court of Randolph county elected a county treasurer. The act of 15th January, 1852, was of force at the time of the election.

The rule, which once prevailed in England, that acts of Parliament should be deemed to have been in force from the first day of the session, when not otherwise prescribed, does not obtain here, for reasons which are explained in the case of the Mobile and Ohio Railroad Company v. The State, 29 Ala. 573. It results, that statutes passed at the same session are not to be regarded as having effect from the same day, or as constituting one act, because they pertain to the same subject.

The act of 15th January 1852, was of force from the date of its approval, and continued in operation, until the suspension act of 9th February, 1852, (twenty-four days afterwards,) was adopted. The appointment of a

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*treasurer was, then, made by the commissioners' court of Randolph county while the act of 15th January, 1852, was of force. The commissioners' court had no power, at that time, to make an appointment to continue longer than the next general election. On the 18th February, 1854, another act was passed, by which it was prescribed, that the county treasurer of Randolph county should be elected by the people. On the first Monday in August, 1854, an election of treasurer was had; but the treasurer appointed by the commissioners' court continued in office, until the 3d February, 1855, at the expiration of three years from his appointment. Now it is manifest that, after the election on the first Monday in August, 1854, the appointee of the commissioners' court ceased to be the treasurer, de jure. It is unnecessary for us to inquire whether his term of service did not expire at an earlier day. Upon the election in August, 1854, the treasurer elect had a right to the incumbency of the office: and that he yielded to the claim of his predecessor, and permitted the latter to discharge the duties of the office until the succeeding February, can give him no right to extend his term of service an equal length of time into the term of his successor. We decide, therefore, that the relator in this case had a right to the office of treasurer, from his qualification, in August, 1857.

Section 2655 of the Code, in reference to the proceeding by quo warranto, says: "A judge of the circuit court may direct such action to be brought, whenever he believes these acts can be proved, and it is necessary for the public good; or it may be brought on the information of any person, giving security for the costs, to be approved by the clerk of the court in which such action is brought." Under the authority of this section, we decided, in the State, ex rel. Burnett v. The Town Council of Cahaba, 30 Ala. 66, that the omission to give security for the costs was a fatal objection to such a proceeding as this. The statute contemplates that the security should be given before the commencement of the suit. The security is a condition precedent to the right under the statute of instituting the proceeding. The decisions of

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this court, *before the adoption of the Code, were in reference to an entirely different statute.—Lyons v. Long, 6 Ala. 103; Reese v. Billing, 9 Ala. 263; Whitaker v. Sanford, 13 Ala. 522. Those decisions are not applicable to the question in hand. We think we should virtually abrogate the statute, by holding that the security for costs could be given pending the suit.—Alabama and Tennessee Rivers Railroad Co. v. Harris, 25 Ala. 232. The court erred, therefore, in overruling the motion to dismiss for want of security for costs; and the judgment of the court below must be reversed, and a judgment must be here rendered, dismissing the proceeding, and awarding against the relator, B. J. Hand, the costs of the court below, and of this court.

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31 Ala. 387.

OWEN v. THE STATE.

INDICTMENT FOR CARRYING CONCEALED WEAPONS.

1. *What constitutes such offense.*—A person who, in the room of another in which there are several persons, bears in his vest pocket a pistol, which is willfully or knowingly covered or kept from sight, is guilty of a violation of the statute (Code, § 3274) against carrying concealed weapons.

[Cited in Lockett v. State, 47 Ala. 44; Harman v. State, 69 Ala. 249; Cunningham v. State, 76 Ala. 88; Dunston v. State, 124 Ala. 90, 27 South. 333, 82 Am. St. Rep. 152.]

[See 48 Cent. Dig. Weapons, § 9.]

From the Circuit Court of Tuskaloosa.

Tried before the Hon. John Gill Shorter.

The bill of exceptions in this case is as follows:

"On the trial of this case the State introduced one Hutchinson as a witness, who testified, that within twelve months before the finding of the indictment, he went into the room of one Charles S. Williams, in said county of Tuskaloosa; that he found in the room Mr. Williams, the defendant, and two or three other young gentlemen: that he remained in the room some twenty minutes, or half an hour; that, while there, he asked the defendant to give him a cap; that the de-

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fendant put his hand into his vest *pocket, and took a small pistol out of his pocket, to get a cap; that the pistol was the smallest he had ever seen, and he requested the defendant to let him look at it; that the defendant did so, and, when he and the others had looked at it, it was handed back to the defendant, who again put it into his vest pocket; that he did not see it until the defendant had taken it out of his pocket, and

could not see it after he had put it into his pocket as stated; that he did not know whether the pistol was loaded or not; and that, when he went out, he left the defendant in the room.

"This was all the evidence in the cause; and thereupon the defendant asked the court to charge the jury, that unless they believed from the evidence that the defendant had the said pistol when he went into the said room, or took it with him when he left the room, merely having the pistol in his pocket, as stated, was not a carrying of the pistol concealed about his person, within the meaning of the statute. The court refused to give this charge, and the defendant excepted."

E. W. Peck, for the appellant.

M. A. Baldwin, Attorney-General, contra.

RICE, C. J.—The defendant was indicted for a violation of section 3274 of the Code, which provides, that "any one who carries concealed about his person a pistol, or any other description of fire-arms, not being threatened with, or having good reason to apprehend an attack, or traveling, or setting out on a journey, must, on conviction, be fined not less than fifty, nor more than three hundred dollars."

That section was not designed to destroy the right, guarantied by the constitution to every citizen, "to bear arms in defense of himself and the State"; nor to require them to be so borne, as to render them useless for the purpose of defense. It is a mere regulation of the manner in which certain weapons are to be borne; a regulation, the object of which was to promote personal security, and to advance public morals. To that end, it prohibits the bearing of certain weapons, "in

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such a manner as is cal*culated to exert an unhappy influence upon the moral feelings of the wearer, by making him less regardful of the personal security of others."—The State v. Reid, 1 Ala. 612 [35 Am. Dec. 44].

The word "carries," in the section above cited, was used as the synonym of "bears"; and the word "concealed," as therein used, means, willfully or knowingly covered, or kept from sight. Locomotion is not essential to constitute a carrying within the meaning of that section. A person who, in the room of another in which there are two or three other persons, bears in his vest pocket a pistol, willingly or knowingly covered or kept from sight, without any of the excuses therefor recognized by law, is a violator of the section above cited. The charge asked by the defendant in this case, is in conflict with the law as thus laid down by us. That charge does not simply assert the general proposition, that merely having a pistol in one's pocket in a room, is not a "carrying" of the pistol concealed about his person, within the meaning of the statute: it goes beyond that, and asserts that, if the defendant did not have the pistol when he went into the room, nor when he went out of it, his "merely having the pistol in his pocket in the room, as stated, was not a carrying of the pistol concealed about his person, within the meaning of the statute." The charge as asked was specific, and referred directly to the evidence which showed the manner in which the defendant carried the pistol, and conceded the truth of that evidence. As the truth of the evidence was thus conceded by it, the conclusion it drew from the evidence was a non sequitur; for, if the defendant did have the pistol in his pocket, in the room, as stated by the evidence, he might be guilty, although he neither had it when he entered the room, nor when he left the room.

Judgment affirmed.

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31 Ala. *390.

*McDANIEL v. THE STATE.

INDICTMENT AGAINST COUNTY COMMISSIONERS FOR FAILURE TO LEVY TAX.

1. *Levy of county tax in Cherokee.*—The special act of February 17, 1854, (Session Acts 1853–4, p. 78,) prohibits the commissioners' court of Cherokee county from levying a county tax, for either general or particular purposes, "exceeding fifty per cent. upon the amount of the assessment of State taxes for said county;" consequently, if the highest county tax allowed by this law has been levied, and proves insufficient to pay for the erection of a county jail, after defraying the ordinary expenses of the county, the commissioners are not liable to the penalties prescribed by section 771 of the Code.

[See 13 Cent. Dig. Counties, §§ 85, 303.]

Appeal from the Circuit Court of Cherokee.

Tried before the Hon. William M. Brooks.

The indictment in this case was found under section 771 of the Code, and charged that the defendants, who composed the court of county commissioners of Cherokee, had failed and neglected to discharge their duties as such commissioners, by not levying a county tax for the erection of a county jail; the old jail being, during their term of office, insecure, insufficient in size, and not properly ventilated. On the trial, as appears from the bill of exceptions, it was admitted, that the county jail was, and had been for more than twelve months during the defendants' term of office as county commissioners, insufficient and insecure for the custody of the prisoners confined therein; that the defendants, as such commissioners, had, from time to time, appropriated moneys out of the general county funds for the repair of the jail, but had not levied a special tax for that purpose, nor for the erection of a new jail; and that their reason for not levying such special tax was, that they had already levied an annual tax, for general purposes, of fifty per cent. on the amount of the State assessment, which was not sufficient to defray the ordinary expenses of the county, and sup-