A HISTORY OF THE COMMON LAW PEACE BONDS

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In 1954 the Supreme Court of Canada ruled that a Canadian Justice of the peace possesses an ancient power to dispense "preventive justice" through the imposition of a common law peace bond[1]. This common law jurisdiction exists independently of the statutory provisions of the Criminal Code of Canada. It empowers a justice to compel a defendant to enter into one of two alternate recognizances in order to prevent an anticipated breach of the peace.

The extent of this ancient common law jurisdiction is uncertain however. The range of behavior covered by the common law sureties has been greatly expanded in a long line of judicial precedents extending back in time to the creation of this jurisdiction in early 12th and 13th century England. This paper examines the historical development of the "surety of the peace" and the "surety of good abearing" (good behavior) with a view to clarifying the application of this common law jurisdiction to Canada's contemporary criminal justice system.

The surety of the peace is of such ancient lineage that its common law roots cannot be traced with certainty. While Lambard suggests a Norman origin, there is no clear evidence of parallel developments in either Norman law or Norman institutions to substantiate such a link[2]. A demonstrable relationship does exist however, between the decline of the ancient Anglo-Norman institution of the frank-pledge in the 12th and 13th centuries, and the development of the surety of the peace in the same period. In an historical context, the surety of the peace was merely an extension of the "frank-pledge"

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[1] See [1] Mackenzie vs. Martin [1954] S.C.R.361; (1954) 108 C.C.C. 305. For a case comment see Williams, Glanville "Mackenzie vs. Martin: Case Comment "The Canadian Bar Review (1954), V.32.

[2] William Lambard, Eirenarcha. (1581) London, Professional Books Ltd., 1972 ed. at Cap.16, pgs.82 & 83. Other commentators simply conclude that this surety has its origin in the common law without assigning any precise origin. See for example Michael Dalton, The Countrey Justice. (1619) London, Professional Books Ltd., 1972 ed. at page 140. See also Ferdinando Pulton. De Pace Regis et Regni. (1609) London, Professional Books Ltd., 1973 ed., Cap.1 at page 70.

in a form made necessary by the political and social chaos caused by the Norman conquest of the year 1066. No understanding of the surety of the peace can thus be complete without some analysis of its historical antecedents. In concept, this surety closely parallels the ancient system of suretyship that preceded it.

Under early Saxon law, the "maegth" or blood kindred were directly responsible for injuries inflicted by any of its members upon a member of another clan. The maegth's liability to pay to the aggrieved family "wergild" or monetary compensation in an amount appropriate to the victim's social station made the kindred of the aggressor a surety for each. Avoidance of the blood feud was conditional upon the maegth's provision of the compensation demanded by law. The laws of Ine later expanded this suretyship to provide that where the maegth itself was not able to provide sufficient wergild, the obligation of the maegth became the liability of the larger non-family unit of the "gegildan" or clan. This provision reflected a growing tendency in late Saxon law to spread the burden of suretyship from the backs of the few to the shoulders of the many. In this way, compensation to the victim was assured and the blood feud averted, while the devastating financial consequence of suretyship to the aggressor's family was minimized.[3]

By the 10th century, this principle of suretyship became institutionalized through laws that required all freemen to participate in the "frith-borg" or "peace pledge", a social unit that guaranteed the principal's obligation to provide the wergild where the principal was found guilty of a crime. The frith-borg's liability for a "borgbriche" or breach of the peace was absolute. By the laws of Edgar pronounced in the year 960, every freeman was required to provide proof of frith-borg in an annual review before the Hundred Court

[3] W.A.Morris. The Frankpledge System. Harvard Historical Studies. V.14, Longman, Green & Co.,London, 1910 at pgs. 8-9.

presided over by an elected official known as the "hundredman".[4] The number of pledges required of an individual under the frith-borg was not fixed, but varied with the reputation and status of the principal in his community. Hence the primary sources record that a Kentish man adjudged by his Hundred to be of "evil repute" was required to have twelve pledges in borg.[5] Additional pledges were also required of those persons accused of crime, persons commonly known as "tyhtbysigmen"and those actually convicted through failure of the ordeal.[6]

The relationship between the principal and his pledges in borg under Saxon law was also not permanent, there being an explicit right to withdraw the pledge for a man adjudged guilty of crime following payment of the wergild.[7] The laws of both Ethelred and Canute thus required the convicted felon to find new pledges for his future good conduct as a condition of his return to the community.[8] The voluntary character of the relationship also resulted in a law that exempted the individual from proof of borg for a period of one year and a day from the point of taking up residence in a new community. This allowed the stranger time in the new community to develop the trust of his neighbors and so acquire the pledges to be produced in borg for the following year.[9]

As a condition of membership in Saxon society, all freemen were required to be enrolled in a "tithing". This was an administrative unit comprised of ten to twelve individuals charged with a "police" function. It was the tithing under the direction of its headman or "teothingman" who apprehended alleged criminals in a posse comitatus

[4] See Morris, ibid, at p.19.
[5] See Morris, ibid, at p.21.
[6] See Morris, ibid, at p.21-22.
[7] See Morris, ibid, at p.27.
[8] See Morris, ibid, at p.27.
[9] See Morris, ibid, at p.71.

formed for this purpose after the hue and cry was raised.[10] The tithing however, did not provide for the suretyship of its members, for this remained the exclusive function of the frith-borg.[11]

Under Saxon law a Lord, or a person of noble rank above freeman, was exempt from the obligations of borg and tithing. This was premised upon the assumption that a person of noble rank would have lands subject to levy to satisfy the wergild.[12] The Lord however, stood as borg for all those under his protection in a legal relationship of "mainpast". Those persons who could establish to the satisfaction of the Hundred a relationship in mainpast were exempt from the requirement of frith-borg. Their protector was bound to be their surety as long as they remained under his protection as a member of his household or as a retainer.[13]

The accountability of the frith-borg for a breach of the peace served to vigorously reinforce community values and deter crime in a society dependent upon a system of collective enforcement of local law and custom. The viability of the frith-borg as an instrument of social control was contingent, however, upon the continued existence of strong social commitments to maegth and gegildan. Saxon society was to undergo profound change, however, as a direct result of the Norman conquest of England in the year 1066.

Organized military resistance to the Norman invasion collapsed following the Saxon's defeat in the year 1066. Harold's death in battle at Hastings stripped the loose coalition of Saxon peoples of a leader. William I moved quickly to capitalize upon the confusion and dissension in Saxon ranks that followed. Pockets of resistance under

[10] See Morris, ibid, at pgs.16-17.
[11] See Morris, ibid, at pgs.10-15. Hence the laws of Canute in the year 1030 clearly differentiate between the obligation in borg and the obligation in tithing.
[12] See Morris, ibid, at p.14.
[13] See Morris, ibid, at p.72.

individual chieftains were swiftly isolated and overwhelmed by William's larger and better coordinated feudal levies.

The end of formal military resistance, however, did not result in the immediate pacification of the Saxon population. Resistance to the Norman occupation continued in the form of repeated riots, ambushes, and assassinations of William's Norman retainers. The vanquished population's reluctance to submit to the Conqueror's "peace" created a significant policing problem, a problem made more acute by the absence of any standing army of occupation. Under feudal law, there was a significant limit to the duration of military service that could be demanded of William's vassals. The Norman army assembled for the great invasion was soon to be dispersed.

To meet his immediate policing needs, "The Conqueror" adopted the ancient Saxon institution of the frith-borg, and altered it to suit his own purposes. Between the years 1066 and 1110, a number of reforms were introduced to the frith-borg in an effort to make the vanquished population collectively accountable to the Crown for breaches of the Conqueror's "peace".[14] Under this new regime, the entire Hundred was to be severely punished for the death of a Norman within its territorial limits, with the deceased to be presumed Norman until the fact of English descent could be proved by those otherwise subject to punishment by the Crown.[15]

Under William's "frank-pledge" system, the Saxon right to determine the individual's own surety group was replaced with compulsory and permanent enrollment in a tithing charged with general suretyship of its members. The voluntary pledging of a man to his neighbors under Saxon law thus became under William I an absolute duty of every individual in a tithing (usually ten in number) to serve as surety for the others

[14] See Morris, ibid, at pgs. 72-74.
[15] See Morris, ibid, at pgs.35-37. This was the celebrated Norman doctrine of "murdrum".

without right of refusal.[16] A Saxon requirement of multiple sureties for the tyhtbytsman was thus transformed into a general requirement of multiple sureties to keep the peace that was not dependant upon a poor reputation. The frank-pledge became "a system of collective bail fixed for individuals, not after their arrest for crime, but as a safeguard in anticipation of it."[17]

Under frank-pledge, the ancient police function of the Saxon tithing was merged with the general suretyship of the frith-borg. Enrollment in tithing was to become mandatory for all freemen at the age of 12, and was to continue until death.[18] The tithing's obligation to produce the accused for his trial was expanded to include liability for escape, and the expense of maintaining in custody those who took flight to avoid justice.[19] The liability of the tithing in frank-pledge, like its Saxon equivalent, was absolute, with heavy fines following "borg-briche" even if the accused was subsequently recaptured.[20] These new sources of liability were added to the traditional obligation of the borg to provide the wergild to the aggrieved victim of the principal's crime. The author ofthe Leges Edwardi thus notes that a tithing which failed in its obligation to produce an accused member for his trial was not only subject to a heavy fine payable to the Crown, butwas also liable to make good the damage caused by the principal to his victim.

Maintenance of the frank-pledge, like its Saxon predecessor, was a duty that continued to vest in the Hundred Court through an annual review of the tithing rolls. The Sheriff, who ensured that the King's interest in the proceedings was maintained, quickly replaced the locally elected "hundredman" under Norman rule however. The special

[16] See Morris, ibid, a pgs.29-35.
[17] See Morris, ibid, at p.2.
[18] See Morris, ibid, at pgs.70-71.
[19] See Morris, ibid, at pgs.93-98.
[20] See Morris, ibid, at pgs.92-93.

sitting of the Hundred to view the frankpledge thus became known in law as the "Sheriff's Tourn". A jury was utilized to view the frank-pledge to determine whether all tithingmen had come to the view,[21] and that their respective tithings were complete. This jury also determined who had come of age for enrollment in tithing and recorded the names of those in mainpast or who were otherwise exempt from frank-pledge. The jury was expected to "inform" on of all those in the area of the Hundred who were vagrants or persons of "suspicious" character. Following this report, all those who had failed to attend the view as required, together with incomplete tithings and persons of age who had not presented themselves for enrollment were heavily fined by the Sheriff on behalf of the Crown.

While William's reforms did achieve a measure of stability in the immediate aftermath of the Conquest, the frank-pledge system was to ultimately fail as an effective instrument of social control. Ancient exemptions based on rank and mainpast that were a vital part of the frith-borg under Saxon law had been carried forward and incorporated into frank-pledge by the Norman Kings. The delicate political and social commitments to maegth and gegildan so necessary to the preservation of the frith-borg in Saxon England would soon be displaced by higher feudal obligations of fealty and homage. This would have significant consequences to the Crown's ability to maintain the peace. The exemption of the nobility and their retainers in mainpast under frank-pledge was particularly dangerous, for this thwarted the King's efforts to curb baronial ambition and power pursued at the expense of the community at large.[22] The feudal lord became answerable only to his superior in title, and obedience to that authority a function of

[21] The common law responsibility of this Jury was subsequently codified in the year 1325 by Edward the Second. See the View of Frankpledge Act Appendix "H".
[22] See Morris, ibid, at pgs.112-128.

superior military strength.[23] The exemption in mainpast allowed the Norman nobility to accumulate retainers answerable only to themselves, with the larger community interest becoming subordinate to the interests of the few. To the extent that the feudal barons were themselves implicated in the accelerating political and social violence of post-conquest England, the frank-pledge system itself became hostage to feudal ambition and power.

The ancient Saxon requirement of residency for a year and a day had made some sense in a society of limited mobility, particularly given the voluntary nature of the pledge's relationship in borg to the principal under Saxon law. [24] Under the very unsettled social, political, and economic conditions of post-conquest England, however, large numbers of people were displaced by plague, famine and internecine warfare. To the extent that these displaced persons, particularly disbanded soldiers, became a source of crime and civil strife, the frank-pledge system proved incapable of providing any measure of restraint.

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[23] See Morris, ibid, a-t p.72 where he states: "The magnates themselves, both lay and spiritual, were according to the medieval conception, custodians of the peace, and hence needed no surety to keep it. If they offended against their suzerain or their vassals, the feudal law of forfeiture afforded a means of punishment….as to their treatment of peasant dependants, no one cared; but the mere fact of their lordship over such persons was assumed to be a sufficient pledge of their honorable conduct toward them. They were not expected to be in frankpledge."

[24] See Morris, ibid, at p.71 where he states: "Men who traveled about so much that they were not to be considered as belonging to one place more than another could not be put in frankpledge; for this form of security required a residence of a year and a day. Nor could their good behavior be assured by any other kind of pledging; for such a vagrant existence would as a rule so lay them open to suspicion that no man would assume responsibility for them permanently… The extraneus transiens (the vagabondus of the 14th century) was a person who often fled after committing a crime…."

Crime and other forms of civil strife continued to increase in the 12th and 13th centuries. The preamble to the Statute of Winchester in the year 1285 thus condemns the wretched observance of the peace.[25] Primary sources describe the crime in the single Hundred of North Epingham in Norfolk in this same period as being "so ghastly as to positively stagger one".[26] This social dysfunction was particularly acute in the great cities and towns; areas which were ultimately to become repositories for a displaced and dispossessed rural citizenry. As population gradually shifted from rural village and manor to urban settlements, chaotic economic and social conditions followed. Assize Rolls in this period thus describe convicted felons with increased frequency as "vagabondus" or "alienus extraneus".[27] The local jury's ability to assign individuals to frith-borg and tithing was quickly undermined by the transience of the population in these chaotic urban settlements.

The turbulent social conditions of the 12th and 13th centuries clearly underscored the need to establish a measure of restraint in those areas of exemption not covered by the frank-pledge. This restraint was ultimately to be found in the legal mechanism of the "surety of the peace". A power parallel to the great and general security of the frank-pledge was created to compel those persons most likely to breach the peace to find sufficient sureties to assure their future good conduct. This coercive power was to be vested in a royal officer specifically appointed for this purpose who became known in law as a "Conservator or Custodian of the Peace".

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[25] The Statute of Winchester (13 Edw.1,s.2) of the year 1285 contains a number of statutory enactments designed to counter this breakdown in civil society. These were desperate measures for a desperate and lawless time. Most of these measures focused on conditions within the larger urban centers. See Appendix "I".

[26] See Morris, ibid, at p.152.

[27] Morris, loc cit. for example refers to the Assize Rolls for the Bedford Eyre of 15 Edw.1 showing endorsements in practically every serious case of crime attributable to either "vagabondus" or "alienus extraneous".

Commencing with a Royal proclamation in the year 1195, knights were assigned to compel the taking of oaths to preserve the peace from all freemen over the age of 15 years.[28] After the cessation of hostilities between the barons and Henry III in 1264, more writs were issued with the apparent consent of the barons to provide for the appointment of Custodians in each county to preserve the peace.[29] The standard of rebellion was again raised in the year 1265, this time in opposition to the accession of Edward I. The primary sources record the issuance of writs on June 7th of that year directed to the Conservators of the Peace commanding their assistance in the suppression of the uprising.[30] Again in 1277, Edward I issued writs to the Sheriffs directing the election in County Court of Conservators to attend to the preservation of the peace during the King's absence in Wales.[31]

The Conservators were empowered to compel the taking of oaths to preserve the peace in a form of recognizance that was to become known as "the surety of the peace". They were also vested with full authority to affect arrests and to raise the posse comitatus for this purpose.[32] The primary targets of the Conservator's coercive power to compel the taking of sureties were those persons, or classes of persons, not already subject to frank-pledge and thus most likely to disturb the King's peace. The new "surety of the peace" was thus not subject to the limitations implicit in frank-pledge, and was applied with equal effectiveness to persons of noble rank,[33] their retainers, and the

[28] See C.A.Beard. "The Office of the Justice of the Peace in England", Studies in History Economics and Public Law, V.20. Columbia University Press, New York, 1904, at p.17.
[29] See Beard, ibid, at p.20.
[30] See Beard, ibid, at p.21.
[31] See Beard, ibid, at p.22.
[32] See Beard, ibid, at p.20-21.
[33] See for example: Marquis of Carmathen, Foster 359

Lord Vane's Case, 2 Str.1202

itinerant stranger.

The coercive power of the Conservators to compel the provision of sureties to keep the peace was certainly not revolutionary in concept. The elected nature of the Conservator's early office suggests that this was a position analogous to that anciently held by the Hundredman of Saxon England. The fact that these appointments proceeded with the consent of the Barons suggests that the Conservators powers were not initially viewed as being any real accretion to a growing royal prerogative. When viewed in an historical context, the Conservator's power to compel the provision of sureties to keep the peace was little more than a fulfillment of the obligation to be part of a tithing and borg that was accountable to the community at large for its member's future conduct.

In the fall of the year 1358, Edward III concluded a truce with Philip IV of France, thus bringing a temporary halt to hostilities on the continent with which England had been engaged since the year 1337.[34] This fragile peace proved a mixed blessing however, for it necessitated the rapid disbandment of Edward's ill-disciplined feudal levies.

The great Lords and their retainers were not easily reconciled to the uneasy peace and burdensome obligations of the feudal servitude that followed. The disparate military forces assembled for the Great War at Edward's behest were to be soon engaged by the Barons in domestic quarrels. A truculent feudal nobility actively resisted the efforts of royal officers to restrain repeated incidents of riot, pillage and

Earl of Stamford's Case, Hardw.74

[34] From 1337 to 1453, the English monarchy was locked in a struggle with the Valois dynasty of France for control of the fiefdom of Gascony. This was the celebrated "Hundred Years War". For an in-depth contemporary account of Edward's wars on the continent, see Froissart's Chronicles of England France and Spain, New York, Colonial Press, 1901.

murder which were viewed as legitimate expressions of a feudal philosophy of self-help. Protected by powerful benefactors, marauding bands of displaced soldiers took to the countryside to extort concessions from the weak.[35]

Recurrent plague,[36] famine, and burdensome military drafts all combined to accelerate a general economic decline and exacerbate local tensions. The unsettled social and economic climate in turn generated progressively higher levels of violence and civil disorder. To the extent that large portions of the local community were implicated in the political and social violence of the period, a criminal law dependent upon community enforcement proved of little value.

With his civil administration teetering on the brink of collapse, Edward enacted extraordinary measures to suppress this general disorder. In the spring of 1361, the King created a new type of judicial officer called the "Justice or Guardian of the Peace". The Justices of the Peace were to be invested with summary powers to suppress the refractory elements of Edward's kingdom. In addition to the powers earlier conferred upon the Conservators of the Peace, the Justice of the Peace Act (34 Ed 3 c.1) provided that the justices:

> …shall have power to restrain the offenders, rioters and other barraters, and to pursue, take, arrest, and chastise them according to their trespass or offense; and to cause them to be imprisoned and duly punished according to the law and custom of the realm, and according to that which to them shall seem best to do by their discretions and good advisement; and also inform them, and to

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[35] R. Burns. Justice of the Peace and Parish Officer. 24th Ed. London, A. Strachan Law Printer, 1825, at p.308 attributes the subsequent promulgation of the Justice of the Peace Act of 1361 to the need to suppress the activities of Edward's lawless soldiers.

> "This Statute seems to have had in view chiefly the disorder to which the country was then liable, from great numbers of disbanded soldiers, who having served abroad in the wars of that victorious King, were grown stranger to industry, and were rather inclined to live upon rapine and spoil"

[36] The celebrated "Black Death" first reached Dorset in 1348, and returned to England in 1361. For a general survey of the profound effect of the plague see: The Cambridge Economic History, "The Agrarian Life of the Middle Ages", Cambridge University Press, 1966.

> inquire of all those that have been pillars and robbers in the parts beyond the sea, and be now come again, and go wandering, and will not labor as they were wont to do in times past; and to take and arrest all those that they may find by indictment, or by suspicion, and to put them in prison; and to take of all them that be not of good fame where they shall be found, sufficient surety and mainprise of their behavior towards the King and his people, and the other duly to punish; to the intent that the people be not by such rioters and rebels troubled nor endamaged nor the peace blemished….

The Justice of the Peace Act of 1361 created a new and much more comprehensive surety commonly referred to as the "surety of good abearing" or "good behavior". Edward viewed this surety as a measure necessary to address an unprecedented threat to public order. It is clear that the early courts' interpretation of this legislation was also greatly influenced by the extraordinary political and social conditions under which this new surety was created. The justices' power to compel the taking of the surety of good abearing was to be liberally construed by the King's Courts as an emergency jurisdiction warranting an unprecedented interference with personal liberties. Burns, writing in 1825, thus notes:

> Whatever the natural and obvious sense of it may be, when compared with the history and circumstances of those times, it is certain that it hath been carried much further by construction, and the purport of it hath been extended by degrees, until at length there is scarcely anyother statute which hath received such a largeness of interpretation.[37]

Both types of surety proceedings, the ancient surety of the peace and the statutory surety of good abearing, were summary in nature to respond quickly and effectively to threats to the peace. Legal proceedings were ordinarily commenced by a complainant "exhibiting" or swearing "Articles of the Peace" before a justice of the peace.[38] The

[37] See Burns, ibid, at p.308.
[38] See Appendix A for an example of Articles of the Peace exhibited in support of an application for a Surety of the Peace.

Articles set out the factual allegations and beliefs of the "exhibitant" and formed the legal basis upon which the justice was to issue process.[39] The Articles of the exhibitant had to be verified under oath, a mere affirmation being insufficient in law to support an application of this kind.[40]

The early authorities stipulate that a justice cannot consider factual allegations not found in the sworn Articles of the Peace.[41] The facts alleged by the exhibitant in support of an application for a surety of the peace had to found a reasonable belief in the existence of a present or future threat to the personal security of the exhibitant or his/her property. The surety of good abearing however was only grantable where the exhibitant's facts disclosed a reasonable belief in a present or future threat to public order generally, as distinct from the more limited private or personal security interests of the exhibitant alone.[42] Reliance upon a past disturbance of the peace was not sufficient unless there were also probable grounds to believe that the disturbance would be repeated or continued.[43] While the alleged threat to the peace did not have to be express, it was necessary that such threat arise by reasonable inference from the past conduct of the respondent.[44]

While the swearing of Articles of the Peace ordinarily preceded the issuance of process, it is clear that the justices' power to bind over at common law was in no way conditional upon the existence of a formal complaint. In exigent circumstances, a justice could impose either surety upon personally viewing any matter immediately jeopardizing

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[39] See Rudyard's Case, 2 Vent.22. See also Ex Parte Williams, M'Clel.403 and R. vs Mallinson, 1 L.M.&P.619.
[40] See R.vs Green, 1 St.527 and Hilton vs. Byron, 12 Mod.243. See also Lambard, op cit, Cap.16, 92.
[41] See R. vs. Dunn, 12 Ad & El.599.
[42] See Appendix F for an example of Articles exhibited in support of an application for a surety of good abearing.
[43] See Dalton, op cit, at c.11 and Burns, op cit at p.298. For a later application of this principle, see R. vs. Justices of Londonderry, (1891) 28 C.R.Ir.40.
[44] See R. vs. Dunn 12 Ad & El.599 See also Lambard, op cit, at Cap.16,93.

the King's peace.[45] It was also available at common law in the wake of an adjudication of a criminal complaint.

Once satisfied that the facts disclosed by the Articles of the Peace founded the requisite grounds for belief, the Justice was empowered to issue a warrant or summons to compel the attendance of the respondent(s) before him.[46] Upon arrest, the respondent was brought before the issuing justice or justices and compelled to enter into a recognizance in such amount and with such sureties as the justice thought advisable under the circumstances.

The early authorities stipulate that in the absence of any defect inherent upon the face of the originating Articles, the exhibitant's allegations of fact were not subject to challenge by the respondent. The respondent was denied the both the right to introduce contradictory affidavit evidence, and the right to call witnesses on his own behalf.[47] Blackstone at page 254 of his Commentaries thus notes that:

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[45] See Lambard, op cit, at Cap.16, 86. See also Sir James Stevens, Commentaries on the Laws of England, 8th ed. V.4, London, Butterworths, 1880, at pages 286 and 288. See also Sir William Blackstone, Commentaries on the Laws of England,(1841) Bk.4, Philadelphia, Rees, Welsh & Co., 1897 ed., at C.18, pgs. 253-254. See also William Hawkins, (1716) A Treatise on the Pleas of the Crown, V.1 London, Professional Books 1824 ed., at p.478.

[46] There is some confusion in the early authorities as to whether a Baron could be attached for non compliance with a summons. Dalton at p.145 suggests the following procedure was required:

> "…that the party may crave the Peace in Chancery against such Lord or Peer (viz. to have a Supplicavit directed to a Justice) and that the Sheriff may and ought to execute the same; and if the Sheriff shall not do his office, thereon an attachment lieth against him. And if the Sheriff shall return that such a Lord is so powerful he cannot be arrested, upon such a return the Sheriff shall be grievously amerced (for he might have taken the Posse Comitatus, (viz. he might have levied 300 men by his direction if there had been need to have aided him in such case). And if such Lord or Peer is by the Sheriff so arrested, shall refuse to obey the arrest and shall make a rescous … thereupon there shall be an attachment granted out against such Lord to arrest and take his bodie for such his contempt."

[47] See Rex vs. H. Doherty 13 East 171; Lord Vane's Case, 2 Str.1202; Lort vs. Hutton (1876) 45 LJMC 95; Bent vs. Engle (1878) 66 LTN 138.

> …the truth of the facts stated in the application is taken for granted, unless upon the face of it they appear manifestly to be false; and the party who is applied against is not at liberty by his own affidavit or those of other persons, to contradict them and prove their falsehood.

The respondent was only entitled to a hearing upon application by the exhibitant to enforce subsequent process for breach of the recognizance. At this hearing, the respondent could file an affidavit attacking the allegations of breach or the allegations set out in the exhibitant's originating Articles. If, upon hearing the respondent's allegations of fact, the Court was satisfied that the exhibitant's Articles were false, the Court could resist the exhibitant's application to estreat the recognizance. The vindicated respondent was then left to his remedy at common law by way of an action against the exhibitant for malicious process.[48]

The recognizance for both common law sureties specified the sum to be forfeited by the respondent upon a breach and further stipulated the number of sureties to be provided as a guarantee of future good conduct.[49] There was no upper limit at common law to the amount to be pledged under the recognizance or the number of sureties required in any particular case.[50] Both matters were left entirely to the discretion of the presiding justice, whose view of the seriousness of the apprehended breach of the peace, the likelihood of its occurrence, and the respondent's place in the community invariably

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[48] See Steward vs. Gromett (1859), 141 E.R. 788.

A power to commit the false exhibitant to gaol on an estreatment proceeding was to be subsequently created by statute (see 21 Jac.1, C.8 . For the law after this amendment, see R. vs. Parnell, 2 Barr.806 and R. vs. Hon. P.Mackenzie, 3 Burr.1922.

[49] For an example of a common law recognizance (surety of the peace), please see Appendix E attached to this paper.

[50] See Burns, op cit. at p.303.
The amount of the surety could even be greater than the maximum fine available upon conviction for the substantive offence that is apprehended by the exhibitant. See R. vs. Sandbach, (1935),2 K.B.192.

colored the amount to be pledged in the recognizance and the number of sureties to be required.

There was similarly no upper limit to the duration of either common law surety.[51] In the absence of any limit prescribed by the justice, the common law sureties continued to bind the respondent until his death or the death of the exhibitant.[52]

A refusal by a respondent to find sureties in the number and amount stipulated by the justice resulted in the respondent being committed to gaol. The duration of the imprisonment in default was again in the absolute discretion of the court.[53] The prisoner was at liberty to apply for his release at any time thereafter upon perfection of the recognizance through provision of sufficient sureties.

The scope of the anticipated harm and magnitude of the risk to public order determined the type of surety to be imposed in each case. Acts that threatened the peace and good order of the community at large were usually the subject of the more onerous surety of good abearing. An application for this type of surety thus called for multiple Articles of the Peace to be exhibited by prominent members of the local community, because the harm anticipated put the public at risk. This application would result in the respondent being bound by a "general" recognizance that proscribed hostile acts against

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[51] See Burns, op cit, at p.303 & 306. See also Hawkins, op cit, at c.60, 15. A seven year recognizance was upheld in R. vs. Williams, (1790) 1 Leach.529. A two year recognizance was upheld in Willes vs. Bridger, (1819) 2 B & Ald. 278. A three year recognizance was upheld in Mackenzie vs. Martin [1954] S.C.R.361.

[52] See Lambard, op cit, Cap.13, 104 and Cap.16 109,120,121, and 131. Lambard suggests that the sureties could only be discharged at the suit of the exhibitant or upon the Respondent's acquisition of a Writ of Supercedas issued out of King's Bench. Hawkins questions this proposition however, and argues that the Court was never bound by a formal release entered into by an exhibitant. Hawkins maintains that while such a release may be highly persuasive to the Court in its decision, the King's interest in the proceeding was nonetheless paramount, at least in so far as the surety of Good Abearing was concerned.

[53] Statute would later intervene to soften the rigors of the common law in relation to the surety of the peace. The Criminal Procedure Act of 1853 limited imprisonment for failure or refusal to find such a surety to a period of one year. This statutory amendment had no application to the surety of good abearing, which continued to be subject to indeterminate detention in default.

the community at large. All of His Majesty's subjects were therefore subject to its protection.[54]

Acts which only threatened the peace and security interests of the individual were normally restrained by the lesser surety of the peace. This surety was normally imposed at the suit of a single exhibitant, and for the protection of that exhibitant and his/her property only.[55] The resulting recognizance for a surety of the peace was known in law as a "specific" recognizance, for its protection was limited to the individual exhibitant who brought the application. Dalton thus distinguishes the two common law sureties in this way:

> The surety of good abearing is to be granted at the suit of divers, and those being men of credit, and to provide for the safety of many; where the surety of the peace is usually granted at the suit of one and for the preservation of the peace chiefly towards one.[56]

While the surety of the peace was only grantable upon evidence of a "direct" threat to the peace, the surety of good abearing could be granted for any conduct or misbehavior that "indirectly" threatened the peace and good order of the community whether such behavior amounted to a breach of the peace or not.[57]

The form of the recognizance also determined the range of behavior that could be the subject of a breach. A breach of a specific recognizance was thus consequent upon a hostile act towards the individual whose interests were to be protected by the surety of the peace, and that individual only. If this surety was imposed in the context of an assault, or a battery, it was clearly breached by a willful act of mischief to the exhibitant's

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[54] For an example of Articles of the Peace related to the surety of good abearing see Appendix E.
[55] See R. vs. Stanley, (1754) Soy 139; 96 E.R.830.
[56] See Dalton, op cit, at p.170. Dalton's views are corroborated by Lambard, op cit, at Cap.16,127-128 and by Pulton,op cit,at V.1,70.
[57] See Lambard, op cit, at Cap.16 124-126 ; Hawkins, op cit, at Cap.28,485 & 486; Dalton, op cit, at p.160.

property, or by words directed to the exhibitant amounting to a challenge to fight.[58] However, mere defamatory statements not directly instigating a fight could not be the subject of a breach of this type of surety.[59] Early authorities held that procuring another to breach the peace[60] or escaping from arrest, even if the arrest was unlawful,[61] could amount in law to a breach of the surety of the peace.

A general recognizance, on the other hand, was breached by any hostile act or threatening towards the community at large and was in no way limited to acts directed at the exhibitants. Dalton suggests that the larger and more comprehensive surety of good abearing was breached by any of the following "direct" threats to the peace, namely:

> By the extraordinary number of people attending upon the party bound;
>
> By his wearing of harness or other weapons, more than usually he hath done or more than be meet for his degree;
>
> By using words or threatenings tending or inciting to the breach of the peace;
>
> By doing anything which shall tend to the breach of the peace, or to put the people in dread or fear, although there be no actual breach of the peace.[62]

Behavior falling within the class of indirect threats to the peace proved even more elusive to define. Early authorities included within the prohibitions caught by this surety any acts likely to offend contemporary morals. This interpretation was doubtless based

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[58] See Hawkins, op cit, at Cap.28, 483.

[59] See Stampe vs. Hyde, 2 Roll R.199-227. This proposition remains a matter of some controversy. There are conflicting authorities. See Bagg's Case, 11 Rep.93b, 93a; Rex vs. Hart, 30 How St.Tr.1131,1194,1344; Rex vs. Wilkes, 2 Wils.151; Rex vs. Shuckburgh, 1 Wils.29; Rex vs. William King, Coke, 4 Inst.189.

[60] See Anon.(circ.1520) Broc.N.C.140; 73 E.R.911.

[61] See Anon.(1854)Goodb.22.

[62] See Dalton, op cit, at p.160. Stampe vs. Hyde, 2 Roll R.199-227 is authority for the proposition that whatever will be a good cause to bind a man to his good behavior, will forfeit a recognizance for it.

upon the premise that acts violating contemporary mores served to provoke the hostility of the less tolerant society of the day. In a society still bound by fervent religious devotion, a moral outrage was often met by the community with violence.

Hence, the preservation of public good order demanded consideration of all matters affecting public morals. Dalton cites the following instances of behavior as falling within this class of "indirect" threats for which this surety was grantable:

> First, against those that are greatly defamed for resorting to houses suspected to maintain adultery or inconstinency. Also against the maintainers of houses suspected to be houses of common bawdry. Also against common whoremongers and common whores for (by good opinion) bawdry is an offence temporal as well as spiritual and is against the peace of the land. Also against nightwalkers, that be suspected to be pilferers, or otherwise like to disturb the peace, or that be persons of evil behavior, or of evil fame and report generally, or that shall keep company with any such, or with any other suspicious persons in the night. Also against eaves-droppers. Also against suspected persons who live idly yet fare well, or are well appareled, having nothing whereon to live. Against common haunters of alehouses and taverns. Against common drunkards. Also it seemeth grantable against cheaters and cofiners. Libellers (it seemeth) also may be bound to their good behavior…for such libeling and defamation tendeth to the railing of quarrels and effusions of blood, and on special means and occasions, tending and inciting greatly to the breach of the peace. Also this surety of good behavior is grantable against the putative father of a bastard child. Also it shall be grantable against him that shall use words of contempt or contra bones mores against a justice of the peace, constable or other officer of the peace in executing their office.[63]

Dalton suggests that while a single justice of the peace has the jurisdiction to impose a surety of good behavior, such jurisdiction could only be exercised in exceptional circumstances.[64] The onerous nature of this type of surety ordinarily demanded special procedural protection that was not required for the lesser surety of the

[63] See Dalton, op cit, at p. . This list was not intended to be comprehensive, and the class of indirect threats to the peace was never closed. See R. vs. County of London Quarter Sessions Appeals Committee [1948],1 K.B. 670; 1 All E.R. 72. See also Lambard, op cit, at Cap.16 126,127.

[64] See Dalton, op cit, at p.170; Lambard, op cit, at Cap.16, 127,128; See Pulton, op cit, V.1,70.

peace.

> This surety of good abearing is most commonly granted either in open sessions of the peace or out of sessions, by two or three justices of the peace, whereas that of the peace is usually granted by one justice of the peace, and out of sessions. And yet by the words of the Commission, as also by the common opinion of the learned, any one justice of the peace alone, and out of sessions, may grant the surety of good abearing; and that either by their own discretion or upon the complaint of others (as they may that of the peace). But this is not usual unless it be to prevent some great and sudden danger….[65]

Dalton's opinion is shared by Fitzherbert, and both authors are cited by Burns as authority for the proposition that a single justice of the peace has the jurisdiction to impose both forms of surety.[66] Dalton insists that despite the procedural protection attached to the surety of good abearing, a justice's discretion to impose this form of surety should not be exercised lightly. Dalton's view is followed by Lambard, Pulton and Burns.[67] All commentators agree that the surety of good behavior is an extraordinary measure that should issue where exceptional circumstances demand increased restraint.

> But the more difficult and dangerous this surety is to the parties bound, the more regard there ought to be taken in the granting of it; and therefore it shall be good discretion in the justice of the peace that they do not command or grant it, but either upon sufficient cause seen to themselves or upon the suit of divers others and the same very honest and credible persons.[68]

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[65] See Dalton, loc cit. See also Burns, op cit, at pgs.311-312, 314.

[66] See Burns, op cit, at p.309.

[67] See Lambard, op cit, at Cap.16,127,128; See Pulton, op cit, at V.1,70; See Burns, op cit, at p.316 where the author states:

> "That therefore upon the whole, it may be proper to conclude, that the magistrate in this article of good behavior cannot exercise too much caution and good advisement; that in matters which the law hath left indefinite, it is better to fall short of, than to exceed his commission and authority…."

[68] See Dalton, op cit, at p.120.

The commentator's concerns were well justified because of the royal court's jealous view of feudal prerogative. In practice, the amorphous concept of an "indirect" threat to the peace was invoked to oppress those deemed suspect by the King's justices of the peace. C.A. Beard in his work The Office of the Justice of the Peace in England notes that in the last year of Edward's reign feudalism made a "strenuous protest" against the widespread and penetrating jurisdiction of the justice of the peace.[69] While the sources do not reveal the particular demands made by the barons at this point, it seems likely that a vigorous attempt was made to limit the justices' power to bind over. It was this power that formed the central weapon in the justices' new arsenal. This formidable power was clearly the most dangerous yet devised by the Crown, for it appeared to directly threaten the freedoms won by the barons in the Magna Carta. In support of an argument in favor of a narrow interpretation of the Justices of the Peace Act of 1361, Burns writing in 1825 notes that:

> Trial by his peers is the Englishman's birthright by the Great Charter, and cannot be taken away but by an authority equal to that which established it – that is, by an act of Parliament…. And it seemeth incongruous, that a justice of the peace shall have power to bind a man to his good behavior for an offence that he hath himself no power to hear and determine; for that is in effect, giving judgment and awarding execution, when it doth not and cannot legally appear to him that the person is guilty.[70]

Hawkins seems to acknowledge the extraordinary breadth of the surety of good abearing, but suggests that the early authorities should no longer be applied.[71] Burns agrees with Hawkin's critique, and quoting Hawkins, states:

> It hath been laid down as a general rule, that whatever will be

[69] See Beard, op cit, at p.42.
[70] See Burns, op cit, at p.316.
[71] See Hawkins, op cit, at p.486.

> a good cause to bind a man to his good behavior will forfeit a recognizance for it; but this hath since been denied, and indeed seems to be by no means maintainable.[72]

Blackstone took a middle position and argued that while the breach was not limited to the conduct originally responsible for the imposition of the surety, subsequent behavior should amount to a criminal offence in order to justify forfeiture.[73] While this may have been a desirable means of limiting the extent of this form of surety, Blackstone's view reflects more of a desire for reform than an accurate portrayal of the position at common law. Burns aptly summarizes the law in this area by noting that:

> …the sense of the Statute hath been extended not only to offences immediately relating to the peace, but to divers misbehaviors not directly tending to a breach of the peace; in so much as it has become difficult to define how far it shall extend and where it shall stop.[74]

There is certainly some evidence of a movement by the later commentators to try to limit the surety of good behavior to acts that only directly threatened the peace. The views espoused by both Blackstone and Burns lean in this direction.[75] It could be argued that the early liberal interpretation of the Justices of the Peace Act was distinguishable as

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[72] See Burns, op cit, at p.317.
[73] See Blackstone, op cit, at p.257.
[74] See Burns, op cit, at p.313.
[75] See Blackstone, op cit, at Bk.4 257; See Burns, op cit, at p.315. Speaking on the subject of Dalton's celebrated list of indirect threats to the peace, the author states that:

> "…notwithstanding the aforesaid instances given by Mr. Dalton and others, it may not be safe in all cases to rely upon every one of them without distinction; not only because it is almost impossible for any two cases to be exactly alike in all other circumstances, but also because in fact divers of them, at different times, have been adjudged otherwise, and others have not prevailed without much difficulty and contradiction in the Courts above, and perhaps were admitted from the conveniency and reasonableness of the thing itself, and from an indulgence usually allowed to those gentlemen who serve their country without gain, and oftentimes with much trouble, than from any clear, positive and express power given to them by the commission or by the aforesaid statute".

an historical anomaly. The early precedents were part of a carefully orchestrated response to an extraordinary peril to public order. With the restoration of peace, the rationale for such a drastic mode of restraint had disappeared. On a philosophical note, it was argued that the concept of "preventive" justice was inconsistent with both the presumption of innocence and the celebrated maxim "nulla poena sine leges".

A large part of the English judiciary did not share these commentator's opinions, however, and the range of behavior that was subject to the surety of good behavior continued to expand in the 18th and 19th centuries. Hawkins notes that:

> There seems to have been some opinions that the Statute, speaking of those that be not of good fame, means only such that are defamed and justly suspected that they intend to break the peace, and that it does not in any way extend to those who are guilty of other misbehaviors not relating to the peace. But this seems much too narrow a construction; since the above mentioned expression of persons of evil fame in common understanding includes persons of scandalous behavior in other respects…. And accordingly, it seems always to have been the better opinion, that a man may be bound to his good behavior for many causes of scandal which give him a bad fame, as being contrary to good manners only.[76]

In support of this surety's application to the class of "indirect" threats to the peace, Hawkins cites cases extracted from the English Reports where individuals were bound over for behavior that was considered an affront to good morals or public decency.[77] The surety of good abearing was thus imposed for using foul language in Court,[78] for accusing justices of ignorance in the excise laws,[79] for publishing an obscene book,[80] for offering medicines for the purpose of abortion,[81] for disturbing a

[76] See Hawkins, op cit, Ch.28, p.485.
[77] See Hawkins, op cit, Ch.28, p.486.
[78] 1 Lev. 107.
[79] 1 Vent. 16.
[80] Fort. 193.
[81] Cro. Eliz. 449.

licensed preacher,[82] and for neglecting attendance at Church.[83]

In support of an application for either surety at common law, a broad range of evidence was historically admissible to establish the "disposition" or "propensity" of the respondent to do the mischief that the recognizance was designed to prevent. In assessing this issue of propensity, other acts of misconduct that were not the subject of a criminal conviction could be considered by the justice with a view to establishing the basis upon which the exhibitant entertained his or her fear of the respondent. Evidential rules developed at common law to protect an accused person in the context of a criminal trial thus had no application to the common law surety proceeding.[84]

While many of the features of the common law sureties appeared harsh and inflexible to the commentators of 19th century England, the "draconian" common law procedure was explainable as a direct legacy of its Anglo-Norman predecessor. The respondent's inability to challenge the exhibitant's Articles of the Peace thus paralleled the inescapable obligation under frank-pledge to be part of a tithing and to participate in legal processes integral to the administration of justice and enforcement of the law of the realm.

Like the frank-pledge, the common law surety was an obligation that was not subject to challenge or dispute. This obligation arose by virtue of membership in Saxon society, and was not a sanction triggered by the commission of an offence against the peace. A presumption of innocence was thus inapplicable to the freeman's obligation in

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[82] 1 Mar. 2, 3.

[83] This was made an offence by virtue of 23 Eliz. C.1.

[84] For a contemporary application of the common law position regarding the admissibility of evidence of disposition or propensity, see Regina vs. Patrick (1990) 75 C.C.C.(3d)222 BCSC.

frank-pledge. This same philosophical approach appears evident in the early authorities' interpretation and application of the common law sureties.

The absence of any limit to the duration of the sureties at common law was similarly understandable in the context of an obligation to participate in frank-pledge that attached at age twelve and continued until death. The indeterminate detention that could result from a refusal to be bound by a recognizance flowed from a frank-pledge system that made continuing membership in society conditional upon fulfillment of fundamental social and legal obligations to preserve, protect, and enforce the peace. The absence of any limits at common law upon the number of pledges to be required for the common law surety also parallels a similar position in Saxon law that linked the number of borgs to the individual's status and reputation in the community.

As the rift slowly widened between principles of fundamental justice enunciated by the great English jurists and the common law jurisprudence on the ancient sureties, demands for legislative reform increased in number and intensity. In the year 1623 the statute 21 Jac.1 C.8 was passed by James I to provide a justice with the power to award costs against an exhibitant whose factual allegations were determined to be false in the context of an application to estreat a recognizance for breach. This same legislation empowered the court to commit the false exhibitants to gaol for their contempt of the truth. This remedy supplemented the innocent respondent's right at common law to sue the false exhibitant for malicious process, and provided necessary relief from a proceeding that was perceived by 17th century England to be both flawed in its approach and inequitable in its result.

Further amendments to common law procedure followed in 1853 with the passage of the Criminal Procedure Act of that year (16 & 17 Vict.C.30). This legislation limited

the imprisonment for failure or refusal to find a surety to a period of one year, thus eliminating the prospect of indefinite detention at common law.

In the year 1879, the Summary Jurisdiction Act (42 & 43 Vict. C.49) implemented a number of substantial reforms to procedure with respect to "specific" recognizances attached to the surety of the peace. This Act requires a complaint to be laid in the first instance as a condition precedent to the issuance of process. It confers upon a respondent a right to dispute the complainant's allegations of fact by means of cross-examination with a further right to call witnesses in defense. The court is empowered to impose costs on either party to the proceedings. The punishment for a willful refusal or failure to enter into a recognizance is limited to six months where the court imposing the surety is a Petty Sessional Court (two or more justices sitting together) or a Magistrate's Court. Where the recognizance is ordered by a single justice of the peace outside sessions, the maximum period of detention is limited to 14 days. A summary right of appeal is then provided to the Petty Sessional Court from any order of detention from a single justice, with the appellant having the right to call new evidence on the hearing of the appeal.

These legislative reforms did much to bring common law procedure on the surety of the peace into line with contemporary notions of fundamental justice. It is significant to note however, that the more comprehensive form of recognizance, the "general" recognizance, remained untouched by these statutory amendments and thus continued to be subject to common law doctrine and procedure.[85] While the specific recognizance required statutory intervention to guard against abuse by individual

[85] See R.vs. County of London Quarter Session Appeals Committee [1948], 1 K.B.670; See also Glanville Williams, "Preventive Justice and the Rule of Law" (1953), 16 Modern Law Review at p.423.

complainants, the multiple Articles sworn by prominent citizens required for the general recognizance at common law was perceived to provide adequate protection against false accusation.

In the 18th and 19th century, the ancient sureties were increasingly used in the aftermath of an adjudication of a criminal charge to secure the continued good conduct of an accused. The sureties were often imposed in the wake of an acquittal where the justice was left with sufficient grounds, short of proof beyond a reasonable doubt, to reasonably apprehend a present or future breach of the peace based upon those facts established in the course of the defendant's trial on the substantive offence.[86]

Subsequent to conviction, the sureties were also used as an adjunct to sentence to ensure the offender's continued good conduct following his return to the community.[87] Prior to 1861, in addition to a sentence of imprisonment for a misdemeanor, a Court could bind over an offender to find sureties and, in default of doing so, imprison him/her consecutively until the expiration of the period he/she was to keep the peace.[88] In the case of misdemeanors, common law precedent also supported the use of the sureties as an alternative to any other sentence available at law, thus becoming a form of court mandated "diversion".

The Criminal Law Consolidation Act of 1861 (24 & 25 Vict.c.96) subsequently

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[86] See Wilson vs. Skeock (1949) 65 T.L.R.418; Ex Parte Davis (1871) 24 L.T.547; R. vs. Sharp [1957] 1 Q.B. 552; 1 All E.R.577; R. vs. Woking Justices Ex Parte Gossage [1973] 2 All E.R.621; [1973] Q.B. 448;Ex Parte Harken (1889) 24 L.R. Ir.427.

[87] See obiter in Rex vs. Trueman [1913] 3 K.B. 64; See also Claxton's Case (1701) 10 Holt. K.B.406; 90 E.R.1124.

This was the common law origin of "community corrections". The role of the common law sureties has now been assumed by a statutory probation order and a requirement "to keep the peace and be of good behavior".

[88] See Rex vs. Trueman [1913] 3 K.B. 64; Dunn vs. Regina 12 Q.B. 1031.

extended the use of the ancient sureties on sentence to include felonies. The consecutive sentence of gaol imposed in default of sureties could legally result in the offender serving a sentence in excess of the maximum reserved for the substantive offence.[89]

Where a statutory penalty proved inadequate or ineffective to prevent the repetition of an offence (particularly a continuing offence), common law authority again provided for the imposition of a surety of good behavior upon the recalcitrant offender. In such a case, the amount of the recognizance could exceed the maximum fine provided by law for the substantive offence.[90]

The common law sentencing practice was subsequently recognized by England's Parliament through formal incorporation of these common law sureties into the statutory sentencing provisions of the Larceny Act (24 & 25 Vict.c.96) and the Offences against the Crown Act (24 & 25 Vict.C.100). Section 71 of this Act thus provides:

> Whenever any person shall be convicted of any indictable misdemeanor punishable under this Act, the Court may, if it think fit, in addition to or in lieu of any punishment by this Act authorized, fine the offender, and require him to enter into his own recognizances, and to find sureties, both or either, for keeping the peace and being of good behavior; and in the case of any felony punishable under this Act otherwise than with death, the Court may, if it shall think fit, require the offender to enter into his own recognizances and to find sureties, both or either, for keeping the peace and for being of good behavior in addition to any other punishment by this Act authorized; provided that no person shall be imprisoned for not finding sureties under this clause for any period exceeding one year.

[89] See Rex vs. Trueman [1913] 3 K.B. 64.

[90] See Sandbach ex parte Williams (1935) 2 K.B. 192; 104 L.J.K.B.420.

In 1892, Canada similarly applied the common law practice to the statutory peace bond created by the Criminal Code of that year. Section 958 and 959(1) of the 1892 Criminal Code thus provided for the use of the binding over power both as an adjunct to formal sentence and as an alternative to any other punishment provided by law.[91]

Contemporary English and Canadian courts have followed the precedents set by the early authorities in the context of the "indirect" threats to the peace. The English Court of King's Bench in ~~Regina vs. Sandbach ex parte Williams~~[92] and Bumping v~~s. Barnes~~[93] reaffirmed earlier authorities to confirm that violent behavior was not necessary for the imposition of the surety of good abearing. The ancient statutory

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[91] Section 958 of the 1892 Criminal Code RSC c.181 s.31 provided as follows:

> "Every Court of criminal jurisdiction and every magistrate under Part LV before whom any person shall be convicted of an offence and shall not be sentenced to death, shall have power in addition to any sentence imposed upon such person, to require him forthwith to enter into his own recognizances, or to give security to keep the peace, and be of good behavior for any term not exceeding two years, and that such person in default shall be imprisoned for not more than one year after the expiry of his imprisonment under his sentence, or until such recognizances are sooner entered into or such security sooner given…"

Section 959(1) of this same Code stipulated that:

> " Whenever any person is charged before a justice under this part with an offence, which, in the opinion of such justice, is directly against the peace, and the justice after hearing the case, is satisfied of the guilt of the accused, and that the offence was committed under circumstances which render it probable that the person convicted will be again guilty of the same or some other offence against the peace unless he is bound over to be of good behavior, such justice may, in addition to, or in lieu of, any other sentence which may be imposed upon the accused, require him forthwith to into his own recognizances, or to give security to keep the peace and be of good behavior for any term not exceeding twelve months."

[92] R. vs. Sandbach ex parte Williams [1935], 2 K.B. 192; 104 L.J.K.B. 420.

[93] Reported in [1958] Criminal Law Review 186. See also Regina vs. Queen's County Justices (1882) L.R.Ir. 303 where the Court adopts a broad and liberal approach to the jurisdiction to impose the surety of good abearing.

jurisdiction was used to restrain both transvestites[94] and peeping toms.[95] It has been used to curb harassment in a public street[96] and eves dropping.[97] The surety of good abearing has been invoked to restrain libellers,[98] to curb improper behavior in court,[99] and to prevent harassment by telephone.[100]

The surety of good abearing was also used to restrain acts of passive civil disobedience that fell short of the commission of an offence against the peace. In 19th century Ireland, the common law sureties were used extensively to curb agrarian agitation and suppress civil dissent. A number of agrarian reformers were thus bound over for inciting the tenants of the great estates of Ireland to withhold their rents.[101]

The sureties were used to suppress the activities of the militant suffragette movement of the early 20th century.[102] The disorder generated by the popular religious movements of the 19th century was similarly contained by apprehensive civil authorities through the imposition of sureties on the leaders of evangelist crusades.[103] In a modern context, the

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[94] Reported at (1951) 1 J.Jnl. of Crim. Law.

[95] Loc. Cit.

[96] See Regina vs. Poffenroth [1942], 2 W.W.R. 362; (1942) 78 C.C.C. 181. See also Regina vs. Dunn (1840) 113 E.R. 939.

[97] See Regina vs. County of London Quarter Sessions Appeals Committee [1948] 1 K.B.570; 1 All E.R. 72.

[98] See Butt vs. Conant (1820) 1 Brob. & B. 548; 129 E.R. 834; Haylocke vs. Sparke (1853) 1 El. & Bl. 471; 118 E.R. 512; Sawyer vs. Bell (1962) 106 S.J. 177.

[99] See Regina vs. Rodgers (1702) 7 Mod. 28; 87 E.R. 1074; Regina vs. North London Metropolitan Magistrate ex parte Haywood and Brown [1973] 1 W.L.R.165; [1973] 3 All E.R. 50.

[100] See Mackenzie vs. Martin [1954] S.C.R. 361; 108 C.C.C.305.

[101] See Regina vs. Justices of Cork (1882) 10 L.R.Ir.294; 15 Cox 's Criminal Cases 78;

Regina vs. Justices of Queen's County (1882) 10 l.r.Ir.46; 10 Cox's Criminal Cases 294;

Ex Parte Seymour vs. Davitt (1883) 12 L.R.Ir.46; 15 Cox's Criminal Cases 242.

[102] See Lansbury vs. Riley [1914] 3 K.B. 229; 83 L.J.K.B. 1226.

[103] See Beatty vs. Gillbanks (1882) 9 Q.B.D.308; 15 Cox's Criminal Cases 138 and Wise vs. Dunning [1902] 1 K.B. 167.

protest demonstration would prove particularly susceptible to controls imposed under the ancient Justice of the Peace Act. By invoking the surety of good behavior, civil authorities could effectively prohibit a non-criminal act or combination. Conduct that was otherwise innocent could thus be restrained under threat of severe economic sanctions.

An application of the common law sureties to Canada's contemporary criminal justice system is made possible by section 8(2) of the Criminal Code of Canada which provides that:

> The criminal law of England that was in force in a province immediately before April 1st 1955 continues in force in the province except as altered, varied, modified, or affected by this Act or any other Act of the Parliament of Canada.

The Supreme Court of Canada in the case of Mackenzie vs. Martin [104] had occasion to review the history of the common law sureties and their application to Canada. This was a civil action for false imprisonment brought by a plaintiff against a magistrate who had bound the plaintiff over using what was ostensibly a common law jurisdiction. The conduct complained of was repeated and persistent harassment of the complainant by telephone, which was alleged to have caused the complainant "annoyance, loss of sleep, inconvenience, and worry". The defendant magistrate had bound the plaintiff over by a recognizance in the amount of $1000 with two sureties for a period of some three years.

The peace bond imposed by the defendant did not comply with the statutory provisions of what is now section 810 of the Criminal Code. There was clearly no evidence of a direct threat to the peace, and the maximum duration of the statutory bond was fixed at twelve months. After reviewing the history of "binding-over" at common

[104] Mackenzie vs. Martin [1954] S.C.R.361; 108 C.C.C.305

law, Mr. Justice Kerwin, speaking for the majority, says at page 313 that:

> In my view the common law preventive justice was in force in Ontario; section 748(2), or any other provision of the Code to which our attention was directed, does not interfere with the use of that jurisdiction; and the Respondent was intending to exercise it. He therefore had jurisdiction over the subject matter of the complaint, and did not exceed it.

The Supreme Court of Canada then proceeded to adopt the early English authorities that found that the exercise of the common law jurisdiction was not limited to circumstances amounting to an actual breach of the peace, but extended to conduct that was mischievous or suspicious in nature.[105] No attempt was made to distinguish the surety of the peace from the more comprehensive surety of good behavior.

A number of pre-Charter Canadian authorities have since applied Mackenzie vs. Martin, and it appears that short of a successful Charter attack, Canadian justices do have jurisdiction to dispense "preventive" justice by way of binding-over at common law.[106] Canadian Courts have been reluctant to find that the statutory peace bond provisions have in any way altered or ousted the ancient common law jurisdiction, particularly in the absence of any clear indication from Parliament to this effect. Current case law provides that the imposition of a surety does not constitute a "conviction" within the meaning of the Criminal Code or at common law.[107] This jurisdiction is thus not affected by statutory provisions of the Code barring conviction in Canada for a common

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[105] See the judgment of Kerwin J., who quotes with approval Goddard J. in Regina vs. County of London Quarter Sessions [1948] All E.R. 72 at page 74.

[106] See Regina vs. White ex parte Chohan [1969] 1 C.C.C.19 BCSC

Re Regina and Shaben (1972) 8 C.C.C.(2d) 422 Ont.H.C.

Re Compton and the Queen (1978) 42 C.C.C.(2d) 163 BCSC

Re Broomes and the Queen (1984) 12 C.C.C.(3d) 220 Ont. H.C.

[107] See Regina vs. County of London Quarter Sessions Appeals Committee [1948] 1 K.B.670; 1 All E.R.72.

law offence.

In the only post-Charter case of its kind, the Supreme Court of Canada in Regina vs. Parks[108] had occasion to reconsider the use of the common law jurisdiction in circumstances where the accused had been acquitted of murder due to non-insane automatism. All eight Justices (including Lamer and Cory in dissent) again confirm the existence in Canada of the common law power to bind-over. The justices differ however on whether the common law power was appropriate to use on the facts then before the court. The six justices in the majority found that there was insufficient evidence to establish a probable likelihood that the defendant would be involved in future misbehavior. They consequently ruled that the court's common law jurisdiction could not properly be invoked. The constitutionality of the common law power was not argued.[109]

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[108] Regina vs. Parks (1992) 75 C.C.C.(3d) 287 S.C.C.

[109] Mr. Justice Sopinka at pages 313 and 314 says this with respect to the exercise of the common law jurisdiction proposed by Justices Lamer and Cory in dissent:

> "Moreover, the extent and continued validity of this common law power has yet to be considered in light of the Canadian Charter of Rights and Freedoms. Restrictions on an individual's liberty can only be effected in accordance with principles of fundamental justice or must be justified under section 1. This applies to deprivations of liberty following a criminal conviction as well as those effected in other circumstances…
>
> Turning to the common law power relied upon by the Chief Justice, I have grave doubts as to whether a power that can be exercised on the basis of probable grounds to suspect future misbehavior, without limits as to the type of misbehavior or potential victims, would survive Charter scrutiny. If such a power allowed the imposition of restrictive conditions following an acquittal on the basis of a remote possibility of recurrence, it may well be contrary to section 7.
>
> Furthermore, the potential implications of the course of action contemplated by the Chief Justice are significant not only for the respondent, but also in other cases. Consider an individual who is convicted of a violent crime at trial, but on appeal a stay is entered on the basis that his right to be tried within a reasonable time has been violated. Would the Court nonetheless impose restrictions on his liberty in an attempt to ensure that such an event should not recur? Such restrictions would be a significant departure from fundamental principles of criminal law, yet there is nothing in the

Contemporary Canadian case law provides that the rules of natural justice apply to the exercise of the common law jurisdiction to bind-over. The Canadian authorities do not distinguish between the two distinct sureties available at common law. The B.C. Supreme Court in Regina vs. White ex parte Chohan thus ruled that a justice imposing a common law surety exceeded his jurisdiction when he failed to apply the rules of natural justice to the intended target of the application.[110] The justice in this case had acquitted a defendant of a threatening charge. After hearing from both the defendant and the complainant in the course of the criminal trial, the justice purported to exercise his common law jurisdiction to avert an apprehended breach of the peace. Both the complainant and the defendant were bound over by way of a recognizance with one surety in the amount of $250.00. The recognizance at issue purported to bind the subjects over "to keep the peace and be of good behavior". Given the terminology used by the issuing justice, it is impossible to determine whether a general or specific recognizance was intended.[111]

If a general recognizance attached to a surety of good behavior was contemplated by the issuing justice, then the procedural provisions of the English Summary Jurisdiction Act of 1879 would not apply. Old common law authorities clearly provide that the rules

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> authorities relied upon by the Chief Justice which limits the consideration of an order to keep the peace to cases such as the one at bar."

Justices La Forest and McLaughlin concur with the obiter of Justice Sopinka on the applicability of this common law jurisdiction.

[110] Regina vs. White ex parte Chohan [1969] 1 C.C.C. 19.

[111] This confusion stems from the incorporation of this language into the formal statutory provisions of the Criminal Code. The distinction between the surety of the peace and the surety of good behavior was first lost with the creation of a statutory peace bond in 1892 "to keep the peace and be of good behavior". This phrase now finds its way into all probation orders, recognizances, and conditional sentence orders issued under the Criminal Code of Canada. There is little understanding of the legal significance of this language in contemporary statutory provisions. The phrase "keep the peace and be of good behavior" had been borrowed from the English Offences against the Crown Act that had maintained the legal distinction between the two forms of recognizance (see page 30 supra).

of natural justice had no application to an application for a surety of good abearing. If, on the other hand, a surety of the peace was intended, the subjects had both the right to notice of the intended application together with a right to make full answer and defense. These rights arise by virtue of the statutory amendments of 1879 to the common law, which were incorporated into Canadian law by virtue of section 8(2) ofthe Criminal Code of Canada.

The Ontario High Court in Re Regina and Shaben[112] et al quashed a common law surety of the peace imposed upon three Crown witnesses in the aftermath of an assault trial. The Court applied the principles proclaimed by section 2(e) of the Canadian Bill of Rights and followed White ex parte Chohan to find that the justice had exceeded his jurisdiction by binding over in violation of the principles of natural justice. These principles were held to apply to an application of this kind and included a right to know the "particulars" of the "charge", a right to a hearing, a right to call evidence, and a right to make submissions. As in the case of Chohan, no common law authorities were cited in support of the proposition advanced in this case, and no reference was made to the English statutory amendments to common law procedure.

Chohan and Shaben were followed in Re Compton vs. the Queen, a 1978 decision of the British Columbia Supreme Court.[113] However, the Ontario High Court in Re Broomes and the Queen declined to follow the Chohan decision in so far as the proposition enunciated in that case purported to apply to accused persons in criminal proceedings.[114] The Court held that while principles of fundamental justice may have full

[112] Re Regina and Shaben et al (1972) 8 C.C.C.(2d) 422 Ont.H.C.

[113] Re Compton vs. the Queen (1978) 42 C.C.C.(2d) 163 BCSC

[114] In Re Broomes and the Queen (1984) 12 C.C.C.(3d) 220 Ont.H.C.

See also R. vs. Fehr[1997] B.C.J.#154 B.C.S.C. Contra: R. v.Lynch [2001] B.C.J. #2175

application to a non-party such as a witness in a criminal prosecution, these same principles should not be applied rigorously to the accused where different policy considerations apply. The Court quotes with approval the judgment of Lord Widgery C.J. in Regina vs. Woking Justices ex parte Gossage[115] at page 313 where he states:

> It seems to me a very clear distinction is drawn between, on the one part, persons who come before the justices as witnesses, and on the other hand, persons who come before the justices as defendants. Not only do the witnesses come with no expected prospect of being subjected to any kind of penalty, but also the witnesses as such, although they may speak in evidence, cannot represent themselves through counsel and cannot call evidence on their own behalf. By contrast, the defendant comes before the court knowing that allegations are to be made against him, knowing that he can be represented if appropriate, and knowing that he can call evidence if he wishes. It seems to me that a rule which requires a witness to be warned of a possibility of a binding over should not necessarily apply to a defendant in that different position.

The Court went on to rule that while such a warning to an accused should be given as a matter of courtesy, a failure to do so would not necessarily amount to a breach of natural justice resulting in a loss of jurisdiction.

As the justice's decision to impose a surety at common law does not constitute either a conviction or an order for the payment of money, the absence of any statutory appeal would ordinarily preclude a defendant from attacking a recognizance except by way of the cumbersome prerogative writ. In England, prior to 1956, there was no statutory right to appeal a binding over order made by a magistrate with respect to a general recognizance. The decision to impose this common law surety was not a "conviction" in law and there was therefore no appeal except with a prerogative writ in a

[115] Regina vs. Woking Justices ex parte Gossage [1948] 1 All E.R. 72 at p.74.

superior court.[116] This was so even in instances where an accused was convicted of a substantive offense, fined and then bound over to be of good behavior, because the binding over order was not made "on conviction" within the meaning of the Criminal Justice Act of 1948. Common law authority provided that the binding-over order could have been made whether the accused was convicted or not.[117] In 1956, statute again intervened in England to provide a summary right of appeal from a magistrate's decision to impose a general recognizance.[118]

All reported Canadian decisions suggest that the prerogative writ remains to this point the only recourse of an aggrieved respondent in Canada. The 1956 statutory amendments to the English common law have no application to Canada by virtue of section 8(2) of the Criminal Code of Canada which provides for a cut off of April 1st 1955.

Apart from the obiter expressed by the Supreme Court of Canada in the Parks judgment, there are no reported judgments in Canada that have addressed the impact of the Canadian Charter of Rights and Freedoms on the contemporary use of the ancient sureties. There can be little doubt that much of the early common law procedure would be challengeable. The entire philosophical basis of "preventive justice" may now be questioned as an unjustifiable incursion upon the rights and freedoms that the Charter seeks to confirm and protect. Given the concerns raised over the last several centuries, it is difficult to see how the common law provisions can be upheld under section 1 of the Charter as a "reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society".

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[116] See Regina vs. County of London Quarter Sessions Appeals Committee [1948] 1 K.B. 670.

[117] See Rex vs. London Sessions [1951] 1 K.B. 557.

[118] See the Magistrates Courts (Appeals from Binding Over Orders) Act 1956

It seems clear that the ancient criminal procedure attached to the sureties has resisted, and in some areas, retarded the development of legal principles of fundamental justice and "natural justice". The class of "indirect threats to the peace" as outlined by the jurisprudence on the surety of good abearing, can only be described as uncertain in meaning and extent, with a de facto punishment that may far exceed, in proportionate terms, the risk anticipated to the community.[119]

Unfortunately, the uncertainty associated with the justice's power to bind over continues with us to this day. There exists no clear guidance in Canada or elsewhere in the common law to clarify and regulate the use of the ancient sureties. This problem is aggravated because of continuing judicial confusion between a statutory provision "to keep the peace and be of good behavior" and a common law power that distinguishes between two distinct sureties having unique conditions precedent and terms of breach.

A power created by medieval England has thus assumed new life and vitality in the "new world" of the 21st century. Arguments first raised by enraged feudal nobility have resurfaced in a modern context, with contemporary critics arguing that the sureties in their ancient form continue to operate as an instrument of oppression.[120] With the existence today of sophisticated law enforcement agencies, there is clearly less need for a form of anticipatory restraint of the magnitude and power assumed at common law. The ancient sureties should certainly not be allowed to interfere with the democratic freedoms won over the course of centuries.

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[119] See Rex vs. London Sessions ex parte Beaumont [1951] 1 K.B. 557.

[120] Glanville Williams remains one of the principal critics of the common law sureties today. See G.Williams, "Preventive Justice and the Rule of Law" (1953) 16 Modern Law Review 417.

An attempt must therefore be made to redefine and clarify the peace bond to ensure that it conforms to contemporary legal values.[121] The sureties must be re-designed, to ensure that their terms are based on express statutory criteria, with a summary means of appeal provided so that fundamental rights are respected at all stages of the adjudicatory process. With these statutory reforms, the ancient medieval anachronisms can be safely laid to rest. The sureties in new legislative clothing can then resume their task of ordering the affairs of contemporary Canadian society without interfering with the values and freedoms that we cherish.

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[121] The procedure for the statutory peace bond application is to be found in Part XXVII of the Criminal Code of Canada, which incorporates most, but not all of the procedural mechanisms in place for the trial of a summary conviction offense. It is significant to note however, that the procedural provisions of section 801 appear to follow the common law in requiring the respondent to show cause why he or she should not be bound over to keep the peace. Section 801(1)(b) thus reads as follows:

> "Where the defendant appears for the trial, the substance of the information laid against him shall be stated to him, and he shall be asked:
>
> > (b) Whether he has cause to show why an order should not be made against him, in proceedings where a justice is authorized by law to make an order.

Section 801(3) provides that:

> "Where the defendant states that he has cause to show why an order should not be made against him …the summary conviction court shall proceed with the trial, and shall take the evidence of the witnesses for the prosecutor and the defendant in accordance with the provisions of Part XXIII relating to preliminary inquiries.

Section 801(2) then provides that:

> "where the defendant is unable to show sufficient cause why an order should not be made against him, the Court shall …make an order against him accordingly.

It is difficult to reconcile the reverse onus contemplated by these sections with the usual criminal procedure reserved for criminal trials in which a presumption of innocence operates.

APPENDIX

A. ARTICLES OF THE PEACE – SURETY OF THE PEACE

ARTICLES of the peace exhibited by
CD, wife of AB, of Shipborne,
In the County of Kent, against the said AB

BE IT REMEMBERED that on the 2nd day of January in the year of our Lord 1845, CD of the village of Shipborne, in the County of Kent, came personally before me, XY, one of Her Majesty's Justices of the Peace in and for the County of Kent, at Shipborne, **AND UPON HER OATH INFORMETH ME** that she, the said exhibitant, hath reason to believe and doth believe that AB, yeoman, of the village of Shipborne, in the County of Kent, the lawful husband of this exhibitant, will cause her death or inflict grievous bodily hurt upon her for the premises set out herein, to wit:

THIS EXHIBITANT UPON HER OATH SAITH that she hath been married to the said AB for the space of some six years, and that, for the space of one year and ten months before the 1st day of November last past, the said AB hath treated this exhibitant with great cruelty and barbarity, and without any provocation from this exhibitant; and in particular, AB hath frequently, during the time last aforesaid, struck and threatened to strike this exhibitant, and dragged her about his dwelling house.

THIS EXHIBITANT UPON HER OATH SAITH that the said AB, having made a voyage to the East Indies, returned on or about the 20th day of September in the year of our Lord 1845, and soon thereafter commenced or renewed an acquaintance with a woman who was known by the name of G, with whom, as with other women, the said AB frequently cohabited, as this exhibitant hath great reason to believe; this exhibitant having

known the said woman by the name of G, shut into the said AB's bedroom, where she hath remained with him for several hours.

AND THIS EXHIBITANT SAITH that the said AB compelled this exhibitant to reside in mean lodgings, different from his place of residence, and that whenever this exhibitant ventured to go to the said AB's chambers to expostulate with him on his ill treatment, he hath beaten or threatened to beat this exhibitant;

AND THIS EXHIBITANT SAITH that at one time in particular, namely on or about the 27th day of September, in the year of our Lord 1845, the said AB did, with a violent blow, knock this exhibitant down in the said chambers, and that this exhibitant, in consequence of the said blow, lay senseless for a considerable period of time.

THIS EXHIBITANT SAITH UPON HER OATH, that by means of the cruel treatment of the said AB before set forth, and particularly, of his having at divers times within the space of three months last past, as this exhibitant hath been informed and verily believes, AB has threatened to seize, confine, beat, maim or ill treat this exhibitant, she, this exhibitant, is put therefore into the utmost fear and danger, and verily believes that AB will put his said threats into execution, and will do this exhibitant some bodily hurt, and this exhibitant is therefore prevented from going about her lawful occasions, until she can obtain that protection from the laws of this country which this Honorable Court hath authority to grant.

AND THIS EXHIBITANT FURTHER SAITH that she is now under great fear and apprehension that the said AB will take the first opportunity of doing this exhibitant some bodily hurt unless he is restrained there from by this Honorable Court and therefore this exhibitant humbly craves that the said AB may be ordered by this Honorable Court to find sufficient sureties for keeping the Queen's peace towards this

exhibitant.

AND THIS EXHIBITANT SAITH that she doth not make this complaint against the said AB through any hatred, malice, or ill will, which she hath or beareth towards him, but merely for the preservation of her life, and also her person, from bodily hurt.

WHEREFORE THE ABOVE NAMED CD WAS SWORN TO THE TRUTH OF THE ABOVE PREMISES AT SHIPBORNE, IN THE COUNTY OF KENT, ON THE 29TH DAY OF SEPTEMBER IN THE YEAR OF OUR LORD 1845.

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B. **SURETY OF THE PEACE – PUBLIC INTEREST WARRANT**

XY, a Justice of the Peace for our Sovereign Lady the Queen, in and for the County of Kent, to the Sheriff of the County of Kent, and to the Constables of the Hundred of Shipborne in the said County, and to every of them, GREETING:

WHEREAS CD of the village of Shipborne, in the County of Kent, haththis day made complaint before me that the said CD hath reasonable grounds tofear and doth fear that AB, of the village of Shipborne, in the County of Kent, yeoman, doth intend to cause her death or grievous bodily hurt; and

WHEREAS the said CD hath prayed that the said AB may be required to find sufficient surety to keep the peace towards the said CD;

I DO, THEREFORE, HEREBY CHARGE YOU AND COMMAND YOU jointly and severally in the name of our Sovereign Lady the Queen, to apprehend and bring the said AB, yeoman, before me, or some other Justice of the Peace assigned to keep the peace in the said County, to find sufficient surety to keep the peace towards CD for such term as shall then be enjoined upon him, and to be further dealt with according to law.

And see that you certify your doing so in the premises.

GIVEN UNDER MY HAND AND SEAL AT SHIPBORNE IN THE COUNTY OF KENT, THIS____DAY OF_____IN THE YEAR OF OUR LORD 1845.

_____

By the Court

C. SURETY OF THE PEACE – WARRANT OF COMMITAL FOR WANT OF SURETY

To EF, the Constable of the Hundred of Shipborne, in the County of Kent, and also to the Keeper of Her Royal Majesty's gaol in the said County and others to whom this may concern, GREETINGS.

WHEREAS CD of the village of Shipborne, in the County of Kent,hath made complaint before me that the said CD hath reasonable grounds to fear and doth fear that AB of the village of Shipborne, in the County of Kent, yeoman, doth intend to cause her death or grievous bodily hurt; and

WHERAS the said CD hath prayed that the said AB may be required to find sufficient surety to keep the peace towards the said CD;

AND WHEREAS the said AB was this day brought and appeared before me, XY, one of Her Majesty's Justices assigned to keep the peace in and for the County of Kent, to answer the said complaint;

AND WHEREAS I, the said Justice, hath ordered and adjudged, and do hereby order and adjudge, that the said AB shall enter into his own recognizance in the sum of L50 with two sufficient sureties in the amount of L25 each to keep the peace towards the said CD for the term of 24 calendar months next ensuing;

AND WHEREAS the said CD hath refused and still refuses to enter into such recognizance, and to find such sureties as aforesaid, I DO

HEREBY REQUIRE YOU AND COMMAND YOU, the said Constable, forthwith to convey the said AB to the common gaol in and for the Countyof Kent and to deliver him to the Keeper thereof, together with this warrant.

AND I DO ALSO REQUIRE YOU AND COMMAND YOU, the said Keeper, to receive the said AB into your custody in the said gaol, and him there safely to keep for the space of 12 calendar months unless he, in the meantime, enter into such recognizance with such sureties, as aforesaid, to keep the peace of our Sovereign Lady in the manner and for the term above mentioned.

HEREIN FAIL NOT.

GIVEN UNDER MY HAND AND SEAL THIS_____DAY OF _____IN THE YEAR OF OUR LORD 1845 AT SHIPBORNE IN THE COUNTY OF KENT.

_____

By the Court

D. **THE SURETY OF THE PEACE – WARRANT OF DISCHARGE**

To FD, Keeper of Her Majesty's gaol in and for the County of Kent, and others whom this may concern, GREETINGS.

YOU ARE HEREBY COMMANDED to discharge out of your custody the bodie of AB, of Shipborne, in the County of Kent, yeoman, he having this day entered into a recognizance before me, XY, one of Her Majesty's Justices assigned to keep the peace in and for the said County, in the sum of L50 with two sureties in the amount of L25 each, to keep the peace towards CD, of Shipborne, for the space of 24 months next ensuing.

GIVEN UNDER MY HAND AND SEAL THIS____DAY OF_____IN THE YEAR OF OUR LORD 1845.

_____

By the Court

E. **SURETY OF THE PEACE - RECOGNIZANCE**

BE IT REMEMBERED that on the___day of_____in the year of Our Lord 1845, AB, of the village of Shipborne, in the County of Kent, yeoman, and BS, of the village of Wroteham, in the County of Kent, blacksmith, and BA, of the same place, yeoman, came before me, XY, one of the Justices of Our Lady The Queen, assigned to keep the peace in and for the County of Kent, and **ACKNOWLEDGED THEMSELVES TO OWE** to our said Lady The Queen, to wit: the said AB, the sum of L50, and the said BS, the sum of L25, and the said BA, the sum of L25, of good and lawful money of Great Britain, to be respectively made and levied of their several goods and chattels, lands and tenements, to the use of Our said Lady The Queen, her heirs and successors, if he, the said AB, shall fail in performing the conditions underwritten:

The condition of this recognizance is such, that if the above bounden AB shall keep the peace towards CD, of the village of Shipborne in the County of Kent for the term of 24 calendar months next ensuing, then the said recognizance shall be void, or else remain in force.

ACKNOWLEDGED BEFORE ME, XY, AT SHIPBORNE, IN THE COUNTY OF KENT, THIS____DAY OF_____IN THE YEAR OF OUR LORD 1845

_____

F. **ARTICLES OF THE PEACE – SURETY OF GOOD ABEARING**

Articles of the Peace exhibited by RG, of the Village of Wroteham, in the County of Kent, Reeve of the said village of Wroteham, against GD, of the village of Wroteham, in the said County, yeoman.

BE IT REMEMBERED that on the 31st day of May in the year of Our Lord 1785. RG, of the village of Wroteham, in the County of Kent, Reeve, came personally before us, DK and SG, Justices of Our Sovereign Lord the King, assigned to keep the peace in and for the County of Kent, and UPON HIS OATH informeth us that he, the said exhibitant, together with divers other residents of the village of Wroteham, hath reason to fear and doth fear that GD, of the village of Wroteham of the said County, doth intend to take possession of the lands and hereditiments known as Greyfriars situate at or near the village of Wroteham, in the County of Kent, by force of arms and against the peace of our Sovereign Lord the King for the premises set out herein, to wit:

THIS EXHIBITANT SAITH UPON HIS OATH that for the last twelve months last preceding April 1st in the year of Our Lord 1785, the said GD hath borne great enmity towards his first cousin GR, of the village of Wroteham in the County of Kent, by reason that the said GR did succeed to the inheritance of the estate of Greyfriars in preference to the said GD, whereby GD hath waxed greatly and was sorely grieved.

THIS EXHIBITANT SAITH that on divers occasions since GR succeeded to his lawful inheritance, the said GD hath most violently and maliciously declared and threatened, in the presence of this exhibitant and others, to take possession of Greyfriars by force of arms, and more particularly, in the forenoon of Tuesday, the 30th day of May in the year of Our Lord 1785, at Greyfriars in the village of Wroteham, the said GD together with his brother NY and retainers OP and SX, did then and there together assault the said GR in the presence of his spouse and this exhibitant, and did apprise the said GR that he would be removed from Greyfriars within a fortnight.

THIS EXHIBITANT UPON HIS OATH DOTH FURTHER SAITH that he is advised by TC, armorer of the village of Wroteham in the County of Kent, and doth verily believe that the said GD, together with his brother NY, did attend the armory situate in the village of Wroteham in the said County, in the afternoon of Tuesday the 30th day of May, and did then and there purchase sundry weapons, to wit: cutlass and sabers, more than be meet for the said GD's station and degree.

THIS EXHIBITANT SAITH that by reason of the divers assaults by the said GD against the bodie of GR as set out in the premises herein, this exhibitant doth greatly fear that the said GD doth intend to seize possession of Greyfriars by force of arms against the peace of Our Sovereign Lord The King, and all his liege subjects, and particularly, GR of the village of Wroteham in the County of Kent.

AND THIS EXHIBITANT SAITH that he does verily believe that the said GD doth even now acquire weapons to suit his intended purposes, and this exhibitant doth therefore humbly crave that the said GD be ordered by this Honorable Court to find sufficient sureties and mainprise for his good abearing towards Our Sovereign Lord

the King, and all his liege subjects, and particularly, GR of the village of Wroteham in the County of Kent.

THIS EXHIBITANT SAITH that he doth not make this complaint against the said GD through any hatred, malice, or ill will, which he hath or beareth towards him, but merely for the preservation of the peace of Our Sovereign Lord The King.

WHEREFORE, THE ABOVE NAMED, RG, REEVE, WAS SWORN TO THE TRUTH OF THE ABOVE PREMISES ON THE____DAY OF_____IN THE YEAR OF OUR LORD 1785 AT WROTEHAM, IN THE COUNTY OF KENT.

_____

G. **SURETY OF GOOD ABEARING – PUBLIC INTEREST WARRANT**

DK and SG, two of the Justices assigned to keep the peace of Our Sovereign Lord The King in and for the County of Kent, to the Sheriff of the said County, and to the Constables of the Hundred of Wroteham in the said County, and to every of them, GREETINGS.

For as much as we are given to understand by the reports of sundry credible persons, that GD of the village of Wroteham, in the County of Kent, yeoman, is not of good fame, nor of honest conversation, but an evil doer, rioter, barrator, and disturber of the peace of Our Sovereign Lord The King, so that murder, homicide, strifes, discords, and other grievances and damages amongst the lieges of Our said Lord The King concerning their bodies, are likely to arise thereby.

Therefore, on behalf of Our said Sovereign Lord, **WE COMMAND AND CHARGE YOU**, jointly and severally, to cause the said GD to come before us, or some others of our fellow justices assigned to keep the peace within the County aforesaid, to find sufficient surety and mainprise for his good abearing towards Our Sovereign Lord the King, and all his liege people, and particularly, GR of the village of Wroteham in the County of Kent, for such term as shall then be enjoined upon him.

AND SEE THAT YOU CERTIFY YOUR DOING SO IN THE PREMISES.

GIVEN UNDER OUR HAND AND SEAL THIS_____DAY OF _____IN THE YEAR OF OUR LORD 1785 AT WROTEHAM IN THE COUNTY OF KENT.

_____DK

_____SG

By the Court

H. **VIEW OF FRANKPLEDGE ACT (1325)**

First, you shall say unto us by the Oath that you have made, if all the Jurors that owe Suit to this Court be come, and which not.

2. And if all the chief Pledges or their Dozeins be come, as they ought to come, and which not.

3. And if all the Dozeins be in the Assise of our Lord the King, and which not, and who received them.

4. And if there be any of the King's Villains fugitive dwelling otherwhere than in the King's Demeans, and of such as be within the King's Demeans, and have not abiden a Year and a Day.

5. And if there be any of the Lords Villains in Frankpledge otherwhere than in this Court.

6. Of Customs and Services due to this Court withdrawn, how, and by whom, and in what Bailiffs Times.

7. Of Purprestures made in Lands, Woods and Waters to Annoyance.

8. Of Walls Houses, Dikes, and Hedges set up or beaten down to Annoyance.

9. Of Bounds withdrawn and taken away.

10. Of Ways and Paths opened or stopped.

11. Of Waters turned or stopped, or brought from their right course.

12. Of Breakers of Houses, and of their Receivers.

13. Of common Thieves, and of their Receivers.

14. Of Petty Larsons, as of Geese, Hens or Sheafs.

15. Of Thieves that steal Clothes, or of Thieves that do pilfer Clothes through Windows and Walls.

16. Of such as go in Message for Thieves.

17. Of Cries levied and not pursued.

18. Of Bloodshed, and of Frays made.

19. Of Escapes of Thieves or Felons.

20. Of Persons outlawed returned, not having the King's Warrant.

21. Of Women ravished not presented before Coroners.

22. Of Clippers and Forgers of Money.

23. Of Treasure found.

24. Of the Assise of Bread and Ale broken.

25. Of false Measures, as of Bushels, Gallons, Yards and Ells.

26. Of false Balances and Weights.

27. Of such as have double Measure, and buy by the great, and sell by the less.

28. Of such as continually haunt Taverns, and no man knoweth whereon they do live.

29. Of such that sleep by day, and watch by night, and eat and drink well, and have nothing.

30. Of Cloth-Sellers and Curriers of Leather dwelling out of Merchant Towns.

31. Of such as flie into Church or Church-yard, and after depart without doing that which belongeth thereunto.

32. Of Persons imprisoned, and after let go without Mainprize.

32. Of such as take Doves in Winter by Doorfalls or Engines.

And of all these Things, you shall do us to wit, by the oath you have taken.

I. THE STATUTE OF WINCHESTER (1285)

FORASMUCH as from Day to Day, Robberies, Murders, Burnings, and Theft be more often used than they have been heretofore, and Felons cannot be attainted by the Oath of Jurors, which had rather suffer strangers to be robbed, and so pass without pain, than to indite the Offenders, of whom great part be People of the same County, or at the least, if the Offenders be of another County, the Receivers be of places near; and they do the same, because an Oath is not given unto Jurors of the same Country where such Felonies were done, and to the Restitution of Damages hitherto no Pain hath been limited for their concealment and neglect; Our Lord the King, for to abate the power of Felons, hath established a Pain in this case, so that from henceforth, for fear of the Pain more than for fear of any Oath, they shall not spare any, nor conceal any Felonies; And doth command, That cries shall be solemnly made in all Counties, Hundreds, Markets, Fairs, and all other Places where great resort of People is, so that none shall excuse himself by Ignorance, that from henceforth every County be so well kept, that immediately upon such Robberies or Felonies be committed, fresh Suit shall be made from Town to Town, and from County to County.

LIKEWISE, when need requires, Inquests shall be made in Towns, by him that isLord of the Town, and after in the Hundred, and in the Franchise, and in the County, andsometimes in two, three, or four Counties, in case when Felonies shall be committed in the Marches of Shires, so that the Offenders may be attainted. And if the County will not answer for the bodies of every County, that is to wit, the People dwelling in the County, shall be answerable for the Robberies done, and also the Damages; so that

the whole Hundred where the Robbery shall be done, with the Franchises being within the Precinct of the same Hundred, shall be answerable for the Robberies done. And if the Robbery be done within the Division of two Hundreds, both the Hundreds and the Franchises within them shall be answerable; and after that Felony or Robbery is done, the County shall haveno longer space than forty days, within which it shall behove them to agree for the Robbery or Offence, or else they will answer for the Bodies of the Offenders.

AND FORASMUCH as the King will not that his People should be suddenly impoverished by reason of this Penalty, that seemeth very hard to many; the King granteth, That they shall not incur immediately, but it shall be respited until Easter next following, within which Time the King may see how the County will order themselves, and whether such Felonies or Robberies do cease. After which term, let them all be assured, that the foresaid penalty shall run generally, that is to say, every County, that is to wit, the People in the County, shall be answerable for Felonies and Robberies done among them.

AND FOR THE MORE SURETY OF THE COUNTRY, **THE KING HATH COMMANDED**, that in Great Towns, being walled, the Gates shall be closed from the Sun-Setting until the Sun-rising;and that no man do lodge in suburbs, nor in any place out of the Town, from nine of the clock until Day, without his host will answer for him; and the Bailiffs of Towns every Week, or at least every fifteenth day, shall make inquiry of all persons being lodged in the Suburbs, or in “foreign places” of the Towns; and if they do find any that have lodged or received any Strangers or suspicious person, against

the peace, the Bailiffs shall do right therein.

AND THE KING COMMANDETH, that from henceforth all Towns be kept, as it hath been used in times passed, that is to wit, from the Day of the Ascension unto the Day of Michael, in every City Six Men shall keep at every Gate, in every Borough Twelve Men, every Town Six or Four, according to the number of inhabitants of the Town, and shall watch the Town continually all night, from the Sun-Setting unto the Sun-rising. And if any stranger do pass by them, he shall be arrested until morning; and if no Suspicion be Found, he shall go quit; and if they find cause of Suspicion, they shall forthwith deliver him to the Sheriff, and the Sheriff may receive him without Damage, and shall keep him safely, until he be acquitted in due manner. And if they will not obey the arrest, they shalllevy Hue and Cry upon them, and such as keep the Town shall follow with Hue and Cry with all the Town, and the Towns near, and so Hue and Cry shall be made from Town to Town, until that they be taken and delivered to the Sheriff, as before is said; and for the arrestments of such Strangers none shall be punished.

AND FURTHER, **IT IS COMMANDED**, That Highways Leading from one Market Town to another shall be enlarged whereas Bushes, Woods, or Dykes be, so that there beneither Dyke, Tree nor Bush, whereby a man may lurk to do hurt, within two hundred foot of the other side of the way, so that this Statute shall not extend unto Oaks nor unto great Trees, for which it shall be clearly out of this. And if by Default of the Lord that will not abate the Dyke, Underwood or Bushes, in the manner aforesaid, any robberies bedone therein, the Lord shall be answerable for the Felony; and if Murder be done the Lord shall make a fine at the King’s pleasure. And if the Lord be not able to fell

the Underwoods, the County shall assist him therein.

AND THE KING WILLETH, that in his demean Lands and Woods within his forest and without, the Ways shall be enlarged, as before is said. And if percase a Park be taken from the Highway, it is requisite that the Lord shall set his park the space of two hundred foot from the Highways, as before is said, or that he make such a Wall, Dyke or Hedge, that Offenders may not pass, or return to do evil.

CASES CONSIDERED

1. R. vs. Abbott [1940] 3 W.W.R. 289; 74 C.C.C. 318; [1940] 4 D.L.R. 478 (Alta.)
2. R. vs. Ayu [1958] 1 W.L.R. 1264 ; [1958] 3 All E.R. 636
3. Anon. (1520) Broc. N. C. 140; 73 E.R.911
4. Anon. (1854) Goodb. 22; 78 E.R. 14
5. Bagg's Case 11 Rep.936
6. R. vs. Barker (1967) 63 W.W.R. 180; 3 C.R.N.S. 58 (Y.T.)
7. Beatty vs. Gillbanks (1882) 9 Q.B.D. 308; 15 Cox C.C. 138
8. Bent vs.Engle (1878) 66 Ltn. 138
9. R. vs. Billingham (1825) 2 Car. & P. 234; 172 E.R. 106
10. R. vs. Borland (1968) 66 W.W.R. 751; 5 C.R.N.S. 251 ; [1970] 2 C.C.C.172 (NWT)
11. Rex vs. Bowes 1 Term. Rep. 696
12. Re Broomes and the Queen (1984) 12 C.C.C. (3d) 220 (Ont. H.C.)
13. Butt vs. Conant (1820) 1 Brob.& B. 548 ; 129 E.R. 834
14. Bumping vs. Barnes [1958] Crim.L.R.186
15. Rex vs. London Sessions ex parte Beaumont [1951] 1 K.B.557; [1951] 1 All E.R.232

16. Regina vs. South West London Magistrate's Court ex parte Brown [1974] Crim L.J.313.
17. Marquis of Carmarthen Foster 359
18. Claxton's Case (1701) 10 Holt .K.B. 406; 90 E.R. 1124
19. Re Compton and the Queen (1978) 42 C.C.C.(2d) 163 (BCSC)
20. Davies vs. Griffiths [1937] 2 All E.R. 671; 53 T.L.R.680
21. Ex parte Davis (1871) 24 L.T. 547
22. Rex vs. H.Doherty 13 East 171
23. R. vs. Dunn 12 Ad. & El. 599; 113 E.R. 939
24. R. vs. Edgar (1913) 23 Cox C.C. 558; 109 L.T. 416
25. Everett vs. Ribbands [1952] 2 Q.B. 198
26. Feehan vs. Queen's County Justices (1882) 10 L.R.Ir. 294; 10 Cox C.C. 294
27. R. vs. Fehr [1997] B.C.J. No.154
28. Earl Ferrer's Case 1 Burr. 631, 703
29. R. vs. Aubrey Fletcher ex parte Thompson [1969] 2 All E.R.846; 53 Cr.App.R.380
30. Frey vs. Fedoruk [1949] 2 W.W.R.604 ; 95 C.C.C.206 (BCCA) reversed by SCC on other grounds [1950] S.C.R.517 ; 97 C.C.C. 1
31. Regina vs. Green 1 St. 527
32. Regina vs. Woking Justices ex parte Gossage (#1) [1948] 1 All E.R.72
33. Regina vs. Woking Justices ex parte Gossage (#2) [1973] Q.B.448; [1973] 2 All E.R. 621;
34. Hilton vs. Byron 12 Mod.243

35. Lord Howard's Case 11 Mod.109; 3 Burr. 703

36. Haylocke vs. Sparke (1853) 1 El & Bl 471; 118 E.R. 512 ; 22 L.J.M.C. 67

37. Rex vs. Hart 30 How St. Tr. 1131, 1194, 1344

38. Ex parte Hulse (1851) 21 L.J.M.C.21

39. Regina vs. Heyward (1638) Cro. Car. 498; 79 E.R. 1030

40. Ex parte Harken (1889) 24 L.R.Ir. 427

41. Regina vs. North London Metropolitan Magistrate ex parte Haywood and Brown [1973] 1 W.L.R. 165; [1973] 3 All E.R. 50

42. Rex vs. William King Coke 4 Inst. 198

43. Lort vs. Hutton (1876) 45 L.J.M.C. 95; 33 L.T.730

44. Regina vs. Little and Dunning ex parte Wise (1909) 101 L.T.859; 22 Cox C.C. 225

45. Lansbury vs. Riley [1914] 3 K.B.229; 83 L.J.K.B.1226

46. Regina vs. Lynch [2001] B.C.J. No .2175

47. Mackenzie vs. Martin [1954] S.C.R.361; 108 C.C.C. 305 (SCC)

2,23,39,40,41

48. Re Mackenzie [1945] O.R.787; 85 C.C.C. 233 ; [1946] 1 D.L.R. 584 (Ont.C.A)

49. Regina vs. Hon. P. Mackenzie 3 Burr. 1922

50. Regina vs. Mallinson (1851) 1 L.M. & P. 619; 16 Q.B.367; 117 E.R. 920

51. Regina vs. Mitchell (1908) 8 W.L.R. 357; 13 C.C.C. 344 (YT)

52. Regina vs. ex rel. Murray vs. Murray (1958) 123 C.C.C. 20; 29 C.R. 269 (NBCA)

53. Orr vs. Justices of Londonderry (1891)28 Cr.R.Ir. 40

54. Regina vs. Parks (1992) 75 C.C.C. (3d) 287 (SCC)

55. Regina vs. Parnell 2 Burr. 806

56. Regina vs. Patrick (1990) 75 C.R.(3d) 222 (BC Co Ct.)

57. Prickett vs.Gratex (1846) 8 Q.B.1020 ; 115 E.R.1158

58. Regina vs. Poffenroth [1942] 2 W.W.R.362; 78 C.C.C.181 (Alta.)

59. Reynolds vs. Justices of Cork (1882) 10 L.R.Ir. 294; 15 Cox C.C. 78

60. Regina vs. Rodgers (1702) 7 Mod.28; 87 E.R.1074

61. Rudyard's Case 2 Vent.22; 86 E.R. 286

62. Regina vs Sandbach ex parte Williams (1935) 2 K.B.192; 104 L.J.K.B.420

63. Sawyer vs Bell (1862) 106 S.J.177

64. Ex parte Seymour and Davitt (1883) 12 L.R.Ir. 46; 15 Cox C.C.242

65. Re Regina and Shaben (1972) 8 C.C.C.(2d)422 ; [1972] 3 O.R.613 ;

19 C.R.N.S.35 (Ont.H.C.)

66. Regina vs. Sharp [1957] 1 Q.B.552; [1957] 1 All E.R.577

67. Sheldon vs. Bromfield Justices [1964] 2 Q.B.573; 2 All E.R.131

68. Rex vs. Shuckburgh 1 Wils.29

69. Earl of Stamford's Case Hardw. 74

70. Stampe vs. Hyde 2 Roll R 199

71. Regina vs. Stanhope (1826) 12 AD & E 621; 113 E.R.949

72. Regina vs. Stanley (1754) Soy 139; 96 E.R.830

73. Steward vs. Gromett (1859) 141 E.R. 788; (1860) 29 L.J.C.P.170

74. Lady Strathmore's Case 1 Term Reports 696

75. Regina vs. West Riding of Yorkshire Justices re Thornton (1837) 7 AD & E. 583; 112 E.R.590

76. Rex vs. Trueman [1913] 3 K.B.164; 29 T.L.R. 599

77. Lord Vane's Case 2 Str. 1202

78. Regina vs. White ex parte Chohan [1969] 1 C.C.C. 19; (1968) 64 W.W.R. 708; 5 C.R.N.S.30 (BCSC)

79. Willes vs. Bridger (1819) 2 B & Ald.278; 106 E.R.368

80. Ex parte Williams Mclel. 403; 12 Price 673

81. Regina vs. Williams (1790) 1 Leach 529

82. Rex vs. Wilkes 2 Wils.152

83. Regina vs. Wilkins [1907] 2 K.B.380

84. Wilson vs. Skeock (1949) 65 T.L.R.418

85. Wise vs. Dunning [1902] 1 K.B.167

86. Regina vs. County of London Quarter Sessions Appeals Committee [1948] 1 K.B.670; 1 All E.R. 72

BIBLIOGRAPHY

I. PRIMARY SOURCES

1. Blackstone, William. (1841) Commentaries on the Laws of England. 20th Edition, Book 4, London, Spettigue Law Bookseller.
2. Burns, Richard (1825) The Justice of the Peace and Parish Officer: Containing the cases & statutes to 7& 8 Vict. Inclusive" 29th Edition, Vol.5, London, Sweet Maxwell & Son, 1845
3. Dalton, Michael. (1619 ed.) Countrey Justice : Containing the practice of the justices of the peace out of their sessions : Gathered, for the better helpe of such justices of peace as have not been much conversant in the studie of the lawes of this realme. London, Professional Books Ltd., 1973.
4. Froissart, Sir John. (1338?) Chronicles of England, France and Spain.Vols. 1&2, New York, the Colonial Press, 1901.
5. Hawkins, William.(1716) A Treatise on the Pleas of the Crown, London, Professional Books Ltd., 1982 ed.
6. Lambard, William. (1581) Eirenarcha : or The office of the Justices of Peace, in four bookes : gathered 1579 and now revised. London, Professional Books Ltd., 1972.
7. Pulton, Ferdinando. (1609) De Pace Regis et Regni. London, Professional Books Ltd., 1972.
8. Fitzherbert, Sir Anthony. (1538) The Newe Boke of Justices of the Peas. London, Professional Books, 1972.

8. Stephen, Sir James. (1883) A History of the Criminal Law of England. Burt Franklin, New York, 1883.

II. SECONDARY SOURCES

1. Beard, C.A. The Office of the Justice of the Peace in England: Its Origin and Development. New York, Columbia University Press, 1904.
2. Harding, Alan. The Law Courts of Medieval England. London, George Allen & Unwin, 1973.

III. ARTICLES AND REVIEWS

1. Grunis, A.D. "Binding Over to Keep the Peace and Be of Good Behavior in England and Canada". Journal of Public Law. Spring, 1976.
2. Hunter, R.C. "Common Law Peace Bonds: The Powers of the Justice of the Peace to Administer Preventive Justice". (1978) 1 C.R. 3d 70.
3. Neumann, P.M. "Peace Bonds: Preventive Justice? Or Preventing Justice" (1994) 3 Dalhousie J. of Leg. Studies 171.
4. Orr, David. "Section 810 Peace Bond Applications in Newfoundland" Criminal Law Quarterly v.46, Canada Law Book Ltd., 2002.
5. Williams, Glanville. "Preventive Justice and the Rule of Law". Modern Law Review. Vol.16, October 1953.
6. Williams, Glanville. "Mackenzie vs. Martin: Case Comment". The Canadian Bar Review.Vol.32, 1954.