

Constables are, by the common law, conservators of the peace within their several limits. 2 *Haw.* 33. *Com.* 6. *Dalt.* c. 1.

And therefore if any man shall make an assault upon another in the presence of the constable, or shall threaten to kill, beat or hurt another, or shall be in a fury ready to break the peace, the constable may commit him to the stocks, or other safe custody for the present, and after may carry him before a justice, or to gaol, until he shall find sureties for the peace. *Dalt.* c. 1.

It hath been always holden, that the constable is the proper officer to a justice of the peace, and bound to execute his warrants; and therefore it hath been resolved, that where a statute authorises a justice of the peace to convict a man of a crime, and to levy a penalty by warrant of distress, without saying to whom such warrant shall be directed, or by whom it shall be executed, the constable is the proper officer to serve such warrant, and indictable for disobeying it. 2 *Haw.* 62.

Constables are also to attend on coroners for executing their warrants. 2 *H. H.* 59. *Woods' Inst.* b. 4. c. 1.

They ought also to attend upon the justices at the gaol delivery; and also at the sessions of the peace, to return warrants, and present offences. *Cr. Cir. Com.* 34.

The duty and power of constables, in respect to particular matters, may be found under different titles throughout this work, references to which are made in the INDEX, under the word CONSTABLE.

And for his power and duty for executing the warrants of justice of the peace—See title ARREST.

See TEN POUND ACT, in the APPENDIX.

IV. *His indemnity and protection in his office.*

If an action is brought against a constable, for any thing done by virtue of his office, he, and also others which in his aid, or by his command, shall do any thing concerning his office, may plead the general issue, and give the special matter in evidence, and if he recovers, he shall have double costs. 1 *R. L.* 233. 4.

And the action shall be laid in the county where the trespass or fact was committed. 1 *R. L.* 234.

C O N V I C T I O N .

A CONVICTION, in the sense in which it is here used, is a record of the summary proceedings upon any penal statute, before one or more justices of the peace, or other persons duly authorized, in any case where the offender has been convicted and sentenced. *Boscawen's Pen. Con.* 7.

This mode of proceeding was first introduced for the greater ease of the citizen, by doing him speedy justice, and by not harassing the freeholders with frequent and troublesome attendances to try every minute offence. *4 Black. Com. 280.*

And this authority being special and in restraint of the common law, it must appear on the face of the proceedings, that it has been strictly pursued according to the title of the act by which it was created; that the justice has jurisdiction in the case, and that rules similar to those adopted by the common law in criminal prosecutions, and founded in natural justice, have been observed, unless the statute (as it does in some instances) expressly dispences with the form of stating them. *Williams' Just. 545.*

And it is reasonable that these convictions should be construed with strictness, because they must be taken to be true against the defendant. *1 Burr. 613.*

But although the superior courts of justice are strict in requiring a precise specification of the offence, so as to give the magistrate jurisdiction; yet if the other proceedings are stated with a reasonable degree of accuracy, the court will not be astute in discovering defects in such convictions, for whether it was expedient that those summary jurisdictions should have been erected, was a matter for the consideration of the legislature; and so long as they exist, the court ought to pursue the intent of those who created them, and expound their acts in so reasonable a manner as that they may be executed. *1 Ld. Raym. 581. 2 Term. Rep. 18. Boscawen 8, 9, 10.*

Therefore in whatever light they may have formerly been viewed, yet the people are now convinced, that they derive considerable advantage from the exercise of the powers delegated to the justices of the peace, and in modern times they have received every support from the courts of law. *2 Term. Rep. 18.*

In these convictions, it is necessary that there should be, *first*, an information or charge against the defendant; *secondly*, a summons or notice of such information, in order that he may make his defence; *thirdly*, his appearance or non-appearance; *fourthly*, his defence and confession; *fifthly*, the evidence against him in case he does not confess; and, *sixthly*, the judgment or adjudication. *Williams' Just. 546.*

And in general all these matters must be particularly set forth in the record of the conviction. *Ib.*

General form of conviction.

County of } ff. **B**E it remembered, that on the day of in the year
of our Lord one thousand eight hundred and at
in the county of aforesaid, A. I. of comes before us, J. P. and S. B.
Esquires, two of the justices assigned to keep the peace in and for the said coun-

ty, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and gives us, the said justices, to understand and be informed that one A. O. of in the said county, yeoman, on the day of now last past, at in the said county, did [*here set forth the fact in the words of the statute, as near as may be*] against the form of the statute in such case made and provided: And afterwards upon the aforesaid day of in the year aforesaid, at in the county aforesaid, he, the said A. O. after being duly summoned in this behalf before us, the justices aforesaid, appears and is present, in order to make his defence against the said charge contained in the said information, and having heard the same, he, the said A. O. is asked by us, the said justices, if he can say any thing for himself why he should not be convicted of the premises above charged upon him in form aforesaid: And thereupon he says that he is not guilty of the said offence, [*or pleads and says that, as the defence may be*].—Whereupon one credible witness, to wit, A. W. of yeoman, comes before us, the said justices, and upon his oath, the same oath being by us then and there duly administered, and in the presence as well of the said A. I. as of the said A. O. deposes, swears, and upon his oath aforesaid, affirms and says, that the aforesaid A. O. on the day of in the year aforesaid, at in the county aforesaid, did [*here again set forth the fact, or so much thereof as is sufficient to convict the offender*]. And thereupon the aforesaid A. O. the day of in the year aforesaid, before us, the justices aforesaid, by the oath of one credible witness aforesaid, according to the form of the statute aforesaid is convicted; and for his offence aforesaid has forfeited the sum of of lawful money of the state of New-York, to be distributed as the statute aforesaid directs. In witness whereof, we, the said justices, in this present record of the conviction as aforesaid, have set our hands and seals at in the county aforesaid, the day and year first above written.

If he confesses the fact, then say—And because the said A. O. has nothing to say, nor can say any thing in his own defence touching and concerning the premises aforesaid, but does of his own accord freely and voluntarily acknowledge and confess all and singular the said premises to be true, in manner and form as the same are charged upon him in the said information; and because all and singular the premises being heard, and fully understood, by the said justices, it manifestly appears to us [*or if the party has been summoned, and does not appear, then say*].—Whereupon, on the said day of in the year aforesaid, at in the county aforesaid, he, the said A. O. was duly summoned in this behalf, to appear before us in order to make his defence against the said charge contained in the said information, but the said A. O. neglects to appear before us, and does not appear, nor make any defence against the said charge as aforesaid: Therefore, we, the said justices, on the said day of in the year aforesaid, at in the county aforesaid, do proceed to examine into the truth of the said complaint: And A. W. of a credible witness, comes before us, the justices aforesaid, and upon his oath, &c.

And gives us to understand and be informed.] A conviction ought to be on an information or complaint precedent. M. 11. W. K. & Fuller. Ld. Raym. 510.

Being duly summoned.] T. 11. G. K. & Venables. The court were unanimously of opinion, that the party ought to be heard, and for that purpose ought to be summoned in fact; and that if the justices proceeded against a person without summoning him, it would be a misdemeanor in them, for which an information would lie. Ld. Raym. 1406.

And in the case of *K. and Allington, H. 12 G.* on affidavit that no summons was had, the court granted an information against the justice who made the conviction. *Str. 678.*