

APPREHENDING THE DEFENDANT.

When a Warrant is put into the hands of a constable, he should, as soon as he possibly can, proceed to find out and arrest the defendant. An arrest may be made in the night as well as the day, but not on a Sunday, unless the offence charged includes a breach of the peace, or felony, &c.¹ A Warrant continues in force until it is fully executed

for that A. B. (*fr. as in the summons*): And whereas (*I*) the said Justice of the Peace then issued (*my*) Summons unto the said A. B. commanding him in Her Majesty's name, to be and appear on the _____ day of _____ at _____ o'clock in the forenoon, at _____ before (*me*) or such Justices of the Peace as might then be there, to answer unto the said information (*or* complaint) and to be further dealt with according to law; And whereas the said A. B. hath neglected to be and appear at the time and place so appointed in and by the said Summons, although it hath now been proved to me upon oath that the said Summons hath been duly served upon the said A. B.: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B. and to bring him before (*me*) or some one or more of Her Majesty's Justices of the Peace in and for the said (*County or United Counties, or as the case may be*) to answer to the said information (*or*) complaint, and to be further dealt with according to law.

Given under my Hand and Seal, this _____ day of _____, in the year of our Lord _____ at _____, in the (*County, or as the case may be*) aforesaid.

J. S. [L.S.]

[4] Dalt. 169 p. 401. In making an arrest, no more force than is actually necessary should be employed, and the defendant should in no case be handcuffed unless there be reason to suspect he will use violence or attempt escape (see *Wright v. Court*, 4 B. & C. 533). The following observations, taken from a published address, by *Judge Gowen*, on the duties of constables, may be substituted as giving full practical instructions for the guidance of officers:—

What an Arrest.—An arrest is the apprehending or detaining of the person in order to be forthcoming to answer an alleged or suspected crime. The officer should not merely content himself with securing the offender, but should actually arrest him; so that if he escape, or is rescued by others, he or they may be subject to the penalties of escape on arrest.

To constitute an arrest, the party should, if possible, be touched by the constable: bare words will not make an arrest without laying hold of the person, or otherwise confining him. But if an officer come into a room, and tell the party he arrests him, and locks the door, this is an arrest, for he is in custody of the officer. Or if in any other way the party submit himself by word and action to be in custody, it is an arrest.

How made.—A constable sworn and commonly known, acting within his own township, need not show his warrant, but he should in all cases acquaint the party with the substance of it, and the cause of arrest.

In every case where the constable acts out of his own township where he is not known to be a constable, he should produce his warrant if required; and to avoid all excuse for resistance, it is recommended, whenever demanded, that the constable should produce and allow his warrant to be read; but in no case is he required to part with it out of his possession. If the party snatch or take the warrant the constable has a right to force it from him, using no unnecessary violence in doing so.

Resisting Officer.—A constable is bound to use the utmost caution and forbearance in case of resistance, but he may lawfully use force to overcome resistance. The force used should not exceed the necessity of the case, and should cease the instant resistance is over,—to beat or abuse a prisoner who is powerless is both unmanly and illegal.

Duty after Arrest.—The constable should impose no more force or restraint than may be necessary to prevent escape. Where the charge is for assault, or other comparatively minor offence, and the defendant is of good repute, and there is no probability of his absconding, less restraint may be considered necessary than in offences of a greater magnitude.

The age and bodily strength of a prisoner are matters to be thought of by the constable in determining the amount of restraint he will use. He certainly ought to treat his prisoner with kindness and humanity, and should use no unnecessary severity or constraint. Yet it is his bounden duty to use all reasonable precaution to prevent escape, especially for serious offences, or if there be any apprehension of an attempt to escape on the part of the prisoner, or rescue by others. If several persons are arrested for an offence, and it be a serious one, the parties should be kept separate from each other, and not permitted to have any communication previous to being brought before the Magistrate for examination.

General directions.—Where the constable has made an arrest, with or without warrant, he should, as soon as possible, bring the party before a Magistrate, according to the terms of the warrant, and if guilty of any unnecessary delay he will be liable to punishment; but if the arrest be made in or near the night, or at a time when the prisoner cannot well be brought before the Magistrate, or if there be danger of rescue, or the party be ill and unable to be brought up, the constable may secure him in the County Gaol, in a lock-up house, or other safe place till the next day, or until it may be reasonable to bring him up before the Magistrate; but a warning is again given against any unreasonable detention.

If the warrant be to bring the party before the Magistrate who issued it, the constable is bound to bring him before the same Magistrate; but if the warrant be to bring him before any Justice of the Peace of the County, then the power of election is in the constable, and not in the prisoner, and the former may proceed to any convenient Magistrate in the County. When the prisoner is brought before the Magistrate, he is still considered in the custody of the officer, until bailed or discharged, or committed to prison.

[5] 9 Co. 88 29 Car. 2 c. 7, s. 6.

and obeyed, provided the Magistrate granting it so long live.^[6] The defendant should be brought without delay before the proper Magistrate; and it is the duty of the Magistrate to make such arrangements with the officer who is entrusted with the execution of a Warrant, that the case may be brought on to a hearing as speedily as possible after the arrest: to detain a party for an unreasonable time on any of the minor charges which Justices are empowered to determine, would be very improper; indeed, it would be both illegal and unjust.

ON THE DUTIES OF CORONERS.

(CONTINUED FROM PAGE 26, VOL. 2.)

IV.—MINISTERIAL DUTIES OF CORONERS.

Acting ministerially, the Coroner has powers analogous to those of the Sheriff in serving process, levying under execution, &c.; but they are only exercised where that officer is disqualified on account of being a party to the suit. Stephens says that he is the Sheriff's substitute, and that "where just, exception can be taken to the Sheriff for suspicion of partiality, as that he is interested in the suit; the process must then be awarded to the Coroner, instead of the Sheriff, for execution of the King's Writs."^[a] There are other ministerial duties attached to the office, in England, which are not applicable to this country; so that we will proceed to notice the Fees payable to Coroners on Inquests, and when acting as the Sheriff's substitute.

V.—CORONERS' FEES.

By the Stat. 3 Hen. VII. c. 1, "the Coroner shall have for his fee upon every Inquest 13s. 4d. of the goods and chattels of the slayer or murderer, if he have any, and if not, of such amerancements as shall fortune any township to be amerced for escape of such murderers." And by 25 Geo. II. c. 29, s. 1, for every Inquisition (not taken upon view of a body dying in Gaol) he shall have 20s., and also 9d. for every mile he shall be compelled to travel from his usual place of abode to take such Inquisition, to be paid by order of the Justices in Sessions out of the County rates, for which no fee shall be paid. And by sec. 2 of 25 Geo. II. c. 29, for every Inquisition taken, on view of a body dying in prison, he shall be paid so much, not exceeding 20s., as the Justices in Sessions shall allow to be paid.

By Rule of T. T. 5 Wm. IV, it is ordered that the following fees be allowed to Coroners for services hereinafter named:—

[6] Per Lord Kenyon, C. J.; Peak R. 234; 1 Esp. R. 218 (s. c.); and see 16 Vic. c. 173, s. 3

[a] 4 Just. 271.