

FEEs IN CRIMINAL CASES

—OF—

Justices of the Peace and Constables

IN NEW JERSEY: /

**What they are, and how and when payable
out of the Public Treasury.**

A HISTORY OF THE LEGISLATION ON THE SUBJECT.

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Fees of Justices of the Peace and Constables in Criminal Cases.

I.

The origin and functions of Justices of the Peace.

Blackstone and Burn treat generally of the origin and functions of Justices of the Peace, but the latter writer like most others dwells particularly upon their civil powers.

"In 1195 the enforcement of an edict for the pursuing of thieves when the hue and cry was raised was committed to knights assigned for the purpose. This is probably the origin of the office of conservator of the peace, out of which, in the reign of Edward III., the existing functions of the justices of the peace were developed."—*Stubbs's Constitutional History of England*, I., 570.

"In the fifth year of Edward I., an officer called *custos pacis*, whose functions formed a stage in the growth of the office of justice of the peace, was elected by the sheriff and community of each county in the full county court."—*Ib.*, II., 228.

"These nominated conservators, two or three in number, were commissioned by the 18th Edward III to hear and determine felonies, and by 34 Edward III were regularly empowered to do so. The office thus became a permanent part of the county machinery in the hands of the justices of the peace."—*Ib.*, II., 297.

A like officer was known to the Civil Law: "Conservatores sunt iudices delegati, et habent jurisdictionem limitatam super injuriis, et violentiis manifestis."—*Barbosæ Repertorium Juris Civilis et Canonici*, Lugdunum, 1668, p. 74.

"The sheriff by the common law is *conservator pacis*, and the general commission of the peace throughout England began anno 1 Ed. III., and it was to prevent rebellions which might happen upon the deposing of his predecessor, Edward II., but before that time there were particular commissions of the peace to certain men, and in particular places."—*Abridgment of the Common Law*, by Wm. Nelson, Esq., II., 1063. London, 1726.

"It seems to be clearly agreed, that before the statute 1 Edward III., there were no justices of the peace, and that they were first instituted by that statute; yet by the common law there were certain conservators of the peace, which were of two sorts: 1. Those who in respect of their offices had power to keep the peace, but were not simply called by the name of conservators of the peace, but by the name of such offices. 2. Those who are constituted for this purpose only, and were simply called by the name of conservators or wardens of the peace."—*Bacon's Abridgment, sub voce.*

The statute provides: "That for the better keeping and maintenance of the peace, the king willeth, that in every county good men and lawful, which be no maintainers of evil, or barrators in the county, shall be assigned to keep the peace."—*Bacon, ut supra.*

"The statute of 34 Edward III. gave them the power to try felonies, and then they acquired the more honorable appellation of justices."—*Jacob's Law Dictionary*, ed. 1811, III., 603.

The statutes 12 and 14 Richard II "direct them to be of the best reputation, and most worthy men in the county; the statute 13 Rich. II. orders them to be of the most sufficient knights, esquires and gentlemen of the law. * * And because contrary to these statutes, men of small substance had crept into the commission,

whose poverty made them both covetous and contemptible, it was enacted by statute 18 Henry VI. that no justice should be put in commission, if he had not lands to the value of £20 per annum."—*Ib.*, 606.

A summary of the duties of justices of the peace in criminal cases was prescribed in a letter from the King's Council, in June, 1605, quoted in "Quarter Sessions from Queen Elizabeth to Queen Anne," by A. H. A. Hamilton, London, 1878, p. 67.

When the government of the Province of New Jersey was surrendered by the Proprietors to Queen Anne, and the Queen appointed Lord Cornbury to be Governor, in her commission to him (Dec. 5, 1702) he was authorized to "erect, constitute and establish such and so many courts of judicature and public justice within our said government, as you and they shall think fit and necessary, for the hearing and determining of all causes as well criminal as civil, according to law and equity, and for awarding execution thereupon with all reasonable and necessary powers, authorities, fees and privileges belonging unto them."—*Leaming & Spicer*, 651.

In his instructions he was enjoined "In the choice and nomination of * * * justices and sheriffs you are always to take care that they be men of good life and well affected to our government, of good estate and abilities, and not necessitous people or much in debt."—*Ib.*, 621.

The ordinance of Lord Cornbury, establishing courts, contains nothing as to the functions of justices of the peace in criminal cases.—*Field's Provincial Courts of New Jersey*, 256.

The first general act appearing on our statute books defining the general powers and duties of justices of the peace was passed November 22, 1794.—*Paterson's Laws*, fol. ed., 129.

II.

Origin and functions of Constables.

The name "constable" is accepted by the best authorities as derived from the French, *connetable*, a contraction from the Low Latin *constabularius*, itself a contraction from *comes stabuli*—knight or superintendent of the stable, or master of the horse—an officer closely attached to the King's household in days of chivalry, his office being particularly of a military nature, relating to the castle or the army. He exercised the office of quarter-master-general of the court and army, and thus naturally soon came to have definite functions in the Exchequer.—*Stubbs's Const. Hist. England*, I., 401, 428; *Stubbs's Select Charters*, 171; *Co. Litt.*, ed. 1627, p. 391, Sec. 745; *Thomson's Essay on Magna Charta*, London, 1829, p. 204.

The quasi-judicial functions of constables were exercised about 1679 and probably earlier in New Jersey, along the Delaware; in New England from its first settlement, and doubtless more than a thousand years ago in England.—*Records of Upland Court*; *Johns Hopkins University Studies in Political Science, First Series*, III., 21; VIII.

In New Jersey there is scarcely a trace left in existing laws of judicial powers in constables, who are simply ministerial officers.

III.

Fees of Justices and Constables.

"In former days the guardians of the peace (who were almost the same with our justices) had certain fees al-

lowed for executing their office; and for that purpose petitions have been exhibited to Parliament, as particularly to that held at York, anno 8 Edward III., which petition was again renewed in the thirty-sixth year of that king's reign, when they were called justices of the peace; and then the king answered that he would provide therefor; but it doth not appear what the fees were, or what was further done in it, but in Hillary Term, 12 R. II., it was enacted, that they should have 4s every day they sat in Quarter Sessions, which in some places is still paid by the Sheriff to the chairman; since this statute there are others made by which they are to have the forfeitures upon conviction."—*English Liberties, etc., compiled by Henry Care, and continued with large additions, by Wm. Nelson, of the Middle Temple. Boston, 1721, p. 226.*

There is reason to believe that constables were allowed fees and other perquisites before the justices, as appears by references in Magna Charta.

IV.

Early New Jersey legislation as to fees of Justices and Constables.

"An Act for Suppressing of Immorality," passed at Burlington, Dec. 12, 1704, provides that the penalties imposed shall be levied and made by distress of the goods and chattels of the offender, with costs, the fines [not the costs] to be paid by the constables to the overseers of the poor of the town; for want of sufficient goods and chattels the offender was to be confined in the stocks.—1 *Nevill's Laws*, 3.

This act having expired by limitation, was revived Sept. 27, 1782.—*Wilson's Laws*, 304.

It was substantially re-enacted March 16, 1798, and forms the basis of the present act on the same subject. The act of 1798 provides for a summary trial. All charges to be paid by the offender, if able; if set in the stocks, "no charges whatsoever shall be paid by any person whomsoever." Justices were allowed to take for the information, summons, conviction and warrant thereupon, forty cents and no more.—*Paterson's Laws*, fol. ed., 333.

"An Act for the Tryal and Punishment of Persons guilty of Larceny, under the Value of twenty Shillings," passed at Perth Amboy, 1738, provides: Persons convicted or pleading guilty should be "sentenced to be forthwith whipped on the bare back, not exceeding thirty-nine lashes, to be performed by any of the constables of the county, city or town corporate (who shall have five shillings for the same,) or fined not exceeding five pounds for the use of the poor, and to be adjudged to make restitution to the person robbed, of the value of the thing stolen, to pay the costs and charges of the whole trial and proceeding, to be taxed by the magistrates, and to be by them committed to jail until the fine and costs are paid or worked out."—1 *Nevill's Laws*, 235.

The first Fee Bill on the statute books was passed at Burlington, February 18, 1747-8, confirmed by His Majesty in Council, Nov. 23, 1749, and read in Council in New Jersey, March 16, 1750. The following fees are prescribed:

"That the Justices' fees in or out of Sessions, shall be as follows, viz:

"For every warrant of appearance, eighteen pence.
a pass, ten pence.

a mittimus, one shilling.

taking examinations, each sheet containing fifteen lines and six words to a line, one shilling.

every oath or attestation, four pence.

actions tried in the Sessions, each action, three shillings.

“And that the Constables' fees shall be as follows, viz :

“For serving every warrant or summons, eighteen pence.

every execution, eighteen pence.

1 *Nevill's Laws*, 338-44 ; *Allinson's Laws*, 165.

Sec. 4 of this act seems to imply that the fees above were to be taxed against the party interested.—1 *Nevill*, 351.

The fee for “a pass” pertained to the days of slavery. “An Act for regulating of white Servants, and taking up Soldiers and Seamen deserting Her Majesty's Service, and coming into this Colony,” passed March 11, 1713-14, provided : “That all seamen, soldiers, servants and other labourers, and suspected Persons, who shall travel in and through this Province, without a pass from one or more justices of the peace of this or the neighbouring Provinces, signifying that he, she or they are free persons,” might be arrested and committed to jail.—*Allinson's Laws*, 21.

A mittimus, it is hardly necessary to explain, was a commitment.

“An Act for the better Regulating Constables, Vendues and Taverns,” passed May 10, 1768, provides :

“Sec. 11. Every constable's fee for serving any warrant shall be two shillings, and for serving every execution, two shillings and six pence, anything in any former law to the contrary in anywise notwithstanding.”—

Allinson, 302. The provisions of this act, relating to constables, were repealed March 15, 1777.—*Wilson's Laws*, 15.

“An Act to regulate the Trial of Slaves for murder and other Crimes,” etc., passed May 10, 1768, provided that the fees should be “paid by the county collector, on order from the Justices and Freeholders of the county where the offence is committed, to be assessed, levied and raised by order of any three justices, one being of the Quorum, equally on the owners of slaves.”—*Allinson*, 307.

This is the first positive enactment making the public, directly or indirectly, liable for fees of justices or constables.

“An Act to regulate Fees,” passed June 13, 1799, provides :

“Fees to be paid to the justice of the peace who performs the service, where he is entitled to fees, and they are not otherwise ascertained by law .

every recognizance,	.25
a pass	.20
a mittimus	.25
taking examinations, for each sheet	.14
every oath or attestation	.05
a warrant against a person for a breach of the peace or a misdemeanor	.25
a summons on a penal law	.13
drawing a conviction	.25
a warrant to levy a penalty	.25

Paterson's Laws, 418.

And the same act thus fixes the fees of constables :

“Fees of the constable, where he is entitled to fees, and they are not otherwise ascertained by law :

“The constable shall, for the same services, be allowed the same fees as are established by the act con-

stituting courts for the trial of small causes."—*Ib.*, 427.

"An Act further to regulate Fees," passed November 30, 1801, enacts :

"2. Justices of the peace shall be entitled to receive the following fees : * * *

In cases of larceny under six dollars, upon conviction

For drawing the accusation	.30
the trial of every cause	.60

"3. That in all criminal cases, upon conviction, constables' fees shall be as follows :

For serving every warrant	.60
attending prisoner during trial for larceny under six dollars	.25

"4. That in all cases of conviction, where the offender hath been sentenced upon such conviction to imprisonment at hard labor for a longer term than six months, then and in that case it shall be the duty of the inspectors in the state prison to cause the fees, costs and charges to be paid out of the first proceeds of the labor of such offender."—*Appendix to Ewing's Justice*, 1805, p. 12.

This last section was obviously intended to make the public treasury responsible for the fees in the case of state prison convicts. It was repealed March 1, 1804.—*Ib.*, p. 47.

Ewing's "New Jersey Justice," first edition, 1805, p. 367, says :

"The fees on summary trials are as follows :

"Warrant for apprehending or bringing in the offender before the justice	.25
Constable, for serving	.60
Drawing accusation	.30
Constable, for attending prisoner during trial	.25

Drawing conviction .25
 "An Act to regulate fees," approved April 15, 1846, re-enacts the law of June 13, 1799, cited above, as to fees of justices, and the act of November 30, 1801, as to fees of constables.—*Revised Statutes*, 1847, 466, 468; *Revision of New Jersey*, 406.

V.

Recent legislation as to fees of Justices and Constables.

No attempt was made, or at least no law was passed, to change the fees of justices and constables, as fixed by the act of 1799, until 1871, when there was enacted "A further supplement to an act entitled 'An act constituting courts for the trial of small causes,'" the act being approved April 6, 1871.—*Pamph. Laws*, 1871, 116; *Rev. of N. J.*, 565. This supplement to the act giving justices civil jurisdiction undertook to fix the fees of justices and constables in *criminal* cases, as follows :

"2. That the following and no other fees shall be allowed to justices of the peace and constables in this state; to justices and constables in criminal cases, and that no fees be demanded from parties applying to justices or constables for their services * * *

"JUSTICES' FEES.

"For drawing complaint and taking affidavit when not exceeding one sheet or folio, thirty-five cents; and for all in excess of one folio, at the rate of fifteen cents per folio.

issuing every warrant	.40
drawing conviction	.40
commitment	.40
each recognizance	.40

JUSTICES' AND CONSTABLES' FEES IN CRIMINAL CASES. 15

warrant to jailor to discharge prisoners	.40
issuing every subpoena	.10
taking examination in writing when required by law, fifteen cents per folio.	
examination in a case where not required to be taken in writing	.50
swearing each witness	.10
making and certifying bill of items of costs in each case	.15
“In cases arising under the act for suppressing vice and immorality, justices and constables shall be entitled to the same fees as for like services in other criminal cases.	
“For a trial before two justices under the sup- plements to the act entitled, ‘An Act to describe, apprehend and punish disorderly persons,’	1.50
making every decree or order required under the supplements to said act to be made by two justices	1—
drawing, certifying and sending to the judge of the circuit court, a copy of complaint and commitment, in a case where a boy un- der fourteen years of age is charged with crime and he is considered a fit subject to be sent to the state reform school	1—

“FEES IN CASES OF TRIAL FOR PETIT LARCENY BEFORE TWO
JUSTICES.

“For issuing warrant to bring the accused before two justices	.40
trial before two justices	1.50
drawing and preferring charge to prisoners	1—
drawing conviction	.50
commitment	.50

making and certifying each copy of bill of items of costs .15

“CONSTABLES’ FEES IN CRIMINAL CASES.

“For serving every warrant against one or more persons—for each person .80
 serving every commitment 1—
 and the constable shall be entitled to mileage at the rate of three cents per mile (to be computed as hereinbefore provided) for the service of all warrants or commitments. attending prisoners under trial for petit larceny, or under examination before a justice .50
 serving every subpoena, where the distance is over one mile .35
 but where the distance is not over one mile .20

“For all services not enumerated in this act, justices and constables shall be entitled to receive fees as now fixed or may hereafter be provided by law.”

“An act concerning disorderly persons,” Revision, approved April 9, 1875 [*Rev. of N. J.*, 307], reads :

“17. Justices and constables shall receive such fees for their services as are allowed them for like services in courts for the trial of small causes * * * the justice shall be entitled to the like sum for making the adjudication and order, the losing party to pay all costs of suit.”

This section refers to costs in cases of desertion by a husband of his wife or other family.

“A supplement to ‘An act concerning disorderly persons,’ approved April 9, 1875,” approved January 29, 1878, as amended by act approved March 21, 1878 [*Pamph. Laws*, 1878, pp. 11 and 167], provides :

"That the fees of the justice of the peace, magistrate or alderman for committing, and constable or police officer for making the arrest, shall be twenty-five cents to the justice of the peace, magistrate or alderman for committing, and fifty cents to the constable or police officer making the arrest, and the sums herein stated shall be in full of all other fees and charges whatsoever."

Where the defendant is convicted under the "Act concerning disorderly persons," and sentenced to imprisonment, the justice of the peace is entitled to his fees from the county collector, upon presenting a certified bill with the conviction in the case, certified by the county clerk as to the correct amount.—*Rev. of N. J.*, p. 288, Sec. 109.

"An act to define and suppress tramps," approved April 19, 1876; amended by act approved March 9, 1877 [*Pamph. Laws*, 1876, p. 220; *Pamph. Laws*, 1877, p. 167; *Rev. of N. J.*, p. 1209], provides :

"7. That for each arrest or commitment made under this act, there shall be paid to the committing magistrate the sum of twenty-five cents, and to the officer making such arrest the sum of fifty cents for their services under the provisions of this act, and no more; * * * *provided, however*, that the constable or police officer shall be entitled to the actual car fare he may have to pay for himself and his prisoner or prisoners in taking them to the county jail."

As regards some of the provisions above, it should be noted that in Passaic county justices of the peace have no power to try persons for petit larceny.

"An act to facilitate judicial proceedings in the county of Passaic," approved March 28th, 1871 (*Pamph. Laws*, 1871, p. 925) provides :

"9. Hereafter no person charged with larceny in said county shall be tried otherwise than before said court

of special quarter sessions, hereby provided for, or on regular indictment according to the usual course of proceedings at law."

The same provision is included in the acts providing for Law Judges in other counties.

And justices of the peace in Paterson and Passaic, and in most of the other cities of the State, have been deprived of their jurisdiction under the Disorderly Act and the Tramp Act, as follows :

"An act to amend an act entitled 'a supplement to the act entitled "an act concerning disorderly persons, approved April 9, 1875,"' which supplement was approved March 9, 1877, provides :

"1. That the first section of the act of which this is amendatory be and the same is hereby amended to be and read in the words following, to wit :

"That in all cities in this state having police courts or police justices, or a recorder's court, or in any city which may hereafter have such courts, or either of them, all persons arrested for the violation of the provisions of the act entitled 'an act concerning disorderly persons,' approved April 9, 1875, or for any violation of the provisions of the act entitled 'An act to define and suppress tramps,' approved April 19, 1876, shall be taken for a hearing before such police court, or police justice, or such recorder's court, and that in all such cities no justice of the peace shall have power to hear, try or determine such cases, any law, custom or usage to the contrary notwithstanding; and when the police justice or the recorder is paid a fixed salary out of the city treasury, all fees received by him for services under the aforesaid acts shall be paid into the city treasury, and where the arrests are made by any police officer of the city, receiving a fixed salary out of the city treasury, all fees to which he would be entitled for ser-

vices under the said acts shall be paid into the city treasury, and all fines collected by any such salaried police justice or recorder under the aforesaid acts shall be paid into the city treasury once a month."—*Pamph. Laws, 1880, p. 210 ; Supp. Rev. of N. J., 220.*

Justices and constables have been paid since 1871 the fees set out in the act of that year prescribing their fees in criminal cases.

The Court of Errors and Appeals at the June Term, 1887, decided that said act was unconstitutional, by reason of defective title.

The syllabus of this decision reads :

"1. The act entitled 'a further supplement to an act entitled "an act constituting courts for the trial of small causes,"' the provisions of which have relation to criminal procedure, is unconstitutional, the title being misleading, and not being in compliance with Art. IV, section 7, paragraph 4 of the constitution, which requires the object of every law to be expressed in its title."—*William A. Lane v. State, 20 Vroom, 673.*

The constitutional provision referred to by the court reads :

"To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title."

The effect of this decision is to refer us back to the Fee Bill of 1846 to ascertain and determine the legal fees of justices and constables in criminal cases. Besides their fees constables are allowed by law their necessary expenses in executing warrants and commitments, as will be noticed hereafter.

VI.

Payment of Justices' and Constables' fees from the Public Treasury.

From the early history of justices and constables, already given, it would appear that they were originally men of substance and distinction, who were for that reason selected for these positions.

It is also evident that at an early day they became solicitous regarding their compensation.

The history of legislation on the subject shows that originally their fees (or compensation) were exacted from the defendants unfortunate enough to fall into their hands, the law providing that the penalties and costs should be levied and made by distress of goods and chattels, lacking which the defendant had to suffer corporeal punishment.

The Roman law was this :

“The punishment of an injury, according to the Twelve Tables, was a return of the like injury, if any limb was broken ; but, if a blow only was given, or a single bone broken, then the punishment was pecuniary, which was not without effect among the anti-ents who lived in great poverty.”—*Justinian's Institutes*, Book IV., Title IV., Par. 7.

Pecuniary punishments also prevailed among the ancient Germans and the Franks, and the parties paid the costs.—*Montesquieu's Spirit of Laws*, ed. London, 1773, I., 133 ; II., 274, 341-3.

The masters or owners of servants or slaves were personally liable for costs incurred in the punishment of their human chattels.

There is no doubt that it soon became the custom for complainants to pay the fees exacted, to hasten the steps of leaden-footed Justice in quest of offenders who

if caught would be unable to pay the charges of the officers.

With the advance of civilization, English jurisprudence, upon which our own is so largely based, gradually overruled the personal interest of the complainant, and took the ground that crimes committed against the life, liberty, member, health, reputation or property of the citizens were crimes against society, and must be punished accordingly, without regard to the citizen's pecuniary interest in the matter.

A full recognition of this principle would involve the assumption by the State of all expenses incurred in enforcing the laws. This is done in the payment of the salaries of all Judges of our courts out of the public treasury, as well as Sheriffs, Constables, Prosecutors and other court officers.

The Act of 1801, already cited, was the first making the public treasury directly liable for the fees of justices and constables, and then only in cases of State prison convicts. As remarked, that act was repealed in 1804.

The next attempt in this direction was by an act passed May 30, 1820, entitled "A supplement to an act entitled 'An act making provision for carrying into effect the act for the punishment of crimes,' passed Feb. 15, 1798."

Sec. 3 provides that in case of conviction the costs of prosecution shall be paid to the sheriff by the state treasurer.

"4. In case the offender or offenders shall be sentenced to pay a fine, or to imprisonment in the county gaol, or to be whipped, and he, she or they are unable to pay the costs of prosecution, it shall be the duty of the county collector of said county, and he is hereby directed to pay the same to the sheriff of the said county on the bill of costs duly taxed being shown

him. * * * And when on any indictment there is an acquittal, the sheriff shall pay the jurors', witnesses' and constables' fees, and the said bill of fees, on proper vouchers produced, shall, on demand, be repaid to the said sheriff by the county collector."

"5. When there shall be judgment of acquittal before justices of the peace, in cases where by law they may try persons charged with any crime against the state, the said justices shall make out a bill of the fees allowed by law to said justices, witnesses for the state, and constables, and certify the said bill to be just and true, to the court of general quarter sessions, at their lawful stated term, to be by them approved, and by their order, certified by the clerk of the county, who shall deliver the same to the justice, to be by him recorded in his docket, and then delivered to the constable, who shall draw on the county collector for the same, and make return of the said money to said justice, to be by him paid to the persons entitled thereto."—*Justice's Laws*, 1821, 729.

The Act of April 6, 1871, making a new schedule of fees for justices and constables, was amended during its passage by the insertion of these clauses: "that no fees be demanded from parties applying to justices or constables for their services, but shall be paid out of the funds of the county in which such services were rendered; *provided*, the presiding judge of the court of oyer and terminer shall approve of such payment."—*Pamph. Laws*, 1871, p. 116; *Rev. of N. J.*, p. 565.

This was amended in 1872 by adding the words: "and such judge shall receive such fees for his services as the county clerks receive for like services, but he shall in no case approve such payment before conviction."—*Pamph. Laws*, 1872, p. 38; *Rev.*, p. 567.

The original act having been declared unconstitutional, the amendatory act of course falls with it.

In setting aside the act in question, the Court of Errors and Appeals held :

"It is not extortion for a justice of the peace to ask or demand from the complainant in a criminal case, at the time the complaint is made, the statutory fees for his services."—20 *Vroom*, 673.

Some justices of the peace seem to be under the impression that this decision authorizes them to demand fees from the county collector immediately upon rendering the service. But the constitutionality of the Criminal Procedure Act of 1874, which regulates the payment of justices' fees by the county, was not questioned in this case.

This decision overrides that of the Supreme Court, Nov. T., 1868, when Chief Justice Beasley held :

"The justice is not, by law, justified in charging anyone for any of his services on a criminal complaint laid before him, unless upon the trial and conviction of the party charged. This rule seems to be founded in the policy of preventing these magistrates from receiving any compensation except in that class of cases in which the result testifies to the solidity of the complaint, the purpose being to prevent proceedings of a vexatious and frivolous nature. I am aware that it has been the practice with some magistrates, in complaints for the minor offences, to refuse to issue a warrant until their fees have been paid ; but there is no legal ground for such a course, and, in my judgment, such conduct constitutes a clear case of extortion. The law is not so unwise as to make the enforcement of the criminal code dependent on the ability of the party injured to pay for the services of its officers ; and upon a sufficient oath, a magistrate is bound to proceed, independent of any mercenary consideration."—*State v. Maires*, 7 *Vroom*, 142.

The Court of Errors and Appeals, in the case already cited, sustains the last-quoted view, holding :

"3. A justice of the peace cannot lawfully refuse to perform his duties as a conservator of the peace unless his fee be first paid."—20 *Vroom*, 673.

The provisions of the act of May 30, 1820, already quoted, in relation to the payment of costs in criminal cases, were re-enacted in the Revised Statutes of 1846, and again in "An act regulating proceedings in criminal cases"—Revision, approved March 27, 1874 :

"99. In case the offender or offenders shall be sentenced to pay a fine, or to imprisonment in the county jail, and he, she or they are unable to pay the costs of prosecution, it shall be the duty of the county collector of said county, and he is hereby directed to pay the same to the sheriff of the said county, on the bills of costs duly taxed being shown him * * * and when on any indictment there is an acquittal, the sheriff shall pay the witnesses' and constables' fees, and the said bill of fees, on proper vouchers produced, shall on demand be repaid to the said sheriff by the county collector, from any moneys in his hands belonging to the county, and be allowed to him in the settlement of his accounts."

"101. When there shall be judgment of acquittal before any court of justices of the peace, in cases where by law they may try persons charged with any crime against the state, the said justices shall make out a bill of the fees by law allowed to said justices, witnesses for the state and constables, and certify the said bill to be just and true to the court of general quarter sessions, at their lawful stated term, to be by them approved, and by their order certified by the clerk of the county, who shall deliver the same to one of the said justices, to be by him recorded in his docket, and then delivered to the constable, who shall draw on the county collector for the same, and make return of the said money to said justice, to be by him paid to the person entitled thereto."

—*Rev.*, 286.

The Act of April 6, 1871, fixing fees of justices and constables, contained (Sec. 3) a provision as to the method by which justices should get their fees from the county, which was substantially embodied in the following section of the Criminal Procedure Act, approved March 27, 1874:

"108. Every justice of the peace shall make a bill of particulars of the costs in each criminal case before him, and certify and send up the same with the papers in the case, to the clerk of the grand jury in his county and if an indictment be found in the case, said bill of costs shall be handed by him to the county clerk, who shall review and correct the same, if necessary, and shall certify the correct amount to the county collector, who thereupon shall pay the amount so certified to the justice, and said justice shall refund to the complainant so much of said costs as shall have been paid by complainant to said justice."—*Rev.*, 287.

Sec. 109 provides for the payment by the county collector of the costs in case a person is convicted under the Disorderly Act of 1799 (since repealed), and supplements, or the "act concerning disorderly persons," and sentenced to imprisonment; or in case an offender is convicted of any offence before two justices, and sentenced to imprisonment or to pay a fine and costs, and committed till fine and costs are paid.—*Rev.*, 288.

The law is more liberal as to the payment of constables' fees, evidently regarding the constables as ministerial officers who have not the same discretion as justices as to the performance of their duties.

"A further supplement to the act entitled 'an act constituting courts for the trial of small causes' (Revision), approved March 7, 1874," which supplement was approved February 5, 1880, enacted:

"That the constables of the several counties of this

state shall be entitled to receive from the collector of said county, their lawful fees for serving any criminal warrant, together with any proper and reasonable expenses by them incurred in conveying any offender to the county jail for commitment to the custody of the sheriff, whether such offender shall be indicted or not, for the offense for which such offender may have been committed; *provided*, that the bill of expenses so incurred shall be itemized and shall be certified by the prosecutor of the pleas of said county to be proper and reasonable."—*Pamph. Laws*, 1880, p. 12; *Supp. Rev.*, 406.

By a parity of reasoning this act would doubtless be set aside by the Court of Errors and Appeals as unconstitutional, on the same grounds as the act of April 6, 1871—to wit, a misleading title.

An act without that objection is "A supplement to an act entitled 'An act to regulate fees,' approved April 15, 1846," which supplement was approved March 31, 1882. It provides:

"The several constables of this state shall be entitled to receive from the collector of the county wherein any warrant issues, their lawful fees for serving any criminal warrant that may be issued by any justice of the peace or police justice duly qualified and commissioned as such in any county in this state, whether any such offender be indicted or not for the offense of which he, she or they may have been charged."—*Pamph. Laws*, 1882, p. 249; *Supp. Rev.*, p. 298.

Constables are also allowed for their *expenses* in certain cases, by the following acts:

"A supplement to 'An act to regulate fees,' approved April 15, 1846," supplement approved April 6, 1871:

"1. That in all cases where any sheriff, coroner, constable or special deputy shall receive any bench warrant, state warrant, *capias ad testificandum*, or other compul-

sory process whatsoever, issued by any court of record or justice of the peace of this state, and to execute the same it shall become necessary for such officer to go beyond the limits of his county, the said officer shall receive from the county collector of said county in which said process is issued, his traveling and other expenses necessarily incurred in such service, whether he shall be able to execute the same or not; *provided*, a particular statement of said expenses shall be made out and sworn to by said officer, and the same certified to as reasonable and just by the prosecutor of the pleas and the presiding judge of the court of oyer and terminer of the county from which said process issued."—*Pamph. Laws*, 1871, p. 101; *Rev.*, p. 410.

"An act regulating proceedings in criminal cases," Revision, approved March 27, 1874, says :

"106. In all cases where any sheriff, coroner, constable or special deputy shall execute any bench warrant, state warrant, *capias ad testificandum*, or other compulsory process whatever, issued by any court of record or justice of the peace of this state, and in the execution thereof it shall become necessary for such officer to go beyond the limits of his county, the said officer shall receive by way of compensation for the service of such process, in addition to the fees now allowed by law in lieu of mileage, his traveling and other expenses necessarily incurred in such service, a particular statement of which expenses shall be made out and sworn to by such officer, and when certified to as reasonable by the prosecutor of the pleas of the county from which such process issued, shall be included in the taxed bill of costs and collected and paid as other fees in criminal cases."—*Rev.*, 287.

The latter act, it will be observed, only allows for expenses incurred in *executing* the warrant or other compulsory process.

Recurring again to the fees of justices, three questions arise :

1. Are justices of the peace entitled to hold an examination in the case of every defendant brought before them ?

Under the fee-bill of 1871 it has become customary for justices to charge the county for an examination in almost every case, and almost invariably fifty cents, the fee allowed by that act "for examination in a case where not required to be taken in writing."

"The statute of 1 and 2 Philip & Mary directs justices of the peace, in case of manslaughter and other felonies, to take the examination of the prisoner, and the information of the fact, and put the same in writing, and then to bail the prisoner, if there be cause, and to certify the same, with the bail, at the next gaol-delivery; and therefore, in cases of great moment, they bind over the prosecutors, and bail the party, ifailable, to the next gaol-delivery."—2 *Hale's Pleas of the Crown*, 46.

The reason for this procedure is obvious. Justices of the peace had not jurisdiction in felonies. They had jurisdiction in the minor offenses, which were triable before them either in or out of the Quarter Sessions, which court was originally composed of the justices of the peace of the county, a rule which prevailed, with some modifications, in New Jersey until changed by the constitution of 1844. It was of course unnecessary for the justices to take the written examination of offenders who would come before them for trial.

"An act concerning justices of the peace and courts of general quarter sessions," passed November 22, 1794, provides :

"VI. All and every justice and justices of the peace, before whom any person shall be brought for treason, misprision of treason, murder, manslaughter, sodomy,

rape, arson, burglary, robbery, larceny, or forgery or for suspicion thereof; or for any crime punishable with death, or suspicion of such crime, shall, before he or they commit or send such offender to prison, take in writing, the examination of such offender, and information of those, who bring him or her, of the fact and circumstances thereof; which examination and information shall be signed by such informant, and by the justice or justices before whom the same shall be taken; and also by the examinant, if he shall be willing to sign the same; and the said justice or justices shall deliver or transmit the said examination and information to the next court, in which such offender is or ought to be tried for such offence," etc.—*Paterson's Laws*, 130.

This provision was incorporated in the Revised Statutes of 1846 (p. 225), and almost verbatim in the Revised Laws of 1874 (*Rev.* 266). As the law stands, justices are authorized and required to take examinations in writing in cases of treason, misprision of treason, murder, manslaughter, sodomy, rape, arson, burglary, robbery, larceny or forgery, or for suspicion thereof. No examination, written or otherwise, is authorized or required in any other cases.

2. The Fee Bill of 1747-8 allowed the justice of the peace "for every warrant of appearance, eighteen pence."

The Fee Bill of 1799 changed this to read: "For a warrant against a person for a breach of the peace or a misdemeanor, twenty-five cents."

The language of "An act to regulate fees," approved April 15, 1846, is the same.

"A crime, or misdemeanor, is an act committed, or omitted, in violation of a public law, either forbidding or commanding it. This general definition comprehends

both crimes and misdemeanors, which, properly speaking, are mere synonymous terms; though, in common usage, the word 'crimes' is made to denote such offences as are of a deeper and more atrocious dye; while smaller faults, and omissions of less consequence, are comprised under the gentler name of 'misdemeanors' only."—4 *Blackstone*, Chap. I, p. 4.

"In the English law, *misdemeanor* is generally used in contradistinction to *felony*, and misdemeanors comprehend all indictable offences which do not amount to felony; as perjury, battery, libels, conspiracies, attempts and solicitations to commit felonies, etc."—*Christian*.

"An act for the punishment of crimes," Revision—approved March 27, 1874, defines most of the crimes therein specified, including most of what were formerly deemed felonies, and therefore punishable by death, to be misdemeanors, and also contains this general provision:

"192. Assaults, batteries, false imprisonment, affrays, riots, routs, unlawful assemblies, nuisances, cheats, deceits, and all other offences of an indictable nature at common law, and not provided for by this or some other act of the legislature, shall be deemed misdemeanors."—*Rev.*, 261.

These changes in the law, by our Crimes Act, practically bring nearly every offense under the head of either "a breach of the peace or a misdemeanor," for issuing warrants in which cases the justice of the peace is allowed fees.

3. By Sec. 108 of the Criminal Procedure Act justices of the peace are allowed their fees only in case an *indictment* is found. Are they, then, entitled to no fees where the defendant applies for trial on an allegation in the Special Sessions?

"An act to facilitate judicial proceedings in the county

of Passaic, approved March 28, 1871, provides, in relation to the court of Special Sessions, that "the proceedings for bringing such person for trial before said court, his accusation, plea, trial and sentence, subpoenaing of witnesses, and the costs of such proceedings, shall be in conformity with law * . * * and the costs now taxable thereunder, if not paid by the party convicted, shall be paid by the board of chosen freeholders."—*Pamph. Laws*, 1871, p. 927.

This would seem to make it clear that, at least in cases of convictions, in the Special Sessions, the justices of the peace are entitled to the same fees as on indictments in the Oyer and Terminer and General Quarter Sessions.

VII.

Summary.

I. FEES OF JUSTICES OF THE PEACE :

From what has gone before it appears that justices of the peace are entitled to the following and no other fees :

A.—*In Criminal Cases :*

For a warrant against a person for a breach of the peace or a misdemeanor	.25
“ taking a written examination (but only in the cases required by law, as specified above), for each sheet (or one hundred words)	.14
“ a mittimus (commitment)	.25
“ every recognizance	.25

The fees as above (except for a recognizance, which is paid by the prisoner) are payable from the county treasury

1, in case the defendant is *indicted*, and it shall so appear by the certificate of the clerk of the grand jury ;

2, in case the defendant is *convicted* in the Special Sessions.

In every case there must be a certificate from the county clerk to the county collector as to the correct amount of the bill of costs.

B.—*Under the Disorderly Act* :

For committing the offender to the county jail or workhouse .25

This fee is payable from the county treasury in case the defendant is convicted and sentenced to imprisonment.

C.—*Under the Tramp Act* :

For committing the offender .25

The Tramp Act of 1876 (Sec. 7) provided that the fees should "be paid out of the county treasury." The act of 1877, in amending this section, omitted all directions as to how the fees should be paid.

II.—FEES OF CONSTABLES :

Constables are entitled to the following and no other fees and compensation :

A.—*In Criminal Cases* :

For serving a warrant in all criminal cases .60

" every mile of travel in serving any summons or warrant, issued by a justice of the peace, after the first mile, the distance to be computed by counting the number of miles in and out, by the most direct route from the place where such process is issued and returnable .04

The above fees he is entitled to receive from the county collector, whether an indictment be found or not.

He is also entitled to receive from the county treasury his proper and reasonable expenses in conveying any offender to the county jail for commitment to the custody of the sheriff, according to the law cited, the consti-

tutionality of which is doubtful. But even if it be good law, is the constable entitled to such expenses where the prisoner is committed to the custody of the keeper or warden of the county jail, in counties where the jails are not in the custody of the sheriffs?

He is also entitled to reimbursement for proper, reasonable and necessary expenses incurred in *executing* warrants or other compulsory process beyond the county, to be approved by the prosecutor, and paid by the sheriff as other taxed costs in criminal cases.

B.—*Under the Disorderly Act :*

For making the arrest .50

C.—*Under the Tramp Act :*

For making the arrest .50

He is also entitled to the actual car fare he may have to pay for himself and his prisoner or prisoners, under the Tramp Act, in taking them to the county jail.

The law is silent as to how or by whom the fees under the last two acts cited above should be paid.