seizure, they shall certify the same, which certificate shall be a bar to any action against the officer for, or on account of such seizure.⁸ The officer arresting in such cases, without a warrant, is not bound to give notice of his purpose to arrest or his authority so to do.⁹

Trespassing upon trains.

174. Any constable having knowledge or being notified of any one trespassing upon any car or engine, or threatening or assaulting any of the passengers or other persons thereon, or committing larceny, violence or destruction thereon, shall arrest the offender and take him before a justice.¹⁰

In the counties of Erie, Luzerne, Susquehanna, Pike, Crawford, Warren, and Venango local acts have been passed enlarging the duties of constables,

⁷ See Form No. 58.

⁸ P. & L., Crimes, 305; 1860, P. L. 382, § 60.

⁹ *Shovlin v. Com.*, 106 Pa. 369.

¹⁰ P. & L., R. R. and Canals, 119, 120; 1879, P. L. 152, §§ 1, 2.

for which see Pepper & Lewis' Digest, under Railroads and Canals.

Constables in boroughs to arrest in certain cases without warrant.

175. For a discussion of which see § 96.

Constable's return.

176. In order to detect and punish the offenders for the commission of certain crimes, or the omission by certain officials to perform their duties properly, constables are compelled to make return to court under oath concerning such, in order that steps may be taken at once to punish any such offenders. Neglect or refusal to make a true and correct return subjects the constable to the liability of dismissal from office, fine, and imprisonment.

The return which must be submitted to the court of quarter sessions on the first day of each term is about as follows :

CONSTABLE'S RETURN

To the court of quarter sessions of the peace in and for the county of Adams for the August sessions, A. D. 1900.

The undersigned, constable of the township of Tyrone, in said county, respectfully makes return as follows :

1. Furnishing by sale, gift, or otherwise, spirituous, vinous, malt, or brewed liquors on Sunday :

Names of offenders :

Names of witnesses :

2. Furnishing by sale, gift, or otherwise, spirituous, vinous, malt, or brewed liquors to minors, either for their own use or for the use of any other person :

Names of offenders :

Names of witnesses :

3. Furnishing by sale, gift, or otherwise, spirituous, vinous, malt, or brewed liquors to any persons visibly affected by intoxicating drink, either for his own use or for the use of any other person :

Names of offenders :

Names of witnesses :

4. Selling or delivering intoxicating drinks to a person of intemperate habits, or habitual drunkard, after notice in writing not to sell or deliver ; or furnishing spirituous, vinous, malt, or brewed liquors, by sale, gift, or otherwise, to any person of known intemperate habits, either for his own use or for the use of any other person ; or to any insane person :

Names of offenders :

Names of witnesses :

5. Any person unlawfully selling intoxicating liquor on election day :

Names of offenders :

Names of witnesses :

6. Persons keeping a public house or drinking place, licensed or unlicensed, furnishing by sale,

gift, or otherwise, spirituous, vinous, malt, or brewed liquors on election days :

Names of offenders :

Names of witnesses :

7. Keepers of any drug or apothecary store, confectionery store, or mineral or other fountain, selling any intoxicating liquors, except upon the written prescription of a regularly registered physician, or selling more than once upon the same prescription :

Names of offenders :

Names of witnesses :

8. Physicians willfully prescribing any intoxicating liquors as a beverage to persons of known intemperate habits :

Names of offenders :

Names of witnesses :

9. Keepers of public houses knowingly allowing or permitting any spirituous or malt liquors, wine, or cider, to be drank on or within their houses or premises on Sunday :

Names of sellers :

Names of witnesses :

10. The licensed sellers of liquors are as follows :

Taverns :

Restaurant :

Quart :

Other sellers :

11. The unlicensed sellers are as follows :

Names of witnesses :

12. Roads, bridges, and hand-rails out of repair, and defects in turnpike roads :

Names of supervisors :

13. Index-boards not up at intersection of public roads :

Names of offenders :

Names of supervisors :

14. Bastard children born :

Name of mother :

Name of reputed father :

15. Bawdy or tippling and disorderly houses and owners and lessees thereof :

Names of keepers, owners, etc. :

Names of witnesses :

16. Gambling houses or common gamblers :

Names of keepers :

Names of witnesses :

17. Wagering or betting on the event of an election.

Names of offenders :

Names of witnesses :

18. Carrying concealed deadly weapons, firearms, razor, slug-shot, handy-billy, or dirk-knife upon the person :

Names of offenders :

Names of witnesses :

19. Knowingly selling, or causing to be sold, to any person under sixteen years of age, any cannon, revolver, pistol, toy pistol, cartridge, gunpowder, or other explosive substance :

Names of offenders :

Names of witnesses :

20. Selling cigarettes to any person under the age of sixteen years :

Names of offenders :

Names of witnesses :

21. Oleomargarine—manufacturing out of any oleaginous substance or compound of the same, other than that produced from unadulterated milk, or cream from the same, or any article to take the place of butter or cheese :

Names of offenders :

Names of witnesses :

22. Selling such article, offering it for sale, or having such article in possession with intent to sell :

Names of offenders :

Names of witnesses :

23. Disturbance of the peace at elections, or any violation of the election laws :

Names of offenders :

Names of witnesses :

24. Game killed out of season, and other violations of law.

A. B., Constable.

ADAMS COUNTY, ss:

I, A. B., constable above named, being sworn in open court, do say: That the foregoing return is correct and true, to the best of my knowledge and belief; and also that I have visited, at least *once in each*

month, every place in my jurisdiction where vinous, malt, or brewed liquors, or any admixture thereof, are sold or kept (except stores kept by druggists or apothecaries), for the purpose of ascertaining whether the provisions of the several acts of assembly relating to the furnishing or sale of such liquors have been violated or are being violated, and that I do not know of any violation except as reported in the return.

A. B., Constable.

Sworn and subscribed in open court this 20th day of August, A. D. 1900.

INSTRUCTIONS.

It is your duty to visit all places in your bailiwick where you have reason to believe the law is being violated, that your return may be intelligently made, and may be of service to the public.

Failing to make a return is an offense punishable by indictment. Making a *false* return is perjury.

~~✎~~ Failure to comply with the above provisions, covering Nos. 1 to 11 inclusive, is punishable by suspension from office and by indictment. The penalty, if the constable is found guilty, is a fine not exceeding \$500 and imprisonment not exceeding two years, or either, at the discretion of the court.

CHAPTER IX.

MISCELLANEOUS DUTIES.

	PAGE.		PAGE.	
177	When sheriff is a party to a suit,	135	182 Canada Thistles,	137
178	Court duties,	135	183 Polluting water,	137
179	Delivering transcript of justice or clerk of court,	136	184 Jury trial before justices.	138
180	Mercantile License Tax,	136	185 Duty of the constable,	138
181	Sheep-dogs,	136	186 Care of the prisoner,	138
			186* Justice's inquest,	139

When sheriff is a party to a suit.

177. In all suits in which the sheriff is a party, when there is no coroner in commission to serve process, the constable shall serve the process which the coroner would otherwise serve.¹

Court duties.

178. The judges of the several courts of quarter sessions, oyer and terminer, and common pleas, shall select a sufficient number of constables to attend during term of the court, and perform the duties imposed by the court. No constable shall be obliged to serve more than one week at one time, and shall not receive pay for the day on which he

¹ P. & L. Cons., 41; 1850, P. L. 459, § 19.

makes his return to the court of quarter sessions. Notice to attend at adjourned courts will be given the constable by the sheriff.²

Delivering transcript of justice or clerk of court.

179. It shall be the duty of the constable to whom any transcript or certificate shall be delivered by a justice of the peace or clerk of the court (as aforesaid), under a penalty of \$10, to be recovered before any other justice of the proper county, to deliver such transcript or certificate to one of the overseers of the district to which such fine, penalty or forfeiture belongs, and for such service, such constable shall be entitled to receive from such overseers the sum of twenty-five cents and no more.³

Mercantile license tax.

180. After the publication of the names of those subject to the mercantile license tax, in the newspapers of the county, it is the duty of the constable to examine such printed list to see whether any name has been omitted that should have been advertised and report the same to the county or city treasurer. For each omission so reported the constable shall be entitled to fifty cents.⁴

Sheep-dogs.

181. Upon the refusal of the owner, after due

2 P. & L. Cons., 39; 1814, 6 Sm. L. 98.

3 P. & L., Poor, 125; 1836, P. L. 539, § 39.

4 1899, P. L. 188, § 10.

notice is given him, the county commissioners shall order the constable to kill any dog that has killed sheep.⁵

Canada Thistles.

182. When any person considers himself aggrieved, or about to be injured by reason of any Canada thistles growing upon land held by lease or otherwise, it shall be the duty of the constable, on written notice from the aggrieved party, to give the party in possession of the land five days' notice⁶ in writing to cut or destroy the same. On neglect or refusal to destroy such at the end of five days, it shall be the duty of the constable to enter upon the premises and destroy the same.⁷ The constable must look to the owner of the real estate and not to the township for his compensation.⁸

Polluting water.

183. Any person who shall wilfully enter upon any enclosed land of any company incorporated in this state for the purpose of supplying drinking water to the public, and pollute, or attempt to pollute the water thereon, shall be deemed guilty of a misdemeanor. Any constable is authorized and empowered upon his own view of any such trespass to

⁵ P. & L., Dogs and Sheep, 6; 1893 P. L. 136, § 6.

⁶ See Form No. 59.

⁷ P. & L., Canada Thistles, 2; 1885, P. L. 9, § 2.

⁸ Bilger v. Spring Twp., 22 C. C. 670.

make arrests and bring the offenders before a justice or alderman.⁹

Jury trial before justices.

184. In the counties of Crawford, Erie, Lawrence, Mercer, Union, Venango and Warren, local acts have been passed¹⁰ empowering the justices in those counties to conduct jury trials.

Duty of the constable.

185. After the selection of the jury, the constable must summon the jurors and he should give each juror, when summoned, a written notice¹¹ and make his return¹² to the justice, showing that each juror has been notified when, where, and for what purpose he is to appear.

The constable shall be present at the trial, and if any of the jurors summoned fail to appear, or if present, they shall not be empaneled, the constable shall fill the panel from the bystanders. At the close of the trial, the jury shall be conducted to some private and convenient place, where they may deliberately and without interruption consult upon their verdict.

Care of the prisoner.

186. In criminal cases, where the prisoner fails to

⁹ P. & L. (Sup.), Crimes, § 27 (nuisances) ; 1895, P. L. 231.

¹⁰ See Price's Index to Local Laws.

¹¹ See Form No. 60.

¹² See Form No. 61.

give sufficient security for his appearance at the trial, the constable shall take him into custody, and commit him to the county jail for safe-keeping until the day of trial, when the constable shall convey him before the justice. The constable, of course, will guard the prisoner so that he cannot escape from his custody. After the trial, if the prisoner is found guilty, and sentenced to jail, or being unable to pay the fine and costs, or the costs alone, the constable, under a writ of commitment, shall convey the prisoner to the county jail and deliver him to the sheriff, or keeper thereof.

Justice's inquest.

186*. Under certain circumstances, justices of the peace are authorized to hold inquests over dead bodies. In such cases it is the duty of the constable of the proper township, ward, or district to be present at the inquest and assist the justice by summoning the witnesses and a jury of six (selected by the justice). The constable's duty after the inquest is the same as laid down in §§ 185 and 186.

The constable's fees in such cases are not due until the court of quarter sessions has first passed upon both the reasonableness of the cause of holding such inquest and the amount of costs incurred thereby.

Justices in the counties of Northampton, Lancaster, Schuylkill, and Chester counties cannot act as coroners, and in Allegheny county in rare cases only.¹³

¹³ P. & L., J. of P., § 55 and notes.

CHAPTER X.

ACTIONS AGAINST CONSTABLES AND THEIR SURETIES.

	PAGE.		PAGE.
(a) ACTIONS AGAINST CONSTABLES.			
187 Introductory,	140	194 Escapes, in general,	147
188 Neglect of duty,	141	195 Illegal fees,	147
189 Suits for acts done in obedience to warrant,	141	196 Limitation of actions,	148
190 Liability as to executions,	143	197 Where actions may be heard,	149
191 Arrests without a warrant,	146	198 Actions against constables in general,	149
192 Escapes by negligence,	146	199 Service of process upon constables,	150
193 Escapes due to refusal to execute process,	146	200 Costs of suit,	150
		(b) ACTIONS AGAINST SURETIES.	
		201 Actions against sureties,	150

(a) ACTIONS AGAINST CONSTABLES.

Introductory.

187. Constables are sued, as a rule, upon the least provocation, therefore they should be especially discreet at all times in the performance of their legal duties. No other official, probably, is compelled to defend himself as frequently in the courts as the constable. Ignorance of his duties and wretched advice lead the constable astray, and the fortunate ones only escape law suits.

This chapter is designed to point out errors made in the past, so that the constable may avoid making the same mistakes, and, also to set forth the statutory regulations governing actions against the constable and the defences that may be set up for his protection.

Neglect of duty.

188. If any constable shall neglect or refuse to perform the duties required of him, he shall, on conviction, be fined in any sum not less than \$50, nor more than \$100, by the act of 1839,¹ or he may be subjected to a greater or lesser fine, dismissal from office, and even imprisonment, according to the grade of the offense for which he is chargeable. A constable, moreover, is liable for damages sustained by an individual in consequence of any duty omitted or any act unlawfully performed by him in office.²

Suits for acts done in obedience to warrant.

189. Before any action can be brought against a constable, or any one acting by his order, and in his aid, for anything done in obedience to a warrant, under the hand and seal of a justice, a written demand³ for the perusal, and a copy of such warrant, signed by the party demanding the same, must

1 P. & L., Crimes, 131; 1839, P. L. 519, § 97.

2 *Work v. Hoffnagle*, 1 Y. 506.

3 See Form No. 62.

be made upon the constable personally, or left at his usual place of abode, and this demand be neglected or refused for the space of six days.

If the demand for a copy of the warrant is complied with, and an action is brought against the constable without making the justice who issued the warrant a party to the suit, the constable upon producing and proving such warrant at the trial of such action, shall be entitled to a verdict in his favor, notwithstanding any defect of jurisdiction in such justice, and if the action be brought against the constable and the justice jointly, the constable in such cases is entitled to a verdict in his favor after producing and proving his warrant.⁴

Where the constable has followed the directions of and proves his warrant he is entitled to the protection of the act.⁵ If the constable on demand, refuses for a space of six days to furnish a certified copy⁶ of his warrant, he may be held liable for any irregularity in the warrant. Accordingly, constables should in all cases furnish a certified copy of the warrant on proper demand and thus escape liability.⁷ The purpose of the act is to protect constables from

⁴ P. & L., Constables, 33; 1772, 1 Sm. L. 364, § 6; *Jones v. Hughes*, 5 S. & R. 298; *Osborne v. Hess*, 1 Browne, 343; *Com. v. Warfel*, 157 Pa., 444; *Ward v. Shortlidge, etc.*, 9 York, 92; *Bassett v. Walker*, 3 C. C., 183.

⁵ *McGill v. Ash*, 7 Pa., 397.

⁶ See Form No. 63.

⁷ *Varley v. Zahn*, 11 S. & R. 185; *Jones v. Hughes*, 5 S. & R. 298.

suffering injury for acts done strictly in accordance with their warrants defective by reason of irregularity or want of jurisdiction in the justices.⁸ In such cases, the fault is with the justice, and the constable is not affected thereby.⁹

Where the constable does not act in pursuance of his warrant, as levying upon the goods of a stranger to the writ, a call for the warrant is unnecessary.¹⁰ But in an action of trespass for not allowing exemption, the plaintiff must demand a copy of the writ.¹¹

Liability as to executions.

190. By far, the greater number of actions against constables are for errors made in the service of executions and the subsequent duties connected therewith.

A constable neglecting to make a lawful return to his execution on or before the return-day (twenty days after the writ issues) is absolutely fixed for the debt and costs,¹² and he will not be relieved unless he has sufficient reason for his delay.¹³ It matters not that the constable could not by the greatest dili-

8 *Mollison v. Bowman*, 3 Clarke, 181.

9 *Paul v. Depu*, 6 Binn. 123; *Jones v. Hughes*, 5 S. & R. 298.

10 *Mollison v. Bowman*, 3 Clarke, 181.

11 *Bassett v. Walker*, 3 C. C. 183.

12 *Amey v. Kennedy*, 1 Ash. 160; *Burkholder v. Keller*, 12 Pa. 51.

13 *Keller v. Clarke*, 6 W. & S. 534.

gence have recovered anything whatever on the execution.¹⁴

On the sufficiency of a constable's return to an execution the justice must judge in the first instance, but his judgment and acceptance of the return will not relieve the constable from liability, if it be erroneous.¹⁵ The constable's return must, of course, be in writing.

A constable who, through neglect of duty, becomes liable for and pays an execution directed to him, cannot have another execution issued on the judgment and recover the sum paid by him from the original defendant.¹⁶ And if the execution creditor tenders a satisfactory bond, the constable cannot demand such sureties as please him, but he will be held liable for his refusal to proceed with the execution.¹⁷ Constables, however, are held liable for the sufficiency of all bonds they take,¹⁸ and, in fact, constables accept bonds at their peril, for if the sureties on the accepted bond should become insolvent between the time of signing the bond and the breach of the bond by the defendant, the plaintiff may hold the constable for any damage suffered thereby. Consequently, constables are only protecting themselves by demanding the

14 *Bachman v. Fenstermacher*, 112 Pa. 331.

15 *Shover v. Funk*, 5 W. & S. 457.

16 *Arbingast v. Houk*, 6 Watts, 228.

17 *Meeker v. Sutton*, 2 Phila. 288.

18 P. & L., Constables, 21; 1810, 5 Sm. L. 161, § 18.

very best men in the community as sureties ; still if a satisfactory bond is tendered by a plaintiff, the constable must proceed.¹⁹ The fact that the plaintiff ordered the constable to levy upon goods which belonged to a third party, will not protect the constable from liability to the third party. He can only protect himself by taking from the plaintiff a satisfactory indemnifying bond, before proceeding to make the levy.

After a sale of the defendant's goods, the constable is not bound to remain on the premises any length of time. If any purchaser so requests, the constable should remain until the purchaser has had a reasonable time in which to remove his goods.²⁰

If any constable shall receive money by virtue of an execution, or other process, and shall neglect or refuse, upon application to him made by the party interested to pay the amount thereof to the party entitled to receive the same or to his, her or their agent or legal representatives, he shall be deemed guilty of a misdemeanor in office ; and upon conviction thereof, shall be fined not less than \$20 nor exceeding \$100 and shall stand committed until the money so withheld shall be paid, together with the interest, fine and costs, and moreover, shall, for seven years thereafter, be incapable of holding the

19 *Meeker v. Sutton*, 2 Phila. 288.

20 *Spear v. Alexander*, 2 Phila. 89.

office of constable or the appointment of deputy constable.²¹

Arrests without a warrant.

191. Where an arrest is made without a warrant, the constable's liability turns on the reasonableness of the cause for making the arrest. The test is, would a prudent, reasonable person act, under the same circumstances, in the same way. The constable, however, will be allowed, in all cases, to show his reasons for making the arrest, and the courts incline to favor the constable, unless he has acted recklessly and without any grounds of suspicion. If the arrest is made on the charge of a third person, the person making the charge, alone, will be liable. (As to arrest without a warrant, see § 96.)

Escapes by negligence.

192. If any constable having a prisoner in his charge or custody, under a criminal conviction, sentence or charge, shall suffer such through gross negligence to escape, he shall be deemed guilty of a misdemeanor, and on conviction, be sentenced to an imprisonment not exceeding one year, and to pay a fine not exceeding \$500.²²

Escapes due to refusal to execute process.

193. If any constable shall wilfully, and without

²¹ P. & L., Constables, 28; 7 Sm. L. 308, § 7.

²² P. & L., Crimes, 260; 1860, P. L. 382, § 6.

reasonable cause, refuse to execute any lawful process directed to him, requiring the apprehension or confinement of any person charged with or convicted of, a criminal offense, or shall wilfully and without reasonable cause, omit to execute such process, by which such person shall escape, he shall be guilty of a misdemeanor, and on conviction, be sentenced to an imprisonment not exceeding two years, and a fine not exceeding \$500.²³

Escapes, in general.

194. A prosecutrix, for fornication and bastardy committed with herself, may maintain the action for an escape of the defendant arrested under a warrant.²⁴ A constable is liable for an escape growing out of negligence or misconduct on his part.²⁵ Constables therefore, should be especially careful to prevent an escape, and if the prisoner, by some means, escape, the constable should follow, and retake him without the least delay.

Illegal fees.

195. If any constable shall wilfully and fraudulently receive or take any reward or fee to execute his duty and office, but such as is or shall be allowed by law, or shall receive or take, by color of his office, any fee or reward whatever, *not*, or more than is

23 P. & L., Crimes, 261 ; 1860, P. L. 382, § 7.

24 Lantz v. Lutz, 8 Pa. 405.

25 Blue v. Com., 4 Watts, 215 ; Lantz v. Lutz, 8 Pa. 405.

allowed as aforesaid, he shall be deemed guilty of a misdemeanor in office, and, on conviction, shall be sentenced to pay a fine not exceeding \$500, or to undergo an imprisonment not exceeding one year.²⁶

A constable incurs the penalty of the act by demanding and receiving illegal fees, though it be done by mistake or in ignorance of the law and without any corrupt intent,²⁷ and the penalty is incurred by every illegal charging and taking that occurs.²⁸

Limitation of actions.

196. No action shall be brought against any constable for anything done in the execution of his office, unless commenced within six months after the act committed.²⁹ The action, of course, can be brought subsequent to six months if the constable has exceeded the authority of his writ, as levying upon the goods of a stranger to the writ.³⁰

Suits against sureties on a constable's bond shall not be sustained unless the same be instituted within five years after the date of such bond or obligation.³¹

26 P. & L., Fees, 57; 1860, P. L. 382, § 12.

27 *Coates v. Wallace*, 17 S. & R. 75.

28 *Bartolett v. Achey*, 28 Pa. 273.

29 P. & L., Cons., 34; 1772, 1 Sm. L. 364, § 7; *Smith Jackson*, 9 Dist. R. 353.

30 *Lantz v. Lutz*, 8 Pa. 405; *Hill v. Rice*, 7 Kulp, 311.

31 P. & L., Cons. (Sup.), 2; 1897, P. L. 139.

Where action may be heard.

197. An action against a constable for official misconduct may be brought before a justice who is empowered to hear only actions of trover, trespass, debt, and assumpsit. So, if the action is in any other form, the constable may set up the defence that the justice does not have jurisdiction. If, after judgment is obtained before a justice, and the plaintiff is unable to obtain satisfaction thereon, from the constable, he may then proceed against the surety or the sureties of the defaulting constable. All actions, however, on a constable's bond must be brought in the court of common pleas.³²

Actions against constables, in general.

198. The general rule is, where the constable has acted *honestly*, although *mistakingly*, he is entitled to the protection of the law.³³ But a constable against whom a judgment has been obtained for official misconduct is not entitled to the benefit of the exemption law.³⁴ He is now, however, entitled to the right of appeal.³⁵ Where the official bond of a constable is sufficient in amount to cover the probable damages, he will not be required to furnish additional bail in an action against himself.³⁶

32 *Blue v. Com.*, 4 Watts, 215.

33 *Jones v. Hughes*, 5 S. & R. 298.

34 *Kirkpatrick v. White*, 29 Pa. 176.

35 P. & L., Cons., 25; 1840, P. L. (1841), 1, § 12; *Sott v. Kelso*, 4 W. & S. 278.

36 *Mellick v. Osterstock*, 3 North. Co. 83.

Service of process upon constables.

199. In all actions against constables, the process shall be delivered to another constable of the proper county, and such constable must serve the same or subject himself to a penalty of \$20 fine for his failure to do so.³⁷

Costs of suit.

200. A constable, against whom an action is brought, is entitled to costs when a verdict is in his favor, though joined with a justice who had judgment given against him.

Actions against sureties of constables.

201. (*b.*) The acts for which the sureties of constables may be sued must have been committed by the constable in his official capacity,³⁸ and a judgment against a constable for official misconduct is conclusive against his sureties as to his misconduct and the extent of damages sustained by the plaintiff.³⁹ Yet to recover from the bail of a defaulting constable, the plaintiff must show that he used reasonable and ordinary diligence to collect the claim from the constable by legal process; or that legal process would have been fruitless by reason of the insolv-

37 P. & L., Cons., 35; 1820, 7 Sm. L. 308.

38 Snapp *v.* Com., 2 Pa., 49; Com., etc., *v.* Whitesides, etc., 1 W. N. C. 508.

39 Masser, etc., *v.* Strickland, 17 S. & R. 354; Evans *v.* Com., 8 Watts, 398; Eagles *v.* Kern, 5 Wh. 143.

ency of the constable.⁴⁰ The sureties, however, may take advantage of any defence personal to themselves.⁴¹ But it is not allowable, a long time after suit is begun against a constable to add the names of the sureties as co-defendants, especially where there is no evidence of any omission,⁴² nor to make such amendments as would change the cause of action.⁴³

Since a constable can be compelled to assist in the collection of rent by distress, his sureties are liable for any neglect in the performance of such duty;⁴⁴ or for the act of a constable for levying upon the goods of a stranger to the writ;⁴⁵ or for his failure to pay over money made on process executed beyond his bailiwick.⁴⁶ In an action against the sureties of a constable to recover the amount of an execution, it was held that evidence was not admissible to show that the constable had lent the money to the plaintiff.⁴⁷

40 *Kirkpatrick v. White*, 29 Pa. 176.

41 *Masser v. Strickland*, 17 S. R. 354.

42 *Hausman, etc., v. Frey*, 3 Mont. Co. 163.

43 *Royse v. May*, 9 W. N. C. 104.

44 *Com. v. Sheppard*, 2 Clarke 393; *McElroy v. Dice*, 17 Pa. 163.

45 *Brunott v. M'Kee*, 6 W. & S. 513.

46 *Clark v. Worley*, 7 S. & R. 348.

47 *Eagles, etc., v. Kern*, 5 Wh. 143.

CHAPTER XI.

FORMS.

	Form No.
Affidavit of plaintiff's claim, service of return to,	8a
Appraisement of goods distrained, return to,	50
Appraisement of goods levied upon, form of,	38a
Attachment-execution, service of, return to,	22
Attachment against a non-resident, return to,	22
Attachment against a fraudulent debtor, return to,	22
Attachment upon a witness, service of, return to,	25
Bond, bail, after attachment or levy,	20
Bond, bail, under capias or warrant of arrest,	26
Bond, constable's official,	1
Bond, for witness's appearance,	24
Bond of indemnity in attachment proceedings,	18
Bond of indemnity in execution proceedings,	18
Bond of indemnity in distress proceedings,	18
Canada thistles, notice to destroy,	59
Capias, return to,	27
Capias, when bail is taken, return to,	28
Capias, when defendant is not found, return to,	29
Capias, when defendant is sick, return to,	30
Capias, when defendant is rescued, return to,	31
Consent of tenant for distrained goods to remain on the premises,	47
Deputy constable, deputation of, between terms of court,	5
Deputation, special, of another constable,	6
Distress, warrant of, when all property is exempted, return to,	51
Distress, warrant of, notice of sale under,	52
Domestic attachment, service of writ of, return to,	21
Election, township, notice of,	54

	Form No.
Election, for division of a township, notice of,	55
Election, for erection of a township, notice of,	56
Execution, writ of, return to,	34
Execution, writ of, when defendant has no goods, return to,	35
Execution, writ of, where property is pledged, return to,	36
Execution, writ of, when defendant pays claim and costs, return to,	37
Execution, writ of, when exemption is demanded, return to,	38
Execution, notice of sale under,	39
Execution after sale, return to,	43
Fraudulent debtors, service of attachment upon, return to,	22
Gambling device, seizure of, return to,	58
Information against persons for refusal to assist an officer in service of process,	33
Inventory of property attached,	22a
Juror, notice to,	60
Labor claim, notice of	41
Landlord's claim for rent, under execution proceedings, notice of,	42
Landlord's warrant,	46
Landlord's warrant, notice of sale under,	52
Landlord's warrant when all goods are exempted, return to,	51
Non-residents, service of attachment upon, return to,	22
Non-residents, service of summons upon, return to,	9
Notice to tenant of distraint,	48
Oath of appraisers, under execution proceedings,	19
Oath of appraisers, under distress proceedings,	49
Petition for the appointment of a constable,	3
Petition of surety of constable in case of misconduct,	4
Possession, writ of, return to,	53
Receipt, justice's receipt for money paid to him,	44

	Form No.
Receipt, defendant's receipt for overplus paid to him,	45
Resignation of constable,	2
Sale, adjournment of, under writ of execution,	40
Sale, notice of, under writ of execution,	39
Sale, notice of, under distress warrant,	52
Subpœna, service of, return to,	17
Search warrant, return to,	23
Soldiers' encampment, information for arrest at,	57
Summons, writ of,	7
Summons, service of, return to,	8
Summons, certificate on copy of,	8
Summons, service of, upon non-residents, return to,	9
Summons, service of, upon a corporation, return to,	10
Summons, service of, upon a corporation, when corporate property is within county, return to,	11
Summons, service of, upon a co-operative association, re- turn to,	12
Summons, service of, upon a partnership association, return to,	13
Summons, service of, upon a county, return to,	14
Summons, service of, upon a city, return to,	14
Summons, service of, upon a borough, return to,	15
Summons, service of, upon a school district, return to,	16
Summons in distress proceedings,	48
Venire, return to,	61
Warrant of arrest, return to,	27
Warrant of arrest, when bail is taken, return to,	28
Warrant of arrest, when defendant is not found, return to,	29
Warrant of arrest, when defendant is sick, return to,	30
Warrant of arrest, when defendant is rescued, return to,	31
Warrant of arrest, when bail is taken before another justice, return to,	32
Warrant of arrest, demand for certified copy of,	62
Warrant of arrest, certified copy of,	63

No. 1. Constable's official bond.

Know all men by these presents: That we, A. B. and C. D., of the county of Adams and commonwealth of Pennsylvania, are held and firmly bound unto the said commonwealth in the sum of \$1,000, lawful money of the United States, to be paid to the said commonwealth, to which payment, well and truly to be made and done, we bind ourselves, and each of us, our heirs, executors, and administrators, and each and every of them, jointly and severally, firmly by these presents. Sealed with our seals and dated the day of , 1900.

Whereas the above bounden A. B. has been duly elected and returned to the court of quarter sessions of the peace of the said county of Adams, as constable of the township of Latimore, in the county aforesaid, for the ensuing year, which election has been approved and confirmed by the said court;

Now the condition of this obligation is such that if the said A. B. shall and do, from time to time, and at all times during his continuance in office, justly and faithfully discharge his office as constable according to law, then this obligation to be void; otherwise to be and remain in full force and virtue.

Signed, sealed, and delivered (date) in the presence of

E. F.
G. H.

A. B. [SEAL.]
C. D. [SEAL.]

No. 2. Resignation of constable.

To the Honorable the judges of the court of quarter sessions of the county of Adams.

WHEREAS, the undersigned was duly elected and appointed to act as constable of township for the term of three years, commencing the day of one thousand and nine hundred. Because of removal from the county (give reason) he is unable to perform the duties of the said office, and hereby tenders his resignation and respectfully prays that some suitable person be appointed to perform the duties of the said office in his stead.

A. B., Constable of Penn Township.

November 4, 1900.

No. 3. Petition for the appointment of a constable.

To the Honorable the judges of the court of quarter sessions, for the county of :

We, the undersigned voters in the township of , county of , respectfully state that the office of constable is vacant in the said township by reason of the resignation (state cause) of the constable of the above township, and respectfully pray the appointment of A. B., a voter of the same township, to fill the said vacancy. The said A. B., being of the same political complexion as the vacating constable.

Signatures of petitioners.

No. 4. Petition of Surety of constable in case of misconduct.

To the Honorable the judges of the court of quarter sessions, of the county of _____ :

The petition of A. B. respectfully represents: That C. D. was duly elected constable of the township of _____, in the county aforesaid, on the third Tuesday of February last, and is now serving in said office, your petitioner being the surety upon his official bond. That said C. D. has fallen into habits of intemperance, and neglects his duties (or "is unfit and incompetent to discharge the duties of the said office"). Your petitioner, fearing that he may be damaged by reason of the above, therefore prays the court to require the said C. D. to give additional security as provided by the act of assembly, of May 27, 1841. A. B., Surety.

Personally appeared before me, a justice of the peace, in and for the county of _____, A. B., who being duly sworn, says, that the contents of the above petition are true and correct, as he verily believes.

Sworn and subscribed before me, this _____ day of _____ 1900. H. I., Justice of the Peace.

No. 5. Deputation of a deputy constable between terms of court.

I, A. B., constable of the township of Mt. Joy, in the county of Adams, do hereby, with the con-

sent of one of the judges of the court of quarter sessions of the said county, appoint C. D., of said township, as my deputy to serve writs, execute processes and act in my place and on my behalf generally in all matters relating to the duties of my office, until the next session of the court of quarter sessions of the county aforesaid.

Witness my hand this 1st day of October, 1900.

A. B., Constable of Mt. Joy Township.

No. 6. Special deputation of another constable.

I, A. B., the constable to whom the within warrant is directed, by reason of my sickness (state cause) hereby depute and authorize C. D., the constable of Mt. Joy township, to execute the within warrant.

A. B., Constable of Germany Township.

No. 7. Summons.

Adams County, ss :

The Commonwealth of Pennsylvania to John Lee, constable of the township of Liberty, county of Adams, greeting :

We command you that you summon A. B., of township, in the said county, carpenter, to appear before (name of justice), one of our justices of the peace in and for the said county, at his office on street, in the borough of , in the said county, on Monday, the seventh day of May, 1900, between the hours of and o'clock, A. M. (P. M.),

to answer C. D. in a plea of [trespass for damages done and committed on real estate, situate in the said county] (or as the case may be), for a sum not exceeding \$300.

Witness the said (justice's name), at afore-said, the first day of May, in the year of our Lord one thousand nine hundred.

, Justice of the Peace.

No. 8. Return to a summons.

(Personal service.)

Served, the day of 1900, upon C. D., the within named defendant, by producing to him the original summons and informing him of the contents thereof (and giving to him a true and attested copy thereof).

A. B., Constable of Penn Township.

(Service by copy.)

Served, the day of , 1900, upon C. D., the within named defendant, by leaving a true and attested copy of the original summons at his dwelling-house in the presence of one of the members of his family (or a neighbor).

A. B., Constable of Penn Township.

Certificate on copy of summons. ()

I hereby certify the within to be a true and correct copy of the original summons in this case.

October 1, 1900. A. B., Constable of, etc.

[N. B.—Always date returns.]

(Where defendant is not found.)

After diligent inquiry, C. D., the within named defendant, cannot be found, and he has no dwelling-house in the county.

(Date.)

A. B., Constable, etc.

(When summons is received too late.)

The within summons came to my hands too late to be served. So answers

(Date.)

A. B., Constable of, etc.

(When the plaintiff interferes.)

After the within summons came to my hands the within-named plaintiff directed me not to serve it on the defendant. So answers

(Date)

A. B., Constable, etc.

No. 8 a. Return to service of plaintiff's affidavit of claim.

(Personal service.)

Served the day of , 1900, certified copy of the plaintiff's affidavit on defendant, at the time and in the manner that service was made of the summons in this case, to wit: producing the same, informing of its contents and giving to a true and attested copy thereof. So answers

A. B., Constable of

Sworn to before me this day of ,
1900.

C. D., Justice of the Peace.

(Service by copy.)

Served the day of , 1900, certified copy of the plaintiff's affidavit on defendant, at the time and in the manner that service was made of the summons in this case, to wit: by leaving a true and attested copy of the same at residence in the presence of one of his family (or neighbor). So answers

A. B., Constable of

Sworn to before me this day of ,
1900.

C. D., Justice of the Peace.

No. 9. Return to service upon a non-resident of the county engaged in business therein.

Served the within writ the day of , 1900, upon E. F., agent of the within-named defendant, who is a non-resident of the county, but engaged in business therein, by producing the original summons to said E. F. at the defendant's usual place of business and informing him of the contents thereof. So answers

A. B., Constable of, etc.

No. 10. Return to service upon a corporation.

Served the day of , 1900, by producing the original summons to H. R., president of the defendant corporation, at the usual place of business of the defendant corporation and informing him of the contents thereof. So answers

A. B., Constable of, etc.

No. 11. Return to service upon a corporation when corporate property is within county.

Served the day of , 1900, by producing the original summons to C. D., a director of the defendant corporation, and informing him of the contents thereof. Service was made upon C. D. in county, there being no chief officer of the defendant corporation in county at the time; there was, however, at the time, corporate property of defendant company. So answers

A. B., Constable of, etc.

No. 12. Return to service upon a co-operative association.

Served, the day of , 1900, by leaving a true and correct copy of the within writ at the usual place of business of the defendant association, with C. H., treasurer of the defendant association. So answers.

H. S., Constable of, etc.

No. 13. Return to service upon a partnership association.

Served, the day of , 1900, the within writ at the usual place of business of the defendant association upon B. S., chief clerk of the defendant association, by producing to him the original summons and informing him of the contents thereof. So answers

H. A., Constable of, etc.

No. 14. Return to service upon a county.

Served, the day of , 1900, upon E. R., one of the commissioners of Adams county, by producing the original summons to him, and informing him of the contents thereof, and upon G. Y., a commissioner of said county, by leaving a true and attested copy of the within writ, at his residence with an adult member of his family. (Or as service is made.)

A. B., Constable, etc.

No. 15. Return to service upon a borough.

Served, the day of , 1900, by producing the original summons to J. E., burgess of the defendant borough, and informing him of the contents thereof.

C. G., Constable of, etc.

No. 16. Return to service upon a school district.

Served, the day of , 1900, upon the defendant, by leaving a true and attested copy of the within writ at the residence of J. P., secretary of the board of school directors of the within defendant, with an adult member of his family.

J. C., Constable of, etc.

No. 17. Return to service of a subpoena, with affidavit endorsed thereon.

Adams County, ss :

H. R., being duly sworn according to law, doth depose and say that he served the within subpoena personally upon A. B., by producing to him the

from time to time, and at all times hereafter, indemnify and save harmless the said J. H., constable aforesaid, his executors and administrators, for and on account of his seizing, attaching, distraining, removing, and selling by the direction of the said A. B. and by virtue of the said writ of (insert name of writ) the goods and chattels of any person whatsoever (if particular goods, describe them), as, and supposed to be, the goods and chattels of the said E. F. ; then this obligation to be void and of none effect; else, to be and remain in full force and virtue.

A. B. [SEAL]

C. D. [SEAL]

Signed, sealed, and delivered in the presence of (witness for each signature).

No. 19. Oath of appraisers.

You do swear (or solemnly, sincerely, and truly affirm) that you will well and truly, according to the best of your ability, appraise the goods and chattels of C. H., which he elects to retain under the exemption law of this Commonwealth.

No. 20. Bail bond after attachment or levy.

We, A. B. and C. D., or either of us, are held and firmly bound unto E. F., constable, in the sum of \$, upon condition that the said A. B. shall deliver unto E. F., aforesaid, the following goods

C. D , the defendant [in the possession of G. H.] described in the inventory hereto annexed [and which property I took and now hold in my possession, *or* the said defendant, *or* G. H. having entered into a bond with sufficient surety conditioned for the payment of the debt and costs, *or* for the surrender of the said property] as required by law ; and I delivered a copy of the said attachment and inventory on the day of 19 , at o'clock, M., to the said C. D., the defendant, in the said county, [or as the defendant, "after diligent inquiry," could not be found in the county, with an adult member of his family ; *or* of the family where he resides, *or* as the said defendant is not a resident of the county, and cannot be found, I left on the day of 19 , a copy of the said attachment and inventory with the said G. H., in whose possession the said property was attached.] [The said C. D. hath not any other property, besides the above, which I can attach by virtue of this writ.]

I. J., Constable of, etc.

(Insert date of return.)

No. 22 a. Inventory of property attached.

An inventory of property attached this day of , 19 , by the undersigned, I. J., constable of the township of , in the county of , on a certain writ of attachment issued by

K. L., justice of the peace in and for the county, at the suit of A. B. against C. D., to wit :

One sorrel horse, one wagon, etc.

(Insert date of return of inventory.)

I. J., Constable of, etc.

No. 23. Return to search warrant.

Pursuant to the within warrant, I made search for the goods therein described at the place mentioned, and found the following articles, to wit : (enumerate articles), which said goods, so found (together with the body of C. D.), I have in my custody.

A. B., Constable of, etc.

[Or, pursuant to the within warrant, I made search for the goods herein described at the place mentioned, but could not find any of them. So answers.]

(Insert date of return.)

No. 24. Bond for witness's appearance.

We, A. B. and C. D., or either of us, are held and firmly bound unto E. F., constable, in the sum of _____, upon condition that the said A. B. will be present and in attendance at the time and place designated in the attachment served upon the said A. B. on the _____ day of _____, 19____, by the said E. F.

Witness our hands and seals this _____ day of _____, 19____.

Signed, sealed, and delivered in the presence of (a witness for each signature).	}	A. B. [SEAL.]
		C. D. [SEAL.]

No. 25. Return to service of attachment upon witness.

Pursuant to the within writ, I arrested C. D., the person named in the within writ, and herewith present his body. So answers

A. B., Constable of .

(Insert date of return.)

(Or)

[After a diligent search and inquiry, C. D., the person named in the within writ, could not be found. So answers, etc.]

No. 26. Bail bond for capias or warrant of arrest.

Know all men by these presents: That we, A. B. and C. D., of Gettysburg borough, Adams county, Pennsylvania, are held and firmly bound unto E. F., constable of said borough, in the sum of , conditioned that A. B. shall appear before J. H., a justice of the peace in said borough, on Saturday, the 10th day of April, 1900, at one o'clock P. M., at the office of said justice, to answer S. R. in a plea of slander (or as the case may be).

Witness our hands and seals this 5th day of April, 1900.

Signed, sealed, and delivered in the presence of (a witness for each signature).	}	A. B. [SEAL.]
		C. D. [SEAL.]

No. 27. Return to capias or warrant of arrest.

I have taken the within named R. S., whose body

I have ready as within I am commanded. So answers

A. B., Constable of
(Insert date of return)

No. 28. Return to capias or warrant of arrest when bail is taken.

On the day of , 19 , arrested the defendant and released him on bail, to appear before J. H., justice of the peace, in the borough of Gettysburg, on (insert date for appearance) at (insert hour). So answers

A. B., Constable of

No. 29. Return to capias or warrant of arrest when defendant is not found.

The within T. B. could not be found after diligent inquiry in this county. So answers

A. B.; Constable of
(Insert date of return.)

No. 30. Return to capias or warrant of arrest when defendant is sick.

The within J. H. is dangerously sick and cannot be moved. So answers

A. B., Constable of
(Insert date of return.)

No. 31. Return to capias or warrant of arrest when defendant is rescued

By virtue of this warrant to me, directed on the fifth day of June instant, I took and arrested the

within named J. H., and safely kept him in my custody, until C. S., of township, and divers other persons, to me unknown, on the sixth day of June, A. D. 1900, in the townshsp aforesaid, assaulted and ill-treated me, and the said J. L., out of my custody, then and there rescued. And afterwards the said J. L., after diligent search and inquiry, could not be found. So answers

(Date) X. Y., Constable of

No. 32. Return to warrant of arrest when bail is taken before another justice.

By virtue of the within warrant, I arrested John Gill, May 10, 1900, and took him before George Hiner, justice of the peace, in the county of Adams, and to whom John Gill gave bail for his appearance at the next court of quarter sessions, in the county of York. So answers

 R. P., Constable of
May 11, 1900.

No. 33. Information against a person for refusal to assist an officer.

A. B., being duly sworn, says that he is the regularly elected and appointed constable of the borough of Gettysburg ; and that on the second day of May, 1900, while attempting to arrest (or as the case may be), John Watt, and divers other persons engaged in disorderly conduct, in the said borough, the said A. B. called upon and requested George Walter, a citi-

izen of the said borough to assist in making the arrests (or as the case may be), but the said George Walter, knowing the said A. B. to be a constable as aforesaid, refused to so assist, but neglected and refused to so do as requested by said A. B.

A. B., Constable of, etc.

Sworn and subscribed before me, this third day of May, 1900.

JOHN HILL, J. P.

No. 34. Return to levy on an execution.

On the day of , at 10 A. M., levied upon two bay horses, one buggy, and one white cow the property of the defendant. So answers

A. B., Constable of

No. 35. Return to execution when defendant has no goods.

The within-named C. D. hath not any goods and chattels liable to execution within my bailiwick. So answers

I. J., Constable of

May 1, 1900.

No. 36. Return to execution where property is pledged.

On the 1st day of May, 1900, at 10 A. M., levied upon the defendant's interest in one watch, in the possession of and pledged to P. M. So answers

May 2, 1900.

H. R., Constable of

No. 37. Return to execution when defendant pays claim and costs.

The within-named R. P., before levy was made, paid debt, interest, and costs. So answers
 May 5, 1900. A. B., Constable of, etc.

No. 38. Return to execution when exemption is demanded.

May 4, 1900, exemption demanded by defendant. J. C., R. C., and W. B., appointed appraisers. Defendant's personal property appraised at \$205.40. Appraisement attached hereto. (See below.) So answers
 May 5, 1900. A. B., Constable of, etc.

No. 38a. Form of appraisement to be attached to execution.

We, the undersigned, having been summoned by A. B., constable, to appraise the goods and chattels of John Hill which he elected to retain under the exemption law, and having been sworn (or affirmed) do appraise the goods as follows:

1 table,	\$2.00
4 chairs,	1.50
etc.	

JOHN DOE,
 RICHARD ROE,
 CHARLES LEE,
 Appraisers.

No. 39. Notice of sale under execution.

By virtue of a writ of execution [attachment] to me directed, I levied upon certain goods and chattels, the property of J. H., and I shall offer the same at public sale, at the Globe Hotel in Gettysburg Borough, on Monday the 17th day of May, 1900, at 1 o'clock P. M., at which time the following goods will be offered for sale :

1 wagon.

Household furniture, etc.

May 7, 1900.

A. B., Constable of

No. 40. Adjournment of sale.

May 20, 1899. Sale adjourned, for want of bidders, to May 24 at 10 A. M. So answers

A. B., Constable of, etc.

No. 41. Notice of labor claim.

To A. B., Constable of Freedom township :

I hereby claim out of the fund arising from the sale of the store goods of Bates & Bates the sum of ninety dollars (\$90) for services rendered as clerk in their store between the 1st day of January, 1900, and the 1st day of March, 1900, said claim being for two months' wages at \$60 per month, less a credit of \$30.

A levy has been made upon the store goods of my employers, Bates & Bates.

ROBERT WEILER.

Gettysburg, Pa., April 23, 1900.

No. 42. Notice of landlord's claim for rent.

To A. B., Constable of Fairfield Borough :

I hereby claim out of the proceeds arising from the sale of the personal property of Robert Rupp the sum of forty dollars (\$40), which sum is due and owing for rent due me for the four months next preceding the levy made by you upon his goods which were on the rented premises at the time of levy.

IRA NEELY.

Fairfield, Pa., October 20, 1900.

No. 43. Return to execution after sale.

Property sold October 24, 1900, for \$40.25. The money, less my costs of \$6, paid to John Hill, justice of the peace.

Returned October 25, 1900.

A. B., Constable of, etc.

(Or,)

Property sold October 24, 1900, for \$40.20.
Money distributed as follows :

John Smith, labor claim,	\$7 50
Robert Doe, rent,	12 50
William Brown, plaintiff,	16 00
Justice's and constable's fees,	4 20
	<hr/>
	\$40 20

See receipts for money paid and notices of labor and rent claims hereto attached.

A. B., Constable.

No. 44. Justice's receipt for money paid on execution.

Received October 24, 1900, of A. B., constable, \$46.25, the amount, less the constable's fees of \$4.50, derived from the sale of Robert Doe's property sold by me under an execution issued by John Smith.

JOHN HILL, J. P.

No. 45. Defendant's receipt for overplus on execution.

Received, October 24, 1900, of A. B., constable, \$4.80, the amount over and above the debt, interest and costs, derived from the sale of my property sold under an execution issued by Robert Dodd.

JOHN SMITH, Defendant.

No. 46. Landlord's Warrant.

To John Myers, Constable of York Springs Borough:

Whereas A. B. is indebted to me in the sum of _____ dollars and _____ cents for the rent of (here briefly describe the premises) due on the _____ day of _____, A. D. 1901. You are hereby authorized and empowered to collect the said amount of rent, by distraining the goods and chattels in and on said premises, according to the acts of assembly in such case made and provided; and to proceed to sell the same according to law, for the best price that can be obtained for the same, returning the overplus, if

any, to the said A. B., after paying the said rent, and all legal costs and charges of such distress.

Witness my hand and seal this 22d day of October, 1900. C. D. [SEAL.]

No. 47. Consent of tenant for distrained goods to remain on premises.

I, E. K., do hereby consent that C. D., my landlord, shall continue in possession of my goods and chattels on my premises, upon which he has distrained for rent, for the space of _____ days from the date hereof (he, at my request, having agreed to extend the time of sale of said goods and chattels until that time).

Dated the _____ day of _____ A. D. 1900.

E. K.

No. 48. Notice to tenant of distraint.

C. D.	}	By virtue of a landlord's warrant to me directed, and dated 1st day of November, 1900, for the sum of _____ dollars, I do hereby levy on the following goods, being on the premises therein described.
v.		
A. B.		
		Debt, \$

To wit:

- One cooking stove.
- One rocking chair.
- Four chairs, etc., etc.

To A. B. :

Take notice, that by authority and on behalf of your landlord, C. D., I have this day distrained the several goods and chattels specified in above schedule, on the premises situate (describe location, etc., of premises) for the sum of dollars, rent due to him the said C. D., as aforesaid, and if you do not pay the said rent so due and in arrear, as aforesaid, or replevy the same goods and chattels according to law, within five days hereafter, I shall, after the expiration of the said five days from the date hereof, cause the said goods and chattels to be appraised and sold, according to the act of assembly in such case made and provided.

Given under my hand the 1st day of November, 1900.

E. G., Constable.

No. 49. Oath of appraisers.

You do swear (or solemnly, sincerely and truly affirm) that you will well and truly, according to the best of your ability appraise the goods and chattels of John Small, distrained for rent by John Smith.

No. 50. Return of appraisement of goods distrained.

We, the undersigned appraisers, having been sworn (or affirmed) to well and truly appraise the goods and chattels of James White, of Penn township, distrained by C. D., constable of the said

township, on the 1st day of November, 1900, by the authority of John Doe, for seventy dollars, rent due and in arrears, to the said John Doe, do appraise said goods so distrained as follows :

1 stove,	\$3.30
2 tables, at \$1 each,	2.00
1 sewing machine, etc.,	7.00
	<hr/>
	\$12.30

JOHN REX,
JAMES DOE,
Appraisers.

November 7, 1900.

No. 51. Return to distress warrant when all the property is exempted.

Exemption claimed, and C. D., E. F., and G. H. appointed appraisers. The defendant's property appraised at \$129.80, therefore no sale.

A. B., Constable.

No. 52. Notice of sale in distress proceedings.

I shall offer at public sale, on Monday, the 29th of October, 1900, at the house of John Roe, in the township of Penn, county of Lancaster, the following goods and chattels distrained for rent, as the property of John Roe, to wit: one work horse, one spring wagon, etc.

A. B., Constable of Penn Township.

No. 53. Return to writ of possession.

Delivered possession of the within described premises to John Doe, October 29, 1900, in compliance with this writ.

A. B., Constable of, etc.

October 30, 1900.

No. 54. Election notice.

There will be held on Tuesday, the 25th of February, 1900, at Deardoff's Mill, in Latimore township, a township election to elect the following officers:

Two inspectors of election,

One judge,

One constable,

Two supervisors,

Two school directors,

One town clerk,

One assessor.

A. B., Constable of Latimore Township.

Latimore, Pa., February 5, 1900.

No. 55. Election notice for division of township.

An election will be held on the 24th day of October, 1900, at the Black Horse Hotel, situate in Manor township, Lancaster county, when the voters of said township shall decide by ballot, whether

Manor township shall be divided into two townships.

A. B., Constable of Manor Township.

October 5, 1900.

No. 56. Election notice in erecting a new township.

An election will be held at the regular voting places in the townships of Adams, York, and Lee, on the Fourth day of May, 1900, to determine, by ballot, whether a new township shall be erected out of the above named townships.

A. B., Constable of Adams Township.

June 21, 1900.

No. 57. Information in case of arrest at soldiers' encampment.

Adams county, ss :

A. B., a constable of and for Liberty township, county aforesaid, being duly sworn, doth depose and say, that he arrested John Stine, who, as he believes unlawfully sold whisky and other intoxicating drinks, within less than three miles of a soldiers' encampment, held at Gettysburg, Pa., and during the time the said encampment was being held.

A. B., Constable of, etc.

Sworn and subscribed before me, a justice of the peace, in and for the county of Adams, this 10th day of July, 1900.

JOHN HILL, J. P.

No. 58. Return to seizure of gambling device.

To the Honorable the judges of the court of quarter sessions of Adams county.

A. B., constable of the second ward of the borough of Gettysburg, respectfully returns:

That on the 6th day of June, 1900, he seized a gambling device or machine, known as a roulette wheel, which was used unlawfully in gaming, and several persons, to wit: George Watt and John Smith, were seen by the constable aforesaid to bet and wager unlawfully by means of the said device or machine, in the barber shop of Thomas Derby, situate in the first ward of the borough of Gettysburg county aforesaid, before such seizure was so made.

A. B., Constable of Second Ward of Gettysburg.

(The return must be sworn to in open court.)

No. 59. Notice to destroy Canada thistles.

To James H. White, Latimore township, Adams county, Penna.

You are hereby warned to cut or destroy the Canada thistles, growing upon land in Latimore township, county and state aforesaid, of which you now hold possession. Upon neglect or refusal by you to cut or destroy the same, I shall be compelled to do so at your expense.

JOHN CLEAVER,
Constable of Latimore Township.

No. 60. Notice to a juror.

To C. D.:

You are hereby summoned and required to attend as a juror, before John L. Hill, justice of the peace for Latimore township, Adams county, Penna., on Monday, October 29, 1900, at 10 o'clock, A.M.

A. B., Constable of Latimore Township.

No. 61. Return to venire.

Summoned C. D., E. F., G. H., I. K., L. M., and N. O., as directed.

A. B., Constable of, etc.

Oct. 27, 1900.

No. 62. Demand for certified copy of warrant.

To A. B., Constable of Berwick township:

You are hereby required to furnish me a certified copy of the warrant under which you levied upon the property of John Jones, on the 25th day of October, 1900, within six days from the date hereof, or in default thereof suit will be instituted against you for an illegal levy (or as the case may be).

JOHN JONES.

Berwick, Pa., Dec. 10, 1900.

No. 63. Certified copy of warrant.

To John Jones, Berwick, Pa.:

In compliance with your demand for copy of

warrant, I certify the within to be a true and correct copy of the same.

Witness my hand this 12th day of December, 1900.

A. B., Constable.

CHAPTER XII.

FEES.

	PAGE
202. Fees in general,	196
Act of February 17, 1899, P. L. 3-5.	
(See discussion of special acts passed for Philadelphia and Allegheny counties given in this chapter.)	
Adjourned sale, advertising, under execution or distress warrant,	\$1.00
Advertising sale of goods levied upon or distrained,	1.00
Advertising adjourned sale, under execution or distress warrant,	1.00
Advertising township, ward, or borough elections,	2.00
Appraisers, out of constable's fee, pay of,	1.00
Appraisement, where exemption is claimed by the defendant, including pay of appraisers, for holding,	4.00
Arrest on a capias, for each defendant,	1.00
Arrest on a capias, notifying plaintiff of, to be paid by plaintiff,	.25
Arrest of a vagrant,	.75
Arrest and commitment of a vagrant,	.75
Arrest on a warrant,	1.00
Arrest without a warrant,	.75
Assistants, constables', for aiding in the extinction of forest fires, per hour,	.12

Assistants, constables', for aiding in the destruction of Canada thistles, per day,	\$2.50
Attachment, for each defendant and garnishee served,	.50
Attendance, necessary at court, except day on which return is made to court of quarter sessions, per day,	1.00
Attendance at general or special elections, including pay for serving notices in writing to the persons elected at such elections,	3.00
Attendance at soldiers' encampments, per day,	3.00
Attendance at jury trials, per day,	1.00
Bail, taking, on a capias,	.50
Bail, taking, for delivery of goods,	.50
Bail piece, for executing,	1.00
Canada thistles, service of notice to destroy,	.50
Canada thistles, pay for destroying, per day,	2.50
Canada thistles, pay of assistants for destroying, per day,	2.50
Capias, arresting on, for each person,	1.00
Capias, taking bail on,	.50
Capias, arrest on, notifying plaintiff of, to be paid by the plaintiff,	.25
Capias, taking bail bond on, for delivery of goods,	.50
Capias execution, for serving,	1.00
Cattle or sheep running at large in districts where a contagious disease prevails among such, taking up, per head,	1.00

Clerk of the court, delivery of transcript of, to overseers of the poor,	\$0.25
Conveying defendants, except vagrants, to jail on a <i>mitimus</i> or warrant for the <i>first</i> defend- ant, in addition to the actual cost of trans- portation,	1.00
Each additional defendant,	.50
Copy of vendue paper, when demanded, each item,	.02
Court, necessary attendance at, except day on which return is made,	1.00
Court of quarter sessions, making returns to,	1.50
Custody, taking defendant into, on a <i>mittimus</i> , where bail is afterwards entered before deliv- ery of body to jailor,	1.00
Defendant in custody. (See preceding para- graph.)	
Delivery of goods, taking bail for,	.50
Delivery of transcript of justice of the peace, or clerk of the court, to overseers of the poor,	.25
Deputy constable, for attending general or special elections, in the absence of the con- stable, including pay for serving notices in writing to the persons elected at such elec- tions,	3.00
Distrained, for selling goods, for each dollar not exceeding \$100,	.03
Each dollar in excess of \$100,	.02
Distrained, advertising sale of goods,	1.00

Distress, putting up notices of at mansion house, or at any other place on the premises.	§0.25
Dogs, killing sheep-dogs, each,	1.00
Elections, attending general or special, includ- ing pay for serving notices in writing to the persons elected at such elections,	3.00
Elections, posting notices of general or special,	2.00
Encampments, soldiers', attending, at request of commander thereof, per day,	3.00
Executing attachment for each defendant and garnishee served,	.50
Executing capias for each person arrested,	1.00
" landlord's warrant,	.50
" order for removal of a pauper,	.75
" writ of possession,	2.00
" " " restitution,	2.00
" bail piece,	1.00
Executing search warrant and making return thereon,	1.00
Executing warrant on behalf of the common- wealth, for each defendant,	1.00
Execution, capias, for serving,	1.00
Execution, selling goods levied upon under, writ of. (See Selling.)	
Executions, for serving,	.50
Execution, taking inventory of goods on each item,	.02
Exemption, where claimed, for holding ap- praisement, including pay (§1 each) of ap- praisers,	4.00

Expenses, traveling, in the performance of any duty or service required by law, to be computed by the route usually traveled in going from points and places where said constable may reside, or where he receives any paper to be executed, to the points or places required to be traveled, whether that route be by highways, railroads, or otherwise: Provided, that in no case shall more mileage be demanded or received than for the miles actually traveled, each mile going and coming,	\$0.06
Fees, when acting in capacity of a sheriff, constable entitled to sheriff's fees.	
Fees for services not specially provided for, same as for similar services.	
Fine on a warrant for levying,	.50
Fire wardens, township constables to be, pay for extinction of forest hours, per hour,	.15
Constable's assistants, per hour,	.12
Fish, prosecution by constable to conviction of any violator of the fish laws, in addition to the regular fees,	10.00
Forfeiture on a warrant, for levying,	.50
Forest fires, for extinction of by township constables, per hour,	.15
Constables' assistants, per hour,	.12
Game, prosecution to conviction by a constable of any violator of the game laws, in addition to the regular fees,	10.00

Garnishee, for serving a writ of attachment upon, for each garnishee served,	\$1.00
Goods, for levying upon or distraining,	.50
Goods, levied upon or distrained, for advertising sale of,	1.00
Goods, taking inventory of, each item,	.02
Goods levied upon or distrained, for selling, for each dollar not exceeding \$100,	.03
For each dollar in excess of \$100,	.02
Goods, taking bail for delivery of,	.50
Holding appraisement where exemption is claimed by defendant, including pay (\$1 each) of appraisers,	4.00
Inventory of goods, for taking, each item,	.02
Inventory of goods, for taking, on an execution, each item,	.02
Jury trials, for attending, per day,	1.00
Jury, summoning jury of six, each juror,	.20
Justice of the peace, delivering transcript of, to overseers of the poor,	.25
Landlord and tenant proceedings, for serving summons in,	.50
Landlord's warrant for executing,	.50
Landlord and tenant, see Selling, etc.	
Levied upon, for selling goods, each dollar, not exceeding \$100,	.03
For each dollar in excess of \$100	.02
Levied upon, goods, advertising sale of,	1.00
Levy, after receiving and paying over money paid after a levy without sale, on each dol-	

lar actually received and paid over by the constable to the creditor,	\$0.02
Levying a fine and forfeiture on warrant,	.50
Levying upon goods,	.50
Mercantile license tax list, reporting to city or county treasurer the omission of any name from, each omission,	.50
Mileage (see Expenses).	
<i>Mittimus</i> conveying defendants, except vagrants, to jail on, for first defendant, in addition thereto the actual cost of transportation,	1.00
Each additional defendant,	.50
<i>Mittimus</i> , taking defendant into custody on, where bail is afterwards entered before delivery of body to jailor,	1.00
Money received and paid over, after a levy without sale, on each dollar actually received and paid over by the constable to the creditor,	.02
<i>Non est inventus</i> (he was not found) on any writ, for making return of,	.25
Notices, for serving summons, on referees, suitor, or tenant, for each person served,	.50
Notice of distress, putting up, at mansion house or at any other place on the premises,	.25
Notifying plaintiff where defendant has been arrested on a <i>capias</i> , to be paid by the plaintiff,	.25
Notifying proper person to destroy Canada thistles,	.50

Notices, serving, in writing to persons elected at special or general elections, included in the pay (§3) for attending elections.	
<i>Nulla bona</i> (no goods), on any writ, for making return of,	\$0.25
Omission of names from mercantile license tax list, notifying city or county treasurer of, each omission,	.50
Overseers of the poor, the transcript of a justice or clerk of the court, delivering to,	.25
Pauper, executing order for removal of,	.75
Plaintiff, where defendant has been arrested on a <i>capias</i> , to be paid by the plaintiff,	.25
Policemen, constables employed as, not to charge or accept any fee in addition to salary as policemen, except public rewards and mileage allowed to constables for traveling expenses.	
Possession, for executing writ of,	2.00
Prosecution to conviction, by a constable, of any violator of the fish or game laws, in addition to the regular fees,	10.00
Receiving and paying over money paid after a levy without sale, on each dollar actually received and paid over by the constable to the creditor,	.02
Referees, for serving summons on,	.50
Removal of a pauper, for executing order of,	.75
Restitution, for executing writ of,	2.00

Returns, for making, to court of quarter sessions,	\$1.50
Return of <i>non est inventus</i> (he is not found) on any writ, for making,	.25
Return of <i>nulla bona</i> (no goods) on any writ, for making,	.25
Return thereon, for executing a search warrant and making,	1.00
<i>Scire facias</i> , for serving,	.50
Search warrant, for executing and making return thereon,	1.00
Selling goods levied upon or distrained, for each dollar not exceeding \$100,	.03
For each dollar in excess of \$100,	.02
Services, for, not herein specially provided for, the same fees may be charged and received as for similar services.	
Serving, <i>capias</i> execution, for,	1.00
Serving, executions, for,	.50
Serving, <i>scire facias</i> , for, for each person served,	.50
Serving subpoena, for, for first witness,	.50
Each additional witness served,	.15
Serving summons in landlord and tenant proceedings, for,	.50
Serving summons notices upon referees, suitor, or tenant, for each person served,	.50
Sheep-dogs, for killing, each,	1.00
Sheep. (See Cattle.)	
Sheriff, constables when acting as, or performing duties of, to receive fees as sheriff.	

Soldiers' encampments, constables attending at request of the commander thereof, per day,	\$3.00
Subpoena, for serving, for first witness,	.50
Each additional witness served,	.15
Suitor, serving summons notices upon, for each person served,	.50
Summoning jury of six, each man,	.20
Summons notices on referees, suitor or tenant, for each person served,	.50
Summons, for serving,	.50
Taking body of defendant into custody on a <i>mittimus</i> , where bail is afterwards entered before delivery of body to jailor,	1.00
Taking bail bond on <i>capias</i> for delivery of goods,	.50
Taking inventory of goods on an execution, each item,	.02
Taking up cattle or sheep running at large in districts where a contagious disease prevails among such, per head,	1.00
Tenant, for serving summons upon, in landlord and tenant proceedings,	.50
Tenant, for serving summons notices upon,	.50
Transcript of justice of the peace or clerk of the court to overseers of the poor, for delivering,	.25
Transportation for conveying defendants to jail on a <i>mittimus</i> or warrant, the actual cost of,	
Traveling expenses. (See Expenses, and Transportation.)	

Vagrants, for every act in or about the arrest or commitment of, for each so arrested, or arrested and committed,	\$0.75
Vendue paper when demanded, for copy of, each item,	.02
Wardens, constables to be, fish and game, and for prosecution to conviction by the constable of any violator of the fish and game laws, in addition to the regular fees, the constable shall receive,	10.00
Wardens, constables of townships to be fire, for extinction of forest fires, per hour,	.15
Pay of constables' assistants per hour,	.12
Warrant in behalf of the commonwealth for executing, for each defendant,	1.00
Warrant for conveying defendants, except vagrants, to jail on <i>mittimus</i> or, for the first defendant,	1.00
Each additional defendant,	.50
Warrant, for levying a fine or forfeiture on,	.50
Witness, for serving a subpoena upon, for first witness,	.50
Each additional witness,	.15
Writ of possession, for executing	2.00
Writ of restitution, for executing,	2.00

There was a special fee bill enacted for Philadelphia April 3, 1866, P. L. 94; and extended to Allegheny county by the act of March 23, 1872, P. L. 562. Both of these special acts, it seems, have been

repealed by the general law of February 23, 1899, given above.

A special act passed April 3, 1872, P. L. 772, governing the fees of the constabulary in Philadelphia, in certain cases, has been repealed, in part, by the fee bill of 1899. The provisions of the law of 1872, still in force, are as follows:

For watchman, to be charged to the defendant on an execution or distress for rent, per day, \$3.00

For each adjournment of sale under execution or distress for rent, besides costs for advertising said adjourned sale, 1.00

No. 202. Fees, in general.

The county is primarily liable for all costs of prosecution in felony and misdemeanor cases,¹ and "costs of prosecution" means such costs as are incurred at the request of the commonwealth. In no case does the commonwealth pay any of the costs connected with the defendant's side of the case.²

The constable, if called upon by the defendant to serve his subpoenas, must do so, and he can look only to the defendant for his fees therefor.³ The

¹ P. & L., Crim. Procedure, 101, 1860; P. L., 427, § 64; P. & L., Crim. Procedure, 102, 1874; P. L. 132; P. & L., Crim. Procedure, 103, 1887; P. L. 138; *Allen v. Del. Co.*, 161 Pa. 550.

² *Williams v. North. Co.*, 110 Pa. 48.

³ *Rice v. Schuylkill Co.*, 14 C. C. 541.

result oftentimes is that the constable receives no pay for such work, still he must do it notwithstanding.

If the costs of prosecution are placed upon the defendant the county is still liable in the first instance, and, to be reimbursed, must collect the same from the defendant.

In summary convictions, as drunkenness, disorderly conduct, etc., heard before a justice, the county is not liable for any costs,⁴ such offenses not being included in the term *crime*. But when any person shall be brought before a justice on the charge of having committed a crime, if such charge shall appear unfounded, the costs shall be paid by the county, and not by such innocent person.⁵ The word "crime" is here used in its general sense and means all *indictable* offenses.⁶

In all cases of wife desertion and surety of the peace, the constable's and the justice's fees shall be paid by the proper county as soon as the case is disposed of by the court.⁷ The county shall then collect the same from the party made liable therefor.

The foregoing remarks relate to the recovery of fees in criminal cases, while the following relate solely to fees in civil cases.

Costs follow the verdict in civil cases, but where the defendant cannot be made to pay, the constable

4 Price *v.* Lanc. Co., 24 C. C. 225.

5 P. & L., Crim. Procedure, 98, 1791; 3 Sm. L. 37, § 13.

6 County of Lehigh *v.* Schock, 18 W. N. C. 326.

7 P. & L., Crim. Procedure, 109, 1887; P. L. 138, § 2.

can then look to the plaintiff, who is liable to the constable for his fees in case they cannot be collected from the defendant.⁸

A constable when performing the duties of a sheriff is entitled to the same fees as the sheriff for similar work.

Where a plaintiff brings a number of separate suits against different defendants, the constable who served the writs is entitled to demand his mileage in *each case*, although several of the defendants lived in the same locality and the constable did not make a separate trip to serve each.⁹

An action of *assumpsit* lies for work and labor performed, when the constable's fees are not paid, against the party liable for the same. The fees are due in criminal cases when the case has been disposed of by the justice or the court, while in civil cases the fees are due when judgment is rendered.

⁸ Lyon, etc., *v.* M'Manus, 4 Binn. 167.

⁹ McGee *v.* Dillon, 103 Pa. 433.

TABLE OF CASES.

	PAGE.
Allen <i>v.</i> Del. Co., 161 Pa. 550,	196
Allentown Constable, 7 North. Co., 187,	13
Allison <i>v.</i> Johnson, etc., 92 Pa. 314,	90
Amey <i>v.</i> Kennedy, 1 Ash. 160,	83, 143
Appeal of G. T. Work, etc., 92 Pa. 258,	93
Arbingast <i>v.</i> Houk, 6 Watts, 228,	144
Arnold <i>v.</i> Wells, 3 Luz. L. Reg. 111,	19
Assigned Estate of Childs, etc., 135 Pa. 214,	91
Assigned Estate of Evans, 1 Chest. Co. 112,	91
Bachman <i>v.</i> Fenstermacher, 112 Pa. 331,	144
Baer <i>v.</i> Kuhl, 8 D. R. 389,	99
Bair <i>v.</i> Warfel, 5 Lanc. L. R. 81,	97
Baker <i>v.</i> Co. of Warren, 22 C. C. 205,	126
Bar <i>v.</i> Purcil, 2 Phila. 259,	24, 25
Barr's Petition, 8 C. C. 64,	8
Bartolett <i>v.</i> Achey, 28 Pa. 273,	148
Bassett <i>v.</i> Walker, 3 C. C. 183,	142, 143
Bilger <i>v.</i> Spring Twp., 22 C. C. 670,	137
Black <i>v.</i> Johns, etc., 68 Pa. 83,	27
Blanche <i>v.</i> Bradford, 38 Pa. 344,	101
Blue <i>v.</i> Com., 4 Watts, 215,	147, 149
Boyle <i>v.</i> Burke Bros., 8 C. C. 501,	30
Brisben <i>v.</i> Wilson, 60 Pa. 452,	106
Brobst <i>v.</i> Bank of Pa., 5 W. & S. 379,	32
Bromley <i>v.</i> Hopewell, 14 Pa. 400,	93
Brown, etc., <i>v.</i> Sims, 17 S. & R. 138,	102
Brunott <i>v.</i> McKee, 6 W. & S. 513,	151
Buchanan <i>v.</i> Specht, 1 Phila. 253,	40
Bumbus <i>v.</i> Hardenburg, 3 D. R. 27,	30
Burkholder <i>v.</i> Keller, 2 Pa. 51,	83, 87, 143

	PAGE.
Carr's Case, 1 D. R. 262,	13
Carrier, etc., <i>v.</i> Esbaugh, 70 Pa. 239,	87
Gen. Newspaper Union <i>v.</i> Gracie, 7 C. C. 188,	91
City <i>v.</i> Cathcart, 10 Phila. 103,	26
Clark <i>v.</i> Worley, 7 S. & R. 348,	151
Clevinger's Estate, 1 Lanc. L. R. 277,	44
Clifford <i>v.</i> Beems, 3 Watts, 246,	99
Coates <i>v.</i> Wallace, 17 S. & R. 75,	148
Collom's Ap., 12 W. N. C. 309,	47
Comfort <i>v.</i> Cumb. Co., 23 C. C. 414,	8
Com. <i>v.</i> Atticks, 16 C. C. 147,	5
Com. <i>v.</i> Contner, 21 Pa. 266,	92
Com. <i>v.</i> Dalling, 2 Pars. 285,	26
Com. <i>v.</i> Deacon, 8 S. & R. 47,	67
Com. <i>v.</i> Keeper of Jail. 4 W. N. C. 540,	75
Com. <i>v.</i> Milliman, 13 S. & R. 403,	88
Com. <i>v.</i> Moreland, 9 W. N. C. 272,	88, 100
Com. <i>v.</i> Schaffer, 7 C. C. 24,	4, 5
Com. <i>v.</i> Sheppard, 2 Clarke, 393,	151
Com. <i>v.</i> Springer, 13 W. N. C. 305,	42
Com. <i>v.</i> Warfel, 157 Pa. 444,	142
Com. <i>v.</i> Wells, 110 Pa. 463,	116
Com. <i>v.</i> Whitesides, etc., 1 W. N. C. 508,	150
Cornelius <i>v.</i> Simpson, 3 Phila. 35,	51
Co. of Lehigh <i>v.</i> Schock, 18 W. N. C. 326,	197
Cromelieu <i>v.</i> Brink, 29 Pa. 522,	27
Crook <i>v.</i> Williams, 20 Pa. 342,	89
Cunliffe <i>v.</i> Rinehart, 2 W. N. C. 79,	52
Dauphin Borough Case, 4 D. R. 35,	13
Davis's Case, 3 D. R. 677, 589,	13
Davis <i>v.</i> Davis, 128 Pa. 100,	106
Del. L. & W. R. R. Co. <i>v.</i> Plymouth Borough, 6 Kulp, 91,	24
Diehl <i>v.</i> Halben, 39 Pa. 213,	43
Dolph <i>v.</i> Tooley, 13 Luz. L. Reg. 193,	18
Doylestown High Constable, 16 C. C. 90,	2, 5

	PAGE.
<i>Eagles v. Kern</i> , 5 Wh. 143	150, 151
<i>English's Case</i> , 16 C. C. 129,	13
<i>Esben's Ap.</i> , 5 W. N. C. 221,	93
<i>Evans v. Com.</i> , 8 Watts, 398,	150
<i>Everhart v. Norton</i> , 1 Kulp, 449,	51
<i>Exceptions, etc.</i> , Jno. Ralston, etc., 2 Clarke, 224,	92
<i>Eyster v. Rineman</i> , 11 Pa. 147,	38
<i>Farley v. Newton</i> , 1 Sup. Ct. 300,	18
<i>First Nat. Bank, etc.</i> , <i>v. Childs</i> , 10 Phila. 452,	90
<i>Fraily v. Sparks</i> , 2 Pars. 232,	26
<i>Franciscus v. Reigart</i> , 4 Watts, 98,	97
<i>Freeland v. Ellsworth</i> , 3 Luz. L. Reg. 45,	51
<i>Freeman v. Smith</i> , 30 Pa. 264,	43
<i>Fritz v. Fisher</i> , 5 Clarke, 350,	24
<i>Gandy v. Dickson</i> , 166 Pa. 422,	92, 98
<i>Geyer's Lessee v. Irwin</i> , 4 Dall. 107,	74
<i>Gibbs v. Neely</i> , 7 Watts, 305,	87
<i>Goodwin v. Sharkey</i> , 80 Pa. 149,	99
<i>Gordon v. Camp</i> , 3 Pa. 349,	18
<i>Grace v. Shively</i> , 12 S. & R. 217,	98, 99
<i>Grant & McLane's Ap.</i> , 44 Pa. 477,	92, 93, 98
<i>Gray v. Krugerman</i> , 4 C. C. 291,	91
<i>Green Twp. Constable</i> , 11 C. C. 287,	13
<i>Greevy v. Accident Asso.</i> , 2 D. R. 542,	34
<i>Greider's Ap.</i> , 5 Pa. 422,	92
<i>Griffith v. Hughes</i> , 6 C. C. 534,	47, 49
<i>Hall v. Galbraith</i> , 8 Watts, 222,	41, 81
<i>Hausman, etc.</i> , <i>v. Frey</i> , 3 Mont. Co. 163,	151
<i>Hawn v. Pa. Canal Co.</i> , 154 Pa. 455,	34, 37
<i>Heebner v. Chave</i> , 5 Pa. 115,	52
<i>Hess v. Beates</i> , 78 Pa. 429,	42
<i>Hill v. Rice</i> , 7 Kulp, 311,	148
<i>Hoffa v. Weidenhamer</i> , 22 C. C. 528,	25
<i>Hoskins v. Houston</i> , 2 Clarke, 489,	92, 98
<i>Howe, etc.</i> , <i>v. Sloan</i> , 87 Pa. 438,	102

	PAGE.
Huber <i>v.</i> Ruter, 1 C. C. 323,	51
In re Burgess, etc., 8 Luz. L. Reg. 113,	2
In re Cawley, 5 Kulp, 455,	19
In re Matter of Dep. Constable, 11 Phila. 391,	16, 17
In re Petition of Snyder, 2 Leh. V. 424,	16
Johnson <i>v.</i> Aylesworth, 3 Pitts. 237,	25
Jones <i>v.</i> Hughes, 5 S. & R. 298,	142, 143, 149
Jones <i>v.</i> Gundrim, 3 W. & S. 531,	97
Karns <i>v.</i> McKinney, 74 Pa. 387,	102
Keeler <i>v.</i> Beishline, etc., 1 C. C. 287,	91
Keller <i>v.</i> Clarke, 6 W. & S. 534,	83, 143
Kerr <i>v.</i> Sharp, 14 S. & R., 399,	97
Kessler <i>v.</i> M'Conachy, 1 Rawle, 435,	101
Kirkpatrick <i>v.</i> White, 29 Pa. 176,	149, 151
Kleber, etc., <i>v.</i> Ward, 88 Pa. 93,	101
Kleckner <i>v.</i> Lehigh Co., 6 Wh. 66,	38
Klopp <i>v.</i> Witmoyer, etc., 43 Pa. 219,	88
Lanahan <i>v.</i> Collins, 6 W. N. C. 253,	31
Lantz <i>v.</i> Lutz, 8 Pa. 405,	147, 148
Lantz <i>v.</i> Post, 2 C. C. 481,	90
Leaming's Ap., 5 W. N. C. 221,	93
Lehigh Val. Ins. Co. <i>v.</i> Fuller, etc., 81 Pa. 398,	30
Lewis <i>v.</i> Lewis, 2 D. R. 34,	26
Liblong <i>v.</i> Ins. Co., 82 Pa. 413,	36
Lyon, etc. <i>v.</i> M'Manus, 4 Binn. 167,	198
Masser, etc., <i>v.</i> Strickland, 17 S. & R. 354,	150, 151
Matsinger <i>v.</i> Cov. Pub. Co., 14 W. N. C. 90,	91
Mayfield <i>v.</i> White, 1 Browne, 241,	98
Meeker <i>v.</i> Sutton, 2 Phila. 288,	144, 145
Metro. Ins. Co. <i>v.</i> Cook, 14 C. C. 434,	36
Miles <i>v.</i> McCullough, 1 Binn. 77,	76
Miller <i>v.</i> Heck, 9 Watts, 439,	15, 19
Miller <i>v.</i> Snyder, 133 Pa. 23,	50
Mollison <i>v.</i> Bowman, 3 Clarke, 181,	143
Moore <i>v.</i> Coxe, 10 W. N. C., 135,	56

	PAGE.
Moraski <i>v.</i> Stegmaier, 4 Kulp, 444,	50
Morris <i>v.</i> Shaffer, 93 Pa. 489,	43, 52
Mulligan <i>v.</i> Riley, etc., 1 Kulp, 79,	26
Murray <i>v.</i> Vaughn, 16 C. C. 657,	100, 105
McBride <i>v.</i> Com., 2 Watts, 448,	5
McCarthy's Ap., 68 Pa. 217,	42
McCombs & Howden's Ap., 43 Pa. 435,	93
McCormick <i>v.</i> Miller, 3 P. & W. 230	18, 19
McElroy <i>v.</i> Dice, 17 Pa. 163,	108, 151
McEwen <i>v.</i> Horton, 1. C. C. 498,	25
McGee <i>v.</i> Dillon, 103 Pa. 433,	198
McGill <i>v.</i> Ash, 7 Pa. 397,	142
McKinney <i>v.</i> Reader, 6 Watts, 34,	98, 104
McMillan <i>v.</i> Bank of Corry, 1 W. N. C. 55,	91
McNamara <i>v.</i> Roderick, 1 D. R. 610,	50
O'Donnell <i>v.</i> Mullen, 27 Pa. 199,	89
Oil City <i>v.</i> McAboy, 74 Pa. 250,	38
Osborne <i>v.</i> Hess, 1 Browne 343,	142
Parker & Keller's Ap., 5 Pa. 390,	93
Paul <i>v.</i> Depu, 6 Binn. 123,	143
Phillips, etc., <i>v.</i> Library Co., 141 Pa. 462,	34
Pierre <i>v.</i> Scott, 4 W. & S. 344,	102
Pleiffer <i>v.</i> Schubmehl, 6 Lack. 60,	107
Price <i>v.</i> Lanc. Co., 24 C. C. 225,	197
Quinn <i>v.</i> Fidelity Ben. Asso., 100 Pa. 382,	34
Regan <i>v.</i> Timothy, 7 C. C. 65,	24
Reynolds <i>v.</i> Lochiel Iron Works, 1 D. R. 409,	51
Rice <i>v.</i> Schuylkill Co., 14 C. C. 541,	196
Richards <i>v.</i> McGrath, 100 Pa. 389,	105
Ricketts, etc., <i>v.</i> Unangst, 15 Pa. 90,	88
Riddle <i>v.</i> Welden, 5 Wh. 387,	102
Rhoads <i>v.</i> Megonigal, 2 Pa. 39,	80
Robert, etc., <i>v.</i> Wright, 2 C. C. 175,	50
Royse <i>v.</i> May, 9 W. N. C. 104,	151
Rudy's Case, 9 C. C. 467,	13

	PAGE.
Schrader <i>v.</i> Barr, 10 Phila. 620,	91
Shover <i>v.</i> Funk, 5 W. & S. 457,	144
Shovlin <i>v.</i> Com., 106 Pa. 369,	128
Sloan <i>v.</i> McKinstry, 18 Pa. 120,	24
Smith <i>v.</i> Brooke, 49 Pa. 147,	52
Smith <i>v.</i> Carter, 17 Phila. 344,	110
Smith <i>v.</i> Jackson, 9 D. R. 353,	148
Snapp <i>v.</i> Com., 2 Pa. 49,	18, 150
Snow <i>v.</i> Dill, 6 W. N. C., 330,	47
Snyder, etc., <i>v.</i> Boring & Blair, 4 Sup. Ct. 196, . . .	105, 106
Snyder <i>v.</i> Carfrey, 54 Pa. 90,	24
Sott <i>v.</i> Kelso, 4 W. & S. 278,	149
Spear <i>v.</i> Alexander, 2 Phila. 89,	145
Spettigue <i>v.</i> Hutton, 9 C. C. 156,	50
Starr <i>v.</i> Simon, 9 C. C. 15,	106, 107
Steckel <i>v.</i> Dazien, 2 Leh. V. 416,	47
Stichler <i>v.</i> Malley, 94 Pa. 82,	90
Swires <i>v.</i> Brotherline, etc., 41 Pa. 135,	88
Thatcher <i>v.</i> Beam, 14 C. C. 109	24, 25
Thomas <i>v.</i> Morasco, 5 D. R. 133,	47, 48, 49
Timmes <i>v.</i> Metz, 156 Pa. 384,	91
Tredinnick <i>v.</i> Jones, 4 Del. Co. 224,	82
Tyson's Bond, 2 D. R. 633,	13
Vansykel's Ap., 13 Pa. 128,	50
Varley <i>v.</i> Zahn, 11 S. & R. 185,	142
Waitt <i>v.</i> Ewing, 7 Phila. 195,	104
Wakely <i>v.</i> Hart, 6 Binn. 316,	67
Wallbridge <i>v.</i> Pruden, 102 Pa. 1,	97
Ward, etc., <i>v.</i> Taylor, 1 Pa. 238,	88
Ward <i>v.</i> Shortlidge, etc., 9 York, 92,	142
Warren <i>v.</i> Wells, 3 Luz. L. Reg. 111,	19
Waugh <i>v.</i> Burket, 3 Gr. 319,	49
Weltner's Ap., 63 Pa. 302,	93
Wells <i>v.</i> Harnish, 3 P. & W. 30,	97, 108
Williams <i>v.</i> Krumbharr, 132 Pa. 455,	43

TABLE OF CASES.

205

	PAGE
Williams v. North. Co., 110 Pa. 48,	196
Wilson v. Ellis, 28 Pa. 238,	43
Wolbert v. Fackler, 32 Pa. 452,	49, 50
Work v. Hoffnagle, 1 Y. 506,	141

INDEX

References are to pages.

ABSCONDING DEBTOR, domestic attachment against, 40.

ACCEPTANCE of office of constable, 9.

ACTIONS against constables and their sureties, 140.
neglect of duty, 141.

ACTS, suits for acts done in obedience to warrant, 141. .
liability as to executions, 143.
arrest without a warrant, 146.
escape by negligence, 146.
escape due to refusal to execute process, 146.
escapes, in general, 147.
illegal fees, 147.
limitation of actions, 148.
where actions may be heard, 149.
actions against constables in general, 149.
service of process upon constables, 150.
costs of suit, 150.
actions against sureties, 150.

ADJOURNMENT of sale, 87.

AFFIDAVIT of plaintiff's claim, 28.

AGENT, service upon agent of non-resident, 29, 30, 31.

ALFRED, established office of constable, 6.

ALIAS SUMMONS, when made, 28.

ALLEGHENY, local law as to distress, 109.

AMBASSADORS, privilege from service of process, 74.

APPEAL, execution dead after, 88.

References are to pages.

APPOINTED CONSTABLE, term of, 13, 14.

APPRAISERS of property exempt, 86.

APPRAISEMENT on goods distrained, 106.
of exemption in foreign attachment, 43.

ARMSTRONG COUNTY, service on non-residents in, 31.

ARREST. See **WARRANT OF ARREST**.

by high constable, 3.

on *capias*, 59.

for violation of liquor law, 121.

without a warrant, 146.

what constitutes an, 64.

when may be made, 65.

in what places may be made, 65.

what violence may be used, 66.

showing of warrant, 66.

without a warrant, 67.

for felonies and misdemeanors, 68.

service outside of county, 69.

care of prisoner, 70.

property of the prisoner, 72.

escapes, 72.

after an escape, 73.

rescues, 73.

privilege from, 74.

ATTACHMENT. See **DOMESTIC ATTACHMENT**.

against fraudulent debtors, 47.

service of, 48.

the return, 49.

against non-residents, 45.

service of, 46.

the return, 46, 47.

ATTACHMENT for a witness, 58.

References are to pages.

- ATTACHMENT-EXECUTION**, nature of, 50.
 what property may be attached, 50.
 service of, 51.
 service upon non-residents, 51.
 service upon garnishees, 51.
 the return, 52.
 claim for exemption, 52.
 wages and salaries exempt, 53.
- ATTORNEYS AT LAW**, privilege from arrest, 76.
- BADGE**, when deputy shall wear badge, 20.
- BAIL**. See **BOND**, where arrest is made outside the county, 69.
- BANKRUPT**, privileged from arrest, 77.
- BARRELS**, search warrant for registered brewer's barrels, 56.
- BEDFORD COUNTY**, service on non-residents in, 31.
- BETTING** on elections, 116.
- BIBLES** exempt in domestic attachment, 42.
 cannot be distrained, 103.
- BIDS** at sale, 88.
- BILL OF PARTICULARS** of fees and charges, 85.
- BLACKSTONE**, definition of constables by, 6.
- BOARD**, when exemption not allowed on exemption for, 82.
- BOARDER**, goods of, cannot be distrained, 102.
- BOND OF INDEMNITY** in domestic attachment, 41.
- BOND** for appearance of prisoner arrested under *capias*, 60.
 to secure presence of witness, 58.
 forthcoming bond in domestic attachment, 44.
 in attachments against non-residents, 46.
 when additional bond will be required, 14.
 by defendant in execution, 84.

References are to pages.

BOND—(Continued.)

- of high constable, 2, 5.
- in distress proceedings, 109.
- indemnifying bond in execution, 81.
- constables liable for the sufficiency of, 144.
- freeholder need not give, 10.
- amount of, 10.
- form of, 10.
- to whose benefit bond accrues, 10.

- BOROUGHES**, election of high constables in, 2, 4, 7.
- election of constables of boroughs divided into wards, 8.
 - increasing number of justices in, 117.
 - service upon, 38.
 - arrest in, without warrant, 67.

BOTTLES, search warrant for registered bottles, 56.

BREACH OF THE PEACE, arrest for, without warrant, 67.

- arrest for, by high constable, 3.

BREAKING IN of doors and windows for purposes of arrest,
60, 61, 65, 73, 83.

BREWER'S BARRELS, search warrant for, 56.

BURGLAR'S TOOLS, seizure of, 55.

- in possession of prisoner, 72.

BUTTER-TUBS, search warrant for, 57.

CAMBRIA COUNTY, service on non-resident in, 31.

CAMPS, sale of liquor near, 121.

CANADA THISTLES, destruction of, 137.

CANAL COMPANIES, service upon, 37.

- service on, in Clarion County, 31.

CAPIAS, service of, 59.

- return to service of, 62.

References are to pages.

- CAPIAS EXECUTION**, in certain cases, 95.
- CATTLE**, attachment of, 45.
 distraining of, 101.
 not to run at large where contagious disease prevails, 127.
- CERTIFICATE OF ELECTION**, of constable elect, 9.
- CERTIORARI**, imperfect service ground for, 26.
- CHIEF CLERK**, service upon chief clerk of corporation, 32, 33.
- CITIES**, election of constables in, 8.
 service upon, 38.
 how vacancies are filled in cities of the third class, 13.
 election of high constables in, 2, 4.
- CLARION COUNTY**, service on non-resident in, 31.
- CLASSIFICATION** of constables, 1.
- CLERK**, service upon clerk of non-resident, 29.
- CLINTON COUNTY**, service on non-resident in, 31.
- COLLIERY**, rent for, in certain counties, 94.
- COMPENSATION**. See **FEES**.
 of high constables, 2.
 of deputies who act as policemen, 19, 20.
- CONGRESSMEN**, privilege from service of process, 74.
- CONSTABLES**, classification of, 1.
 office of constable established by King Alfred, 6.
 definition of, by Blackstone, 6.
 general duties of, 6.
 qualifications for, 6.
 election of, 7.
 penalty for refusal to accept office, 9.
 bonds of, 10.

References are to pages.

CONSTABLES—(Continued.)

- oath of, 11.
- term of office of, 11.
- vacancy in office of, 11.
- term of an appointed constable, 13.
- removal of, 14.
- appointment of deputy by, 16.
- general return as to crimes, 129.
- form of return, 129, 134.
- to be fire, game and fish wardens, 123.
- election duties of, 113.
- duties of in relation to liquor laws, 119.
- actions against, 140.
- service of attachment-execution, 51.
- service of attachment for witness, 58.
- service of *capias* by, 60.
- service of warrant of arrest, 63.
- service of writ of execution, 79.
- service of landlord's warrant by, 96.
- service of writs by, 23.
- service of subpoena by, 39.
- service of search warrant by, 53.

CONVICTION for certain crimes disqualifies for office of constable, 7.

CONVICTION OF CRIME, creation of vacancy by, 12.

CO-OPERATIVE ASSOCIATIONS, service upon, 36.

CORPORATION, service upon president, 32.

where service is to be made, 32.

service upon when chief officer resides out of the county, 32.

service upon, when corporate property is located in county where action is begun, 33.

service upon foreign corporations, 34.

service upon insurance companies, 34.

References are to pages.

CORPORATION—(Continued.)

- service upon foreign insurance companies, 35.
- service upon co-operative associations, 36.
- service upon partnership association, 36.
- service upon railroad companies, 37.
- service upon canal companies, 37.

COSTS in suits against constables, 150.

COUNTIES, service upon, 37.

COURT OF QUARTER SESSIONS. See **QUARTER SESSIONS**, 9.

COURT DUTIES of constables, 135.

CRIMES, persons convicted of certain, not eligible to office of constable, 7.

CRIMES AND OFFENSES, constable to be fire, game, and fish wardens, 123.
 forest fires, 125.
 time that minors may be employed, 126.
 vagrants, 126.
 diseased cattle, 127.
 gambling, 127.
 trespassing upon trains, 128.
 constables in boroughs to arrest in certain cases without a warrant, 129.
 constable's return, 129.

CUSTODY of prisoner, 70.

DEATH of deputy constable, 16.

vacancy caused by, 12.

right to distrain ceases with death of tenant, 98.

DECLINATION of office of constable, 9.

DEPUTY CONSTABLE, nature of the office, 15.

consent of court necessary to appointment, 15.

References are to pages.

- DEPUTY CONSTABLE**—(Continued.)
when deputy may be appointed, 16.
residence of, 16.
vacancy in office, 16.
constable and his sureties liable for acts of, 16.
failure to act, 17.
term of, 17.
deputation in general, 17.
deputies to act as policemen, 19.
to wear shield or badge, 20.
compensation and discharge, 20.
wrongful purchase of goods by, 7.
writ issued to deputy is void, 17.
service of writ by deputy, 17.
- DIRECTOR**, service upon director of corporation, 33.
- DISCHARGE** of deputy constables acting as township police, 20.
- DISEASED CATTLE** not to run at large, 127.
- DISORDERLY CONDUCT**, arrest for, by high constable, 3.
arrest for, without warrant, 67.
- DISTRESS**. See **LANDLORD AND TENANT**.
- DISTRIBUTION** of proceeds of sale, 89.
- DOGS**, constables to kill dogs that kill sheep, 136.
- DOMESTIC ATTACHMENT**, service of, 40.
how made, 41.
exemption in, 42.
duties following the attachment, 43.
the return, 44.
- DOOR**, breaking in of, 54, 60, 61, 65, 73, 83, 100.
- DRUNKENNESS**, arrest for, by high constable, 3.
arrest for, without warrant, 67.

References are to pages.

- DUTIES**, general duties of constable, 6.
- DWELLING HOUSE**, service of writ at, 24, 25.
breaking open, to distrain, 100.
breaking open for purpose of arrest, 60, 65, 73, 83.
- ELECTION DAY**, sale of liquor on, 121.
- ELECTION DUTIES**, township elections, 113.
division or erection of new townships, 114.
delivery of certificates of election, 114.
constables to attend elections, 115.
duties at the polls, 115.
constables to report disturbances, penalty, 116.
notice of election of inspectors, 116.
mode of increasing number of justices or aldermen, 117.
- ELECTION OFFICERS**, from service of process, 75.
- ELECTIONS** of constables, 7.
of high constable, 4.
notice of borough, by high constable, 3.
- ELIGIBILITY** for office of constable, 6, 7.
- ENCAMPMENTS**, sale of liquor near, 121.
- ENTRY**, to make distress, 99.
- ESCAPES**, after arrest, 72, 73.
by negligence, 146.
due to refusal to execute process, 146.
in general, 147.
after service of *capias*, 60, 61.
- ERASURE**, by a constable of his own name in writ, 18.
- EXECUTIONS**, liability of constable as to, 143.
embezzlement of money taken upon, disqualifies for
office of constable, 7.
purpose of, 79.
service of, 80.

References are to pages.

EXECUTIONS—(Continued.)

- what may be levied upon, 80.
- indemnifying bond, 81.
- exemption, 82.
- when the exemption shall not be allowed, 82.
- time of making the levy, 82.
- forcible entrance, 83.
- duties subsequent to a levy, 84.
- constable to endorse time of levy on execution, 84.
- constable to give bill of particulars and receipt, 85.
- liability of constable on delivery of an execution, 85.
- return to the levy, 86.
- notice of sale, 87.
- the sale, 87.
- distribution of the proceeds of sale, 89.
- labor claims, 89.
- what labor claims are preferred, 89.
- claimants to give notice, 90.
- landlord's claim for rent, 92.
- return to execution, 94.
- capias* execution, 95.

EXECUTORS, privilege from arrest, 76.

EXEMPTION in execution, 82.

- of goods from distress, 107.
- on attachment-execution, 52.
- in attachment against fraudulent debtors, 49.
- property exempt from attachment, 42.
- appraisement of property, 86.

FACTOR, goods in hands of, cannot be distrained, 102.

FAMILY PORTRAITS cannot be distrained, 103.

FEES, table of, 185.

- liability for taking illegal fees, 147.

References are to pages.

- FELONIES**, list of, 68.
 arrest for, 65.
 arrest for, without warrant, 67, 68.
- FEMALES**, privilege from arrest for debt, 76.
- FINE**. See **PENALTY**.
 for neglecting to qualify as high constable, 3.
 capias for, 59.
 refusal of constable elect to appear before quarter sessions, 9.
- FIRE WARDENS**, constables are, 123.
- FIRES** in forests, 125.
- FISH**, search warrant for, 57.
- FIXTURES**, in certain cases, cannot be distrained, 102.
- FORCIBLE ENTRANCE** under a writ of execution, 83.
- FOREIGN CORPORATIONS**, service upon, 34.
- FOREIGN INSURANCE COMPANIES**, service upon, 35.
- FOREIGN MINISTERS**, privilege from service of process, 74.
- FORESTS**, protection of, 123, 125.
- FORMS**, list of, 152-184.
- FRAUDULENT DEBTORS**, attachment against, 47.
- FREEHOLDERS**, privilege from arrest, 75.
 need not give bond, 10.
- FRUIT** on trees cannot be levied on, 80.
 distraining of, 101.
- GAMBLING OUTFITS**, seizure of, 127.
- GAME**, search warrant for, 57.
- GARNISHEE**, service of attachment-execution upon, 51.
 service of summons upon in domestic attachment, 40.

References are to pages.

- GRAIN** sent to a mill cannot be distrained, 102.
when, may be levied on, 80.
- GAME WARDENS**, constables are, 123.
- HAND-BILLS** of sale, 87.
- HANDCUFFING** of prisoner, 71.
- HATCHET** cannot be distrained when in use, 102.
- HIGH CONSTABLES**, definition of, 2.
duties of, 2.
bond of, 2, 5.
services of notices by, 2.
salary of, 2.
refusal to perform duties of, 2.
election of, 2, 4.
oath of, 3, 5.
notice of borough elections by, 3.
arrests by, 3.
terms of office of, 4.
where one person acts as constable and high constable, 4.
not bound to execute writs, 5.
- HOLIDAY**, to be omitted in computing days, 27.
- HOMICIDE**, in making arrest, 66.
- HORSE** on which man is riding cannot be distrained, 102.
- INDEMNIFYING BOND** in execution, 81.
- INNKEEPER**, goods of guest, cannot be distrained, 102.
- INQUEST**, by justice of the peace, 139.
- INSANE PERSON**, liquor not to be sold to, 120.
- INSOLVENCY**, grounds for removal, 14.
- INSPECTORS**, notice of election of, 116.
- INSURANCE COMPANIES**, service upon, 34.

References are to pages.

- INTEMPERANCE**, removal for, 14.
- INVENTORY**, after distress, 104.
of goods in domestic attachment, 44.
- JUROR**, privilege from arrest, 76.
- JURY TRIALS**, in certain counties, 138,
- JUSTICES OF THE PEACE**, mode of increasing number
of, 117.
backing of warrant of arrest by, 69.
return-day set by, 27.
- KING ALFRED**, established office of constable, 6.
- LABOR CLAIM**. See **WAGES**.
- LANDLORD**, claim for rent, 92.
- LANDLORD AND TENANT**, distress, 96.
landlord's warrant, 96.
who may distrain, 97.
time of distraint, 98.
where distraint may be made, 98.
manner of entering to make distraint, 99.
what may be distrained, 101,
what may not be distrained, 101.
how a distress is made, 103.
care of goods after distress, 104.
return after distraint, 105.
appraisement, 106.
the right to replevy, 107.
exemption, 107.
sale, 108.
duties after sale, 108.
duties in general, 108.
local laws, 109.
proceedings to recover possession, 110.
writ of possession, 111,

References are to pages,

LANDLORD AND TENANT—(Continued.)

writ of execution, 111.

the return, 112.

local law, 112.

LAWRENCE COUNTY, service on non-resident in, 31.

LEGAL HOLIDAY, to be omitted in computing days, 27.

LEGAL PROCESS, privilege from service of, 74.

LEGISLATORS, privilege from service of process, 74.

LEVY. See EXECUTION.

LIEN, by levy, 84.

LIMITATIONS OF ACTIONS against constables, 148.

LIQUOR LAWS, penalties imposed on constables for failure

to perform certain duties under, 119.

return places where liquor is sold, 119.

monthly visitation, 120.

furnishing liquor to certain persons, 120.

sale, furnishing or giving of liquor on election days, 121.

sale of liquor near soldiers' encampments, 121.

LOCK, picking of, by landlord, 100.

MACHINERY, attachment of, 42.

when machinery may be distrained, 102.

MANAGER, service upon manager of corporation, 33.

MANUFACTURING COMPANIES, service on, 30.

MEMBER OF FAMILY, service of writ on, 24.

MERCANTILE LICENSE TAX lists to be examined by constables, 136.

MERCER COUNTY, special landlord and tenant law in, 112.

service on non-residents in, 30.

MILK cannot be distrained, 102.

References are to pages.

- MILK-CANS**, search warrant for, 56.
- MINER**, liquor not to be sold to, 120.
- MINES AND MINING**, rent of colliers in certain collieries, 94.
- MINING COMPANIES**, service on, 30.
- MINORS**, employment in factories, 126.
- MISCONDUCT**, removal for, 14.
- MISDEMEANOR**, arrest for, 65.
 arrest for should be supported by warrant, 68.
- MITTIMUS**, definition of, 71, 78.
- MONEY** in coin or bills not be levied on, 80.
- MUNICIPALITIES**. See **BOROUGHES**; **CITIES**.
- NEGLECT OF DUTY**, action against constable for, 141.
 removal for, 14.
- NEGLIGENCE**, escapes by, 146.
- NEIGHBOR**, service of writ in presence of, 24.
- NIGHT TIME**, when search warrant may be executed in, 54.
- NON-RESIDENTS**, service upon non-residents of the
 county, 29.
 service of summons upon, 28.
 service of attachment upon, 51.
 attachment against, 45, 46, 47.
- NOTICE** to constable-elect, 8.
 of landlord's claim for rent, 94.
 of labor claims, 90.
 of sale under execution, 87.
 services of, by high constables, 2.
- OATH** of office, 11.
 search warrant not to issue except upon, 53.
 of high constable, 3, 5.

References are to pages.

- ORDINANCES**, arrest for violation of borough ordinances by
high constables, 3.
duties of high constable regulated by, 5.
- ORGANS**, when organs cannot be distrained, 103.
- PARTIES** in suits, privilege from arrest, 76.
- PARTNER**, service upon partner of non-resident is in-
valid, 30.
- PARTNERSHIPS**, service upon, 37.
- PARTNERSHIP ASSOCIATIONS**, service upon, 36.
- PENALTY**, summons for a, 25.
for refusal to accept office of constable or perform its
duties, 9.
- PERISHABLE GOODS**, attachment of, 45.
- PERSONAL SERVICE**, definition of, 24.
- PHILADELPHIA**, local law as to distress, 109.
deputy constables not appointed in, 16.
election of constables in, 8.
- PIANOS**, when pianos cannot be distrained, 103.
- PITTSBURGH**, local law as to distress, 109.
- PLEGGED PROPERTY**, what may be levied on, 80.
- POLICEMEN**, deputy constable may act as, 19.
- POLLS**, duties of constables at, 115.
- POLLUTION** of water 137.
- PORTRAITS**, family portraits cannot be distrained, 103.
- POSSESSION**, proceedings to recover possession of leased
premises, 110.
- PRESIDENT**, service upon president of corporation, 32, 33.

References are to pages.

- PRISONER**, care of, by constable, 138.
care of, after arrest, 70.
- PRIVILEGE**, service of legal process, 74.
- PROCESS**. See **SERVICE OF PROCESS**.
service of, by deputy, 17.
service of, upon constables, 150.
privilege from service of, 74.
- PROPERTY**, care of, after levy, 84.
of prisoner, 72.
- QUALIFICATIONS** of constables, 6.
- QUARTER SESSIONS**, appointment by, 12, 13.
consent of court to appointment of deputy, 15.
appointment of deputies to act as policemen, 19.
has no jurisdiction over high constable, 5.
appearance of constable-elect before, 9.
- RAILROAD COMPANIES**, service upon, 37.
service on, in Clarion County, 31.
- RAILROAD TRAINS**, trespassing on, 128.
- REAL ESTATE** cannot be levied upon by constable, 80.
- RECEIPT** by constable for fees and charges, 85.
- REGISTERED BOTTLES**, search warrant for, 56.
- REGISTERED BREWER'S BARRELS**, search warrant
for, 56.
- REMOVAL** of goods to avoid distress, 98.
from office by the court, 12, 14.
from borough, ward or township, 12.
- RENT** of collieries in certain counties, 94.
landlord's claim for, 92.
- REPLEVIN** goods distrained, 107.

References are to pages.

- RESCUES** after arrest, 73.
from arrest on *capias*, 62.
- RESIDENCE** of deputy constables, 16.
- RESIGNATION**, vacancy by, 12.
- RETURN** of service of writ, 24, 25, 26.
after distraint, 105.
to writ of possession and execution, 112.
to execution, 94.
to writ of execution, 85, 86.
to service of *capias*, 62.
in attachment against fraudulent debtors, 49.
of attachment for, 58.
to a search warrant, 57.
on attachment-execution, 52.
in domestic attachment, 44.
in attachments against non-residents, 46.
to warrant of arrest, 73.
general return as to crimes and offenses, 129.
neglect of constable to make lawful return, 143.
- RETURN-DAY** set by justice of the peace, 27.
- SAILORS**, privilege from arrest, 77.
- SALARY**. See **COMPENSATION**; **FEEs**.
exemption of, on attachment-execution, 53.
- SALE**. See **EXECUTION**.
of goods distrained, 108.
under execution, 87.
notice of, 87.
time within which sale must be made, 87.
manner of sale, 87.
- SCHEDULE** of goods levied upon, 84.

References are to pages.

- SCHOOL BOOKS cannot be distrained, 103.
 exempt in domestic attachment, 42.
- SCHOOL DISTRICT, service upon, 38.
- SCIRE FACIAS, service of, 40.
- SEARCH WARRANT, from whom goods may be taken, 55.
 what goods may be seized, 55.
 burglars' tools may be taken although not in warrant, 55.
 search for registered bottles, 56.
 search for registered brewery barrels, 56.
 search for milk-cans, butter-tubs, etc., 56.
 search for game and fish, 57.
 the return for a search warrant, 57.
 when search warrant may issue, 53.
 for stolen goods, 53.
 for goods supposed to be stolen, 53.
 not to be granted without oath, 53.
 persons having goods must be brought before the justice, 54.
 the place and goods to be described in warrant, 54.
 owner should accompany constable, 54.
 when search may be made at night, 54.
 service of warrant, 54.
 when doors may be broken, 54.
- SECRETARY, service upon secretary of corporation, 32, 33.
- SECURITY. See BOND.
- SERVICE BY COPY, definition of, 24.
- SERVICE of writ of execution, 80.
 of warrant of arrest, 63.
 of a *capias*, 59, 60.
 of search warrant, 54.

References are to pages.

- SERVICE OF PROCESS**, definition of summons, 23.
how summons is served, 23.
the return of service, 26.
time in which service must be made, 26.
service of affidavit of plaintiff's claim, 28.
service upon non-residents of the county, 29.
the return, 30.
service upon agents of non-residents not found within the county, 30.
service upon agents of permanent non-residents, 31.
service upon non-residents in general, 31.
service upon a corporation, 32.
service upon a Pennsylvania corporation when office is out of the county, 32.
service when corporate property is located in county where action is begun, 33.
service upon foreign corporation, 34.
service upon insurance companies, 34.
service upon foreign insurance company, 35.
service upon co-operative association, 36.
service upon partnership association, 36.
service upon railroad and canal companies, 37.
service upon a county, 37.
service upon a township, 38.
service upon a borough, 38.
service upon a school district, 38.
service upon a city, 38.
service of a subpoena, 39.
service of a *scire facias*, 40.
domestic attachment, 40.
attachment against non-residents, 45.
attachment against fraudulent debtors, 47.
search warrant, 53.
attachment-execution, 50.
attachment for a witness, 58.

References are to pages.

- SERVICE OF PROCESS by deputy, 17.
- SEWING MACHINES, when sewing machines cannot be distrained, 103.
exempt in domestic attachment, 42.
- SHEEP. SEE CATTLE.
constables to kill dogs that kill sheep, 136.
- SHERIFF, service of process on, by constable, 135.
- SHIELD, when deputies must wear shield, 20.
- SHOWING WARRANT in making arrest, 67.
- SICKNESS of defendant in *capias*, 62.
- SOLDIERS, privilege from arrest, 77.
- SOLDIERS' ENCAMPMENT, sale of liquor near, 121.
- SOMERSET COUNTY, service on non-residents in, 31.
- STATEMENT OF CLAIM, service of, 28, 29.
- STOLEN GOODS in possession of prisoner, 72.
search warrant for, 53.
- STORAGE, goods in, cannot be distrained, 102.
- SUBPCENA, service of, 39.
- SUBPCENA DUCES TECUM, service of, 39.
- SUB-TENANT, goods of, liable for rent, 93.
- SUMMONS. SEE SERVICE OF PROCESS.
- SUNDAY, distress cannot be made on, 98.
to be omitted in computing days, 27.
when arrests may be made on, 65.
- SURETIES, actions against sureties of constables, 150.
- SURETY. SEE BOND.
should be consulted in selection of deputy, 17.

References are to pages.

- TERM of office of constable, 11, 13.
 of office of high constable, 4.
 of deputy constable, 17.
- THISTLES, destruction of Canada thistles, 137.
- TIME, manner of counting days, 27.
 in which service must be made, 26.
 constable to endorse time of levy on execution, 84.
- TOUCHING of prisoner on arrest, 64.
- TOWNSHIPS, service upon, 38.
 mode of increasing number of justices in, 117.
 division of, 114.
 erection of new townships, 114.
- TOWNSHIP ELECTIONS, notice of, 113.
- TOWNSHIP POLICE, when deputies act as, 20.
- TRAINS, trespassing on, 128.
- TRANSCRIPT, delivering transcript of justice, 136.
- TREASON, arrest for, 65.
- TREASURER, service upon treasurer of corporation, 32, 33.
- TRESPASS, summons in, 25.
 liability of constable for wrongful attachment, 41.
- TROVER, summons in, 25.
- TRUSTEES, of perishable goods in domestic attachment, 45.
- TYPEWRITERS, when typewriters cannot be distrained, 103
- UNEXPIRED TERM, appointment for, 13.
- VACANCY, when vacancy exists, 11.
 cause by resignation, 12.
 removal from office by court, 12, 14.
 removal from borough, ward or township, 12.

References are to pages.

- VACANCY—(Continued.)
conviction for crime, 12.
death of the incumbent, 12.
how vacancy is filled, 12.
when the court appoints, 12.
how vacancies are filled in cities of the second and third class, 13.
- VAGRANCY, arrest for, without warrant, 67.
arrest for, by high constable, 3.
- VAGRANTS, arrest of, 126.
- VIOLENCE, what may be used in arrest, 66.
- VISITATIONS of places where liquor is sold, 120.
- VOTERS, privilege from service of process, 75.
- WAGES, when preferred, 89.
exemption not allowed on execution for, 82.
exemption of, on attachment, 52.
notice of claim, 90.
- WARDS, appointment in new wards, 13.
- WARRANT. See SEARCH WARRANT.
for distress, 96, 97.
arrests without a, 146.
as defence to an action, 141.
- WARRANT OF ARREST, definition of, 63.
used in criminal cases, 63.
service of, 63.
what constitutes an arrest, 64.
when the arrest is complete, 64.
touching the prisoner, 64.
when an arrest may be made, 65.
in what places an arrest may be made, 65.
what violence may be used, 65.

References are to pages.

WARRANT OF ARREST—(Continued.)

- showing the warrant, 66.
- arrests without a warrant, 67.
- arrests for felonies and misdemeanors, 68.
- service of warrant outside of county, 69.
- care of the prisoner, 70.
- property of the prisoner, 72.
- escape from arrest, 72.
- an arrest after an escape, 73.
- rescues after arrest, 72.
- return to warrant of arrest, 73.
- privilege from arrest, 74-77.

WARRANT OF DETAINER for prisoner in jail, 76.

WATER, pollution of, 137.

WEAPONS in possession of prisoner, 71.

WEARING APPAREL cannot be distrained, 103.
exempt in domestic attachment, 42.

WIFE, separate property of, may be distrained, 101.
entitled to exemption in foreign attachment, 42.

WITNESS, attachment for, 58.

WITNESSES, privilege from arrest, 76.

WRIT, issue to deputy is void, 17.

WRITS, high constable not bound to execute, 5.

WRIT OF EXECUTION in landlord and tenant proceedings, 109.

WRIT OF POSSESSION in landlord and tenant proceedings, 111.

CHANGES AND ADDITIONS
TO
DILL'S
Constables' Guide

MADE NECESSARY BY THE
ACT OF 1901

PHILADELPHIA
T. & J. W. JOHNSON & CO.
1902

COPYRIGHT, 1902,

BY

T. & J. W. JOHNSON & Co.

Exchange

McClanahan

1906

The legislature of 1901 passed a number of laws relating to the duties of constables and made important changes in others, thus rendering it desirable that these changes be set forth in order that this book be brought up to date and made a safe guide.

Under the respective headings, Non-Resident Gunners, Fees, Order of Relief, Oleomargarine and "Renovated Butter," the reader will find the new laws, while Sections F, G and H show the changes made in the old laws.

A. Non-Resident Gunners.

Every non-resident of this Commonwealth, unless he be an owner of real estate in this Commonwealth, shall be required to take out a license from the county treasurer of the county where he proposes to shoot in this State, before he begins hunting. Upon the payment of ten dollars, the license fee, the county treasurer shall issue a certificate, bearing the name and place of residence of the applicant, with his description as nearly as can be, which certificate shall authorize the owner thereof to hunt and kill in any part of this Commonwealth, subject, nevertheless, to the game laws of this State. Said certificate shall

not be transferable and shall be exposed for examination upon demand made by any game warden or constable of this State.

Any game warden or constable shall have the right, after demand and refusal or failure to exhibit such certificate, to arrest, without warrant, any non-resident person or persons found hunting in this State, and to take him or them forthwith before any magistrate, justice of the peace or alderman, and to proceed against him or them by laying an information against the guilty party or parties for violating the game laws of this State. And the constable shall seize all guns or shooting paraphernalia of said suspected parties, and to hold the same subject to the payment of the fine or fines attached by law to the violation charged, together with the costs of prosecution; and in case of default of payment thereof for a period of ten days from the date of seizure, to sell the same at public auction, and apply the fund thus realized, first, to the payment of the costs attached to said case, and the remainder thereof, if there be any, to the payment of the unsatisfied penalty imposed by law.

Any amount remaining in the hands of the constable after these demands have been met and satisfied, to be returned to the original owner of the property. No game warden or constable shall be liable for damages on account of any such arrest, seizure or sale in accordance with the provisions of this Act. 1901, P. L. 96.

B. Fees—Order of Relief.

By the Act of 1901,¹ the fees to be charged and received by the constables of this State for executing an order of relief of a pauper or paupers shall be seventy-five cents, mileage and the actual car fare expended for transportation of the pauper or paupers.

An order of relief is issued by a justice, alderman or director of the poor, directed to the steward of the almshouse authorizing him to receive the pauper or paupers named in the order. The constable executes the order by delivering the pauper or paupers named in the order, and the order to the steward of the county almshouse. For his fees the constable must look to the directors of the poor of the county.

The constable may also be called upon to serve an order of relief² signed by two justices or aldermen, directed to the directors of the poor of the county, authorizing them to convey a pauper to the almshouse of another county. The constable, in such cases, takes the pauper from the almshouse of one county to the almshouse of another county. The directors of the poor of the county receiving the pauper are liable, in the first instance, for the constable's fees.

If several names are on the order, the constable can charge but seventy-five cents for executing the

¹ 1901, P. L. 131.

² P. & L. Poor, Sec. 113; 1836, P. L. 539, Sec. 16.

order proper. Still he is entitled to pay for every mile traveled in executing the order, and also the actual expenses incurred in transportation.

The act uses the words "car fare expended." These words, it is only fair to presume, include necessary and actual expenses incident to the delivery of the pauper at the proper place, as horse hire, etc.

C. Oleomargarine.

No person, firm, or corporation shall manufacture, ship, sell or have in his possession with intent to sell oleomargarine, butterine or any similar substance, which shall be an imitation of yellow butter, unless such person, firm or corporation is duly licensed to sell the same; nor unless such article or compound shall be kept free from all coloration or ingredients causing it to look like yellow butter. Every licensee shall display his license and also hang a sign, such as the Dairy and Food Commissioner shall direct, on the walls of every room or store in which oleomargarine is sold. And every proprietor of a hotel, restaurant, dining-room or boarding-house serving the same to customers shall have conspicuously placed, upon every counter or table at which food, meals or refreshments are served to customers, a placard plainly printed, in letters not less than a half-inch in length, stating that oleomargarine is used and served to customers. On every tub, package and parcel containing oleomargarine shall be placed a placard containing the

word "Oleomargarine," and when sold at retail, before delivery to the purchaser, it shall be wrapped in wrappers plainly stamped with the word "Oleomargarine" thereon; and the said wrapper shall also contain the name and address of the seller and the quantity sold, and no other words thereon, and the said word "Oleomargarine," so stamped or printed on said wrapper shall not be in any manner concealed, but shall be in plain view of the purchaser at the time of the purchase.

It shall be the duty of every constable in any city, borough, ward or township in this State, having a knowledge of any violation of this Act, or when requested so to do by the Dairy and Food Commissioner, his agent or attorney, or by any citizen of this State, to make a report to the court of quarter sessions of the proper county, as a part of his quarterly report and to return to said court, of the name of every person, firm or corporation known by him to have violated any of the provisions of this act, or alleged by the person so giving notice as aforesaid to have violated any of the provisions of this act, and of the names of all witnesses furnished to said constable, whose testimony it is alleged will sustain or prove the fact of such violation. 1901, P. L. 327.

D. "Renovated Butter."

The same legal provisions that apply to the sale, etc., of Oleomargarine, apply to the sale of "Reno-

vated Butter," commonly known as "boiled" or "process" butter, with this addition, that no person, firm or corporation shall sell or offer to sell or have in his possession with intent to sell any Renovated Butter from a wagon or other vehicle or upon the public streets or roads or from house to house. 1901, P. L. 643.

E. Remarks.

The Act of July 9th, 1901, changed, in part, the manner of serving the writs of *summons*, of *attachment in execution* and of *scire facias*. The several provisions of this very important law, which affect constables, will be first given and then the changes made by the Act will be pointed out. No law on our statute books is of more importance to the constable, so its provisions should be carefully noted.

F. Act of July 9th, 1901, P. L. 614.

SECTION 1. — The writ of *summons*, the writ of *attachment in execution*, and the writ of *scire facias* in personal actions may be served by the constable of the county wherein it is issued upon an individual defendant, or garnishee, in any one of the following methods:

(a) By handing a true and attested copy thereof to him personally; or,

(b) By handing a true and attested copy thereof to an adult member of his family, at his dwelling-house; or,

(c) By handing a true and attested copy thereof, at his place of residence, to an adult member of the family with which he resides ; or,

(d) By handing a true and attested copy thereof, at his place of residence, to the manager or clerk of the hotel, inn, apartment-house, or other place of lodging at which he resides ; or,

(e) By handing a true and attested copy thereof, at his place of business, to his agent, partner, or the person for the time being in charge thereof, if upon inquiry thereat his residence in the county is not ascertained, or if for any cause an attempt to serve at his residence has failed.

SEC. 2.—The writ of *summons*, the *writ of attachment in execution*, and the writ of *scire facias* in personal actions may be served by the constable upon a corporation, a partnership limited, or a joint stock company, in the county wherein it is issued, in any one of the following methods :

(a) By handing a true and attested copy thereof to the president, secretary, treasurer, cashier, chief clerk or other executive officer, personally ; or,

(b) By handing a true and attested copy thereof to an adult member of the family of any one of said officers at his dwelling-house ; or,

(c) By handing a true and attested copy thereof, at his place of residence, to an adult member of the family of the person with whom any of said officers reside ; or,

(d) By handing a true and attested copy thereof,

at his place of residence, to the manager or clerk of the hotel, inn, apartment-house, boarding-house or other place of lodging where any of said officers reside ; or,

(*e*) By handing a true and attested copy thereof, at any of its offices, depots or places of business, to its agents or person for the time being in charge thereof, if upon inquiry thereat the residence of one of said officers within the county is not ascertained, or if from any cause an attempt to serve at the residence given has failed ; or,

(*f*) If the corporation, partnership limited or joint stock company has no office or place of business in actual operation in the county where the cause of action arose, then service may be made in such county upon any member of its Board of Directors, in any of the methods set out in clauses (*a*), (*b*), (*c*) or (*d*) hereof ; or,

(*g*) In the case of a registered foreign corporation, partnership limited or joint stock company, by serving its duly registered attorney as in the case of a summons issued against him personally, or by leaving a true and attested copy thereof for him at the registered place, or if he be not found there during the usual business hours of any business day, with the person for the time being in charge of the business carried on at such place.

SEC. 3. The writ of summons, in cases where a trespass or a nuisance has been committed on real estate, may also be served in the same manner pro-

vided by Secs. 1 and 2, in any other county than that in which the writ issues, by the constable of such other county, who shall be deputized for that purpose by the constable of the county in which the writ issues.

SEC. 4. The writ of summons, on any character of insurance policy or certificate, may also be served in the manner provided by Sec. 2 in any other county than that in which the writ issues, by the constable of such other county who shall be deputized for that purpose by the constable of the county in which the writ issues, if the insurance was effected in, or the insured person at the time of his death resided in, or the insured property at the time of loss was located in, the latter county; *Provided*, that in such event the court shall abate the writ if it be made to appear, at any time before verdict or judgment by default, that the insurance was not effected in, nor was the insured person residing at the time of his death in, nor was the insured property at the time of loss located in, the county in which the writ was issued.

SEC. 5.—The writ of summons against a foreign corporation may also be served in the manner provided by Sec. 2 in any other county than that in which the writ issues by the constable of such other county, who shall be deputized for that purpose by the constable of the county in which the writ issues if the cause of action arose in the latter county: *Provided*, that in such event the court shall abate

the writ if it shall be made to appear, at any time before verdict or judgment by default, that the cause of action did not arise in the county in which the writ issued.

SEC. 6.—The writ of *capias ad respondendum* may be served by the constable of the county in which it is issued in any one of the following methods:

(a) By arresting the defendant, other than a minor or a married woman, and holding him to bail or committing him to jail for want thereof; or,

(b) If the defendant be a minor or a married woman, or if from any cause the defendant is liable to arrest, but is not arrested, then by serving the writ as in case of a summons; in which event the cause (case) shall proceed with the same effect as if a summons in trespass had been duly served, and in that case, if the defendant was liable to arrest on the original writ (*capias*), but was not arrested, *alias* and *pluries* writs may issue at any time prior to final judgment in the cause (case), and the defendant may be arrested by virtue thereof, with the same effect as if arrested on the original writ.

G. Service of Summons—How Changed.

The most important change in the law of service of the summons is this, the service must be by copy. So the reading of the summons to the defendant and informing him of the contents thereof is now done away. The constable should carefully learn the different provisions of the above Act, which prescribes

the manner of making service by copy, and, at the same time, bear in mind that the writ of *attachment in execution* ("Guide," Sec. 68) and the writ of *scire facias* ("Guide," Sec. 54) should be served in the same manner as a summons may be served.

Before making service the constable must make a copy of the original summons and hand the copy to the defendant, or some other proper person as designated by the above statute. The constable must serve "a true and attested copy thereof," so before delivering the copy an endorsement similar to the third form given under Form No. 8 should be made on the back of the copy, dated and signed by the constable. After service the constable should make his return similar to the following form:

Served the day of , 1902, upon A. B., the within named defendant [garnishee] by handing to him personally a true and attested copy of the original summons (or, by handing a true and attested copy of the original summons to an adult member of the defendant's family, at his dwelling house).

C. D., Constable of Lee Borough.

The above return should be used instead of the second form under Form No. 8, page 159.

SECS. 31 and 32 of the "Guide" are now misleading by reason of the changes made by the law of 1901. The copy is served "by handing" it to the proper person. Service on the defendant himself is good where made within the proper county,

but if the defendant cannot be readily found the writ must be served in one of the ways set out in the Act, and in no other manner.

SEC. 2 of the Act provides for service on corporations, joint stock companies and limited partnerships, and here again service must be made by copy. So Forms Nos. 8, 9, 10, 11, 13, 14 and 15 are incorrect ; and a return similar to the following should be used :

Served the day of , 1902, upon
the defendant corporation by handing a true and
attested copy of the original summons to John Doe,
president of the defendant corporation (or to an
adult member of the family of Richard Roe, the
treasurer of the defendant corporation, at his dwell-
ing house).

C. H. WILSON,
Constable of 1st Ward of Gettysburg.

Provision, unusual in civil cases, is made in Sec. 2 (f) and in Secs. 3, 4 and 5, for service outside the county. In such cases a constable of the county, where the cause of action arose deputizes (see Form No. 6) a constable of the county where the party upon whom service is to be made resides, to serve the writ. The serving constable endorses the writ in the name of the constable to whom it was issued in the first instance, and then his own name as deputy, giving the ward, borough, or township, the county of both, and when served.

In Sec. 6, under (b), provision is made for service of a *capias* where no arrest has been made, having the same effect as a summons. But an arrest may be made on an alias (another) writ, as though made in the first instance. If the *capias* is served as a summons then the return should be the same as for a summons.

H. Sections and Forms Altered or Repealed.

The following sections have been altered or repealed by the Act of July 9, 1901 :—

Sec. 31, except the last two paragraphs.

Sec. 32, except the last paragraph. Service must be by “a true and attested copy.” (See Secs. F and G.)

Sec. 38 is good law, except that service must be by copy only.

Secs. 39, 40 and 41 still hold, except that the manner of making service has been enlarged (see Secs. F and G), and when made outside the county, the service must be made upon a member of the Board of Directors (see Sec. F, Sec. 2 (f)) by a deputized constable of the county where the writ is served. (See Sec. G.)

Sec. 42 is repealed. Service must now be made upon the duly registered attorney (see Sec. F, Sec. 2 (g)).

Sec. 43 must be read in connection with Sec. F, Sec. 2 and Sec. 4. Service outside the county is there provided for in the manner set out in Sec. G.

Sec. 47 is good law, but see Sec. F, second section, for manner of making service, and Sec. G for manner of making service outside the county.

Sec. 54 still holds, but service must be made by copy. (See Secs. F and G.)

Sec. 68 is good law, but the writ of attachment in execution must be served in the same way as a summons. (See Secs. F and G.)

The following forms are wrong, by reason of a change in service :

Form No. 8, the first and second forms (page 159) ; see Section G for proper return.

Form No. 8 A (page 160), the first return is correct ; the second return should read as follows :

Served, the 22d day of April, 1902, certified copy of the plaintiff's affidavit upon J. H., the defendant, at the time and in the manner that service was made of the summons in this case, to wit : by handing a true and attested copy of the same to an adult member of J. H.'s family, at his dwelling-house.

A. B., Constable of——.

Sworn before me this 25th day of April, 1902.

C. D., Justice of the Peace.

Forms Nos. 9, 10, 11, 13, 14 and 15 are wrong. Service must be by copy and the return should be according. Each of the above forms would be good if the following words were added : " And handing him a true and attested copy of the original summons in this case." If the return is so made,

the constable, of course, must make service as shown by his return.

The following form will illustrate the manner of making a return as now required :

Return to Service Upon a County.

Served the 4th day of April, 1902, upon James Taylor, one of the commissioners of Adams County, by handing him a true and attested copy of the original summons in this case ; and upon George Y. Henler, a commissioner of said county, by handing a true and attested copy of the original summons in this case to an adult member of his family, at his dwelling-house.

CHARLES WILSON,
Constable of Gettysburg Borough, First Ward.

I. Recent Decisions.

Attention is called to the following recent decisions by the courts.

Deputy Constables—Chapter II.

Township Deputies.—Townships are not liable for compensation of deputies appointed under the act of May 9, 1889 (see Secs. 26, 27 and 28), because not expressly made so by the Act. *Adams v. Twp.*, 9 Dist. 450 ; *contra, In re Cawley*, 5 Kulp, 455.

Service of Writs—Chapter III.

Summons.—A constable's return of service by handing a copy of the summons to an adult member

of defendant's family, need not set forth the name of the person receiving the writ. *Purnell v. McBreen*, 23 C. C. 442; 9 Dist. 232.

Summons.—A summons may be served on the proper officer of a corporation while he is temporarily in a county other than that in which the corporation has its office and transacts its business: *Clever v. Mfg. Co.*, 2 Dauph. 399; *S. P. Moore v. Ins. Co.*, 16 Montg. 90.

Summons.—A service is good if duly served by the constable to whom it is directed, although not a constable of the township, ward or district where defendant resides, as the act of March 20, 1810, is directory only. *Del. Mercantile Co. v. Fulton*, 8 Del. 327; 15 York, 106.

Summons.—The sworn return of a sufficient and proper service of a summons by a constable cannot be contradicted. *Del. Mercantile Co. v. Fulton*, 8 Del. 327.

Attachment in Execution.—Trespass will lie by a trustee in bankruptcy against a constable and creditors of the bankrupt at whose instance property of the bankrupt was sold under attachment proceedings after the debtor had been declared a bankrupt. *Wallace v. Camp*, 200 Pa. 220.

Attachment Against Fraudulent Debtors.—An attachment under the Act of July 12, 1842, is not sufficiently served unless copy of the inventory is also served. *Rifkin & Co. v. Stes'z*, 10 Kulp, 204.

Execution—Levy and Sale—Chapter IV.

Exemption.—On a judgment recovered in assumpsit against husband and wife, where each owns in severalty and in his or her individual right realty and personalty, they are each entitled to their debtor's exemption under the Acts of April 9, 1849, and June 8, 1893. *Friday v. Glasser*, 14 Sup. 94.

Exemption—Where the defendant in the execution died after levy and before sale, and the widow thereupon claimed her exemption out of the goods, the constable is liable in trespass for selling the property. *Brechtel v. Cortright*, 13 Sup. 384.

Landlord and Tenant—Chapter V.

Levy, etc.—Where a constable on a landlord's warrant levied on goods claimed by a stranger, and gave only four days' notice of appraisement and selected appraisers who were not freeholders, and judgment was recovered against the constable for the trespass, the constable cannot recover on the bond given by the landlord to indemnify the constable against loss from the sale of the goods. *Blair v. Boring*, 200 Pa. 27.

Miscellaneous Duties—Chapter IX.

Reward.—A constable is not entitled to the reward for the arrest of a horse thief as provided by the Act of March 15, 1821. *Com. v. Miller*, 25 C. C. 491.

J. Correction.

The references in Secs. 70, 111 and 142 to Sec. 58 may lead the constable to believe that the husband's waiver of the benefit of the exemption law will not prevent the wife, or members of the husband's family from claiming the benefit of the \$300 exemption. Such is not the case, however, for the husband's waiver binds the wife and the members of his family in all proceedings except in domestic attachment.

INDEX.

	SECTION.	PAGE.
Attachment in Execution, how served,	F, G.	8a, 13a
Capias, how served,	F, G.	8a, 12a
Corporation, service upon,	F, G.	8a
Deputy Constable of township, by whom paid,	I.	19a
Execution, levy and sale, exemption under,	I, J.	19a, 20a
Exemption, when it can be claimed, .	I, J.	19a, 20a
Fees for executing and order of relief,	B.	5a
Forms, incorrect,	H.	15a
" correct,	G, H.	12a, 15a
Gunners, non-resident, license of, . .	A.	3a
Joint Stock Company, service upon, .	F, G.	8a
Landlord and Tenant, levy,	I.	19a
Non-Resident Gunners, license of, .	A.	3a
Oleomargarine, sale of, restricted, . .	C.	6a
Order of Relief, pay for executing, .	B.	5a
Partnership, Limited, service upon, .	F, G.	8a
Renovated Butter, sale of, restricted,	D.	7a
Repealed or altered sections of " Guide,"	H.	15a
Return of Summons, how changed, .	G, H.	12a, 15a
Reward, Constables not entitled to, .	I.	19a
Scire facias, how served,	F, G.	8a
Sections of " Guide " altered or re- pealed,	G, H.	12a, 15a
Summons, how served,	F, G.	8a
" return to,	G, H.	12a, 15a



UC SOUTHERN REGIONAL LIBRARY FACILITY



A 000 706 332 4

100

100

100