

CHAPTER XVII.

(C. V. CH. CCI.)

FOR PREVENTING THE COMMISSION OF CRIMES.

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Conservators of the peace; their powers and duties.

§ 1. Every judge throughout the State, and every justice and commissioner in chancery, within his county or corporation, shall be a conservator of the peace, and may require from persons not of good fame,¹ security for their good beha-

¹ Under the act of 34 Edw. 3, c. 1, which uses the same general mode of expression, it hath been holden, that a man may be bound to his good behavior for causes of scandal *contra bonos mores*, as well as against the peace; as for haunting bawdy houses with women of bad fame, or for keeping such

viol, for a term not exceeding one year. (1 R. C. p. 263, ch. 74; Acts 1847-8, p. 127, ch. 14, § 1, 17.)

§ 2. If complaint be made to any such conservator that there is good cause to fear that a person intends to commit an offence against the person or property² of another, he shall examine on oath the complainant and any witnesses who may be

women in his house. Thus, also, night-walkers, eaves-droppers, such as keep suspicious company, or are reported to be pilferers or robbers; such as sleep in the day and walk in the night; common drunkards; whore-masters; the putative fathers of bastards; cheats; idle vagabonds; and other persons whose misbehavior may reasonably bring them within the general words of the statute, as persons "*not of good fame*," an expression, it must be owned, of so great latitude, as leaves much to be determined by the discretion of the conservator of the peace himself.' But if he commit a man for want of sureties, he must express the cause thereof with convenient certainty, and take care that such cause be a good one. 4 Black. Com. 256; Hawk. b. 1, c. 61, § 2; Mayo's Guide, 663.

² Surety of the peace can only be required, when there is fear of present or future danger, and not for any breach of the peace that is passed. 2 Dick. J. P. 398. As a general rule, it should be granted in all cases, if he who demands it makes oath that he is actually under fear of death or bodily harm, or any other injury either to his person or property, which, if done, would amount to an offence, and that he does not require such surety from malice. But notwithstanding the oath, if the justice believes that surety is applied for merely of malice or for vexation, without any just cause of fear, or because the complainant is at variance with another, he should deny it. Mayo's Guide 630; 5 Burn. J. P. 298; Dick. Guide 477.

Surety of the peace may also be required of all persons, who having been before bound to keep the peace, have broken it, and forfeited their recognizance. 2 Deac. Cr. Co. 1271. And the recognizance is forfeited by an actual violence to the person of another, or the commission of any offence against the life or property of another, whether done by the party himself, or by others through his procurement, by attending any unlawful assembly to the terror of the people, and even by words, tending to a breach of the peace, as by challenging another to fight, or in his presence threatening to beat him. But mere words of reproach, as calling a man a liar or a knave, will not forfeit the recognizance, for they are regarded as the effect merely of unmeaning heat and passion, unless indeed they amount to a challenge to fight. 4 Inst. 101; 1 Hawk. c. 60, § 20. The recognizance is discharged by the death of the principal party who is bound by it, if it was not before forfeited, but the sureties are not discharged by their death, their executors continuing to be bound as their testators were. 1 Hawk. c. 60, § 17.

All persons whatsoever, under the protection of the Commonwealth, being of sane memory, whether they be natural and good citizens, or aliens, have

produced, reduce the complaint to writing, and cause it to be signed by the complainant. (Acts 1847-8, p. 127, § 2.)

§ 3. If it appear proper, such conservator shall issue a warrant reciting the complaint, and requiring the person³ complained of forthwith to be apprehended and brought before him or some other conservator. (Id. § 3.)

§ 4. When such person appears, if the conservator, on hearing the parties, consider that there is not good cause for the complaint, he shall discharge the said person, and may give judgment in his favor against the complainant for his costs. If he consider that there is good cause therefor, he may require a recognizance⁴ of the person against whom it is, and give judgment against him for the costs of the prosecution, or any part thereof; and unless such recognizance be given, he shall commit him to jail by a warrant, stating the sum and time in and for which the recognizance is directed. The person giving judgment, under this section, for costs, may issue a writ of *feri facias* thereon, if an appeal be not allowed; and proceedings thereupon may be according to the ninth and eleventh sections of chapter one hundred and fifty.⁵ (Acts 1845-6, p. 64, ch. 87; 1847-8, p. 128, § 4, 5, 6, 7, 8.)

a right to demand surety of the peace. 1 Hawk. c. 60, § 2; Heuing's Jus. 676.

A parent may claim surety of the peace for his child under the age of discretion, and the conservator may grant it on the oath of the parent; and so may a husband demand it for the protection of his wife, upon his oath; and a wife may demand it against her husband; and the husband may have it against his wife; but infants and married women must find sureties by their friends, and cannot bind themselves. Mayo's Guide 630-31; 2 Dick. J. P. 398; Robinson's Guides 339.

³ A warrant, directing the "*associates*" of persons named, to be arrested, without mentioning the *names* of such *associates*, is illegal and void as to *them*. *Wells v. Jackson*, 3 Munf. 458.

⁴ The recognizance required by this section, shall be made payable to the Commonwealth of Virginia, and shall be in such sum as the court or officer requiring it may direct, and with such surety as the court or officer may deem sufficient. It shall be with condition, that the person of whom it is taken, shall keep the peace and be of good behavior for such time, not exceeding one year, as the court or officer requiring it may direct. C. V. ch. 211, § 4; *ante*, ch. 6, § 4.

⁵ See C. V. ch. 150, § 9, 11; 2 Matthews' Dig. p. 844, § 9, 11.

§ 5. A person from whom such recognizance is required, may, on giving it, appeal to the court of the county or corporation; in such case the officer, from whose judgment the appeal is taken, shall recognize such of the witnesses as he thinks proper. (Acts 1847-8, p. 128, § 9, 10.)

§ 6. The court may dismiss the complaint or affirm the judgment, and make what order it sees fit as to the costs. If it award costs against the appellant, the recognizance which he may have given shall stand as a security therefor. When there is a failure to prosecute the appeal, such recognizance shall remain in force, although there be no order of affirmance. On any appeal the court may require of the appellant a new recognizance, if it see fit. (Id. § 11, 12.)

§ 7. Any person committed to jail under this chapter may be discharged by the county or corporation court, on such terms as it may deem reasonable. (Id. § 13, 14.)

§ 8. If a white person go armed with a deadly or dangerous weapon, without reasonable cause to fear violence to his person, family or property, he may be required to give a recognizance, with the right of appeal, as before provided, and like proceedings shall be had on such appeal. (Id. § 16. 1 R. C. p. 554, ch. 140.)

§ 9. If a person, in the presence of a court or a conservator of the peace, make an affray, or threaten to kill or beat another, or to commit violence against his person or property, or contend with angry words, to the disturbance of the peace, he may, without process or further proof, if he be a white person, be required to give a recognizance, and if he be a negro, be punished with stripes. (1 R. C. p. 554, ch. 140. Acts 1847-8, p. 129, § 15.)

Persons suspected of retailing liquors without license.

§ 10. If any justice suspect any free person of selling, by retail, wine or ardent spirits, or a mixture thereof, contrary to law, he shall summon the person, and such witnesses as he may think proper, to appear before him; and upon the persons appearing, or failing to appear, if the justice on examin-