

justice cannot detain a person suspected in prison but during a convenient time only to examine him, which the law intends to be three days, (*Davis v. Capper*, 10 B. & C. 28,)<sup>1</sup> and within that time to take his examination and send him to prison; nor ought he to detain him in prison in his own house, but he is to commit him to the common gaol of the county; for otherwise, when the justices come to deliver the gaol, he is not in the gaol and may not be delivered, and so lie longer than is reasonable. If a party be arrested without warrant, he must be conveyed to the *nearest* magistrate, and it is a false imprisonment if the officer or person having him in charge pass one justice of the peace on his way to another. In *R. v. Kendal and Roe*, 1 Salk. 347, Holt C. J. cited Lord Hale as having said, that if a justice of the peace direct a warrant to any particular person he might execute it, and supposing the commitment ought to have been to the county gaol, yet the want of that would not make the warrant void, see 2 Hawk. P. C. 183, 185. In *R. v. Smith*, 2 Str. 934, however, Smith was discharged on *habeas corpus*, because the warrant was not directed to any gaoler, but was only generally to carry him to prison.

By Art. 43, sec. 16,<sup>2</sup> of the Code, no citizen of the State, committed to the custody of an officer for any criminal matter, shall be removed from thence into the custody of another officer, unless by *habeas corpus* or other legal writ, except where the prisoner is delivered to a constable or other inferior officer to be carried to some common gaol, or be removed to take **211** his trial, &c. This is intended to prevent the vexation \*and danger of protracted imprisonment, which might be occasioned by the removal of the prisoner from one custody to another. And it affirms therefore the principle, that the prisoner ought to be committed to the proper prison in the first instance.

<sup>1</sup> But see *McBee v. Fulton*, 47 Md. 425.

<sup>2</sup> Code 1911, Art. 42, sec. 16; *Blake v. Burke*, 42 Md. 49.

As to liability of the sheriff for negligence in failing to take proper precautions to prevent the lynching of a prisoner, see *Cocking v. Wade*, 87 Md. 529.

## STATUTES

Made at WESTMINSTER, Anno 11 HEN. IV. and A. D. 1409.

### CAP. III.

Records shall not be amended or impaired after Judgment inrolled.

<p><i>Item</i>, it is ordained and established, That the Justices assigned, and to be assigned, to take Assises by Commis-</p>	<p>Item ordeignez est &amp; estab- liz qe justices des assises par commission nostre seignour le roy en les countees de roialme</p>
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