

THE COMMONWEALTH *against* DEACON.

The keeper of the prison is bound to receive a person arrested and brought to him by a constable, and charged with a breach of the peace in his presence.

THIS was an indictment found in the Mayor's Court of the city of *Philadelphia*, against *Israel Deacon*, keeper of the prison of *Philadelphia*, and removed to this Court by *certiorari*. It charged the defendant with refusing to *receive into his custody, *Albert Canfire*, who was arrested by *John Topham*, a constable of the said city, for committing a breach of the peace in his presence. The indictment was tried in *December* last, before DUNCAN J. at *Nisi Prius*, when a verdict was found for the Commonwealth, subject to the opinion of the Court, whether the offence described in the indictment was indictable. [*48]

Kittera, for the Commonwealth.

The inspectors of the prison wish the question decided, whether the keeper of the prison is bound to receive into his custody, persons arrested by a constable, under the circumstances described in the indictment. There can be no doubt that the constable had a right to arrest the party, and keep him safe till he could have a hearing before a magistrate. Where is he to keep him? His own house is not safe. The authorities show, that in every case of treason, felony, and actual breach of the peace, the offender may be apprehended without warrant; and even though no crime were actually committed, a peace officer would be justified if he acted on the information of another. 6 *Bac. Ab.* 572. 1 *Chitt. Cr. L.* 14. 16. 40. *Hawk. B.* 2. *Ch.* 16. *S.* 3. A justice who detains one for further hearing, (which should not exceed three days,) should keep him in the common jail.

Bradford, contra.

The object is to settle the law as respects the duty of the keeper. We contend, that he is not bound to receive a prisoner without a previous warrant from a justice. DALTON, (*Justice 4*,) lays it down, that if any

(The Commonwealth v. Deacon.)

man shall make an affray or assault upon another, in the presence of the constable, or threaten to kill, beat, or hurt another, or shall be in a fury ready to break the peace, the constable may commit the offender to the stocks, or to some other safe custody for the present, as his or their quality requireth, and after, may carry them before some justice of the peace or to the jail, until they shall find surety for the peace, which the constable may take by obligation, &c. *Hawkins*, in treating of this subject, confines it to cases of felony or treason. It would be of dangerous conse-

quence to say that a constable may arrest whom he chooses to charge, and lodge him in jail. This *Court has held, that common report will not justify a Judge in issuing a warrant, 3 *Binn.* 38. At all events, if the constable can commit, he should do it in writing, so that the ground of it may be distinctly stated.

Gibson, J. delivered the opinion of the Court.

Although the authorities are not decisive on this subject, they go a considerable length to establish the right of a constable to deposit a prisoner arrested without warrant, in the common jail for safe keeping, till he can be carried before a magistrate. Even a private person, who may have apprehended another for *treason* or *felony*, may convey him to the jail of the county; although it is said, the safer course is to cause him, as soon as convenience will permit, to be brought before a justice of the peace, and I cannot see any reason why a private person should not have the same authority on an arrest during an affray, which has taken place in his presence. A constable may put a party arrested for an affray in the stocks; and, in case of any offence for which the party suspected may be arrested, may convey him to the sheriff, or jailer of the county; although in this case also, and in every other of the kind, it is said to be the safest and best course, to carry the offenders before a magistrate as soon as circumstances will permit. This is the sum of what is found in the books on the subject; and without saying what would be the duty of a jailor in

OUR NOTE:
Constables
can arrest
without
warrant and
take the
person to the
magistrate,
sheriff or jail

(The Commonwealth v. Deacon.)

case of an arrest by a private person, I think it may fairly be inferred, he is bound to receive a prisoner offered by a constable for safe keeping. A constable is a known officer, charged with the conservation of the peace, and whose business it is to arrest those who have violated it. It would therefore be strange if, while all private persons are bound to obey and assist him in suppressing an affray, an officer of justice should be at liberty to refuse the most efficient assistance of all, the confinement of the parties engaged. The officers of justice are bound to assist each other in their several departments, and to afford each other all the facilities which the public means have put in their power. There may be cases of such urgency as not to admit of delay till a warrant of commitment can be procured, -as in the case of an affray near the jail; and there the necessity of the case would prove that the jailer ought to take

[*50] *charge of the parties actually engaged; and if he is bound to receive in one case, on the bare charge of a peace officer, I know not why he should not in another. There is no danger to the liberty of the citizen in this; for if the arrest and detention be improper, the prisoner can have instant redress by the writ of *habeas corpus*, and the constable may be punished by indictment, or subjected to damages in an action of trespass. On the other hand, were the law otherwise, the means of securing the persons of prisoners, and of acting with decisive effect in quelling affrays and riots, would be greatly and unnecessarily lessened. "I am therefore of opinion, that the indictment is sufficient.

OUR NOTE:

Prisons must take people arrested by constables.

OUR NOTE:

LEOs must help each other, including the constable.

OUR NOTE:

Constables have power to arrest.

Private persons must help when called upon for help.

April, 1822.]

OF PENNSYLVANIA.

47

(McNeilledge v. Galbraith and others executors of Thomas.)

estate (for the Court give no opinion how the real estate is to go) is to be divided share and share alike, *per capita* between the brothers and sisters of the testator, living at his death, and the children of such brothers and sisters as were then dead, and the mother of the wife. The distribution is deferred to the death of the wife, but that does not prevent the interest from vesting at the death of the testator. I had a strong desire to bring in the relations of the wife, who stand in the same relation to her, that the testator's relations stand to him. That was the only difficulty I had. But, on further reflection, I cannot see how this can be done; without introducing some other rule than the Statute; for the mother cannot be excluded; and if she takes, she takes as the relation of her daughter, and as the relation of the daughter, takes all. She is the sole relation, that can come in, and excludes all other relations under the Statute, and as the Statute is the only rule, under which any can claim under the devise, if they cannot take under the Statute, they cannot under this will.

THE COMMONWEALTH *against* DEACON.

The keeper of the prison is bound to receive a person arrested and brought to him by a constable, and charged with a breach of the peace in his presence.

THIS was an indictment found in the Mayor's Court of the city of Philadelphia, against *Israel Deacon*, keeper of the prison of Philadelphia, and removed to this Court by *certiorari*. It charged the defendant with refusing to *receive into his custody, *Albert Canfire*, who was arrested by *John Topham*, a constable of the said city, for committing a breach of the peace in his presence. The indictment was tried in December last, before DUNCAN J. at *Nisi Prius*, when a verdict was found for the Commonwealth, subject to the opinion of the Court, whether the offence described in the indictment was indictable.

Kittera, for the Commonwealth.

The inspectors of the prison wish the question decided, whether the keeper of the prison is bound to receive into his custody, persons arrested by a constable, under the circumstances described in the indictment. There can be no doubt that the constable had a right to arrest the party, and keep him safe till he could have a hearing before a magistrate. Where is he to keep him? His own house is not safe. The authorities show, that in every case of treason, felony, and actual breach of the peace, the offender may be apprehended without warrant; and even though no crime were actually committed, a peace officer would be justified if he acted on the information of another. 6 *Bac. Ab.* 572. 1 *Chitt. Cr. L.* 14. 16. 40. *Hawk. B.* 2. *Ch.* 16. *S.* 3. A justice who detains one for further hearing, (which should not exceed three days,) should keep him in the common jail.

Bradford, contra.

The object is to settle the law as respects the duty of the keeper. We contend, that he is not bound to receive a prisoner without a previous warrant from a justice. DALTON, (*Justice* 4,) lays it down, that if any

(The Commonwealth v. Deacon.)

man shall make an affray or assault upon another, in the presence of the constable, or threaten to kill, beat, or hurt another, or shall be in a fury ready to break the peace, the constable may commit the offender to the stocks, or to some other safe custody for the present, as his or their quality requireth, and after, may carry them before some justice of the peace or to the jail, until they shall find surety for the peace, which the constable may take by obligation, &c. *Hawkins*, in treating of this subject, confines it to cases of felony or treason. It would be of dangerous conse-

quence to say that a constable may arrest whom he chooses to [*49] charge, and lodge him in jail. This *Court has held, that common report will not justify a Judge in issuing a warrant, 3 *Binn.* 38. At all events, if the constable can commit, he should do it in writing, so that the ground of it may be distinctly stated.

GIBSON, J. delivered the opinion of the Court.

Although the authorities are not decisive on this subject, they go a considerable length to establish the right of a constable to deposit a prisoner arrested without warrant, in the common jail for safe keeping, till he can be carried before a magistrate. Even a private person, who may have apprehended another for *treason* or *felony*, may convey him to the jail of the county; although it is said, the safer course is to cause him, as soon as convenience will permit, to be brought before a justice of the peace, and I cannot see any reason why a private person should not have the same authority on an arrest during an affray, which has taken place in his presence. A constable may put a party arrested for an affray in the stocks; and, in case of any offence for which the party suspected may be arrested, may convey him to the sheriff, or jailer of the county; although in this case also, and in every other of the kind, it is said to be the safest and best course, to carry the offenders before a magistrate as soon as circumstances will permit. This is the sum of what is found in the books on the subject; and without saying what would be the duty of a jailor in case of an arrest by a private person, I think it may fairly be inferred, he is bound to receive a prisoner offered by a constable for safe keeping. A constable is a known officer, charged with the conservation of the peace, and whose business it is to arrest those who have violated it. It would therefore be strange if, while all private persons are bound to obey and assist him in suppressing an affray, an officer of justice should be at liberty to refuse the most efficient assistance of all, the confinement of the parties engaged. The officers of justice are bound to assist each other in their several departments, and to afford each other all the facilities which the public means have put in their power. There may be cases of such urgency as not to admit of delay till a warrant of commitment can be procured,—as in the case of an affray near the jail; and there the ne-

cessity of the case would prove that the jailer ought to take [*50] *charge of the parties actually engaged; and if he is bound to receive in one case, on the bare charge of a peace officer, I know not why he should not in another. There is no danger to the liberty of the citizen in this; for if the arrest and detention be improper, the prisoner can have instant redress by the writ of *habeas corpus*, and the constable may be punished by indictment, or subjected to damages in an action of trespass. On the other hand, were the law otherwise, the means of securing the persons of prisoners, and of acting with decisive

(The Commonwealth v. Deacon.)

effect in quelling affrays and riots, would be greatly and unnecessarily lessened. I am therefore of opinion, that the indictment is sufficient.

THE COMMONWEALTH *against* GILLAM.

INDICTMENT.

Under the Act of the 10th of March, 1817, the officer, appointed by the corporation of the city of Philadelphia for the cording of wood, has no right to enter on a private wharf or landing, unless wood be taken there which is subject to seizure; and the owner may lawfully prevent the officer from coming there for other purposes. The ordinance of the city of Philadelphia, of the 28th January, 1808, is, so far as concerns private wharves or landings, superseded by the Act of the 10th of March, 1817.

THIS case was argued by *Sykes* and *Tilghman*, for the Commonwealth, and *Purdon*, *C. J. Ingersoll*, and *Hopkinson*, for the defendant. The opinion of the Court was delivered by

TILGHMAN, C. J.—This is an indictment against *Samuel Gillam*, for an assault and battery, in which a verdict was found for the Commonwealth, subject to the Court's opinion on the validity of an ordinance by the citizens of *Philadelphia* in select and common councils assembled, regulating the cording of wood, &c., passed the 28th of *January*, 1808. The question arises on the fourth section of this ordinance, by which it is enacted, "that whenever any cord wood shall be landed for sale at any *private* wharf or landing within the city, the corder who shall superintend the nearest public wharf thereto, is enjoined and directed to inspect and measure the same, for which service he shall receive eight cents per cord, for the benefit of the corporation, to be paid *by [*51] the purchaser; and if any person shall prevent or oppose such corder in the execution of his duty therein, every such person shall, for every such offence, forfeit the sum of twenty dollars."

It is not denied, that the corporation has the right of regulating the cording of wood landed on the *public* wharves, which are the *property of the city*. But the present case relates to a *private* wharf, the owner of which contends, that he has a right to permit any person to land and sell wood, without the interference of the officers of the corporation, provided, each cord offered for sale be of the legal measure. In order to decide this question, we must take into consideration an Act of Assembly, passed on the same subject, the 10th *March*, 1817; for it is admitted by the counsel for the corporation, that if there be any inconsistency between the Act and the ordinance, the latter must give way. It seems that the Legislature had it in contemplation to make a complete provision on the subject, at least so far as concerned wood exposed to sale on ground not the property of the city; and this provision was to extend to the *county*, as well as the *city*. The Act is entitled "An Act for the better regulation of cord wood and bark exposed to sale within the city and county of *Philadelphia*." The first section ascertains the measure of a cord. The second section directs that all cord wood, brought to market within the city and county of *Philadelphia*, shall be at least four feet in length,