In examining the Act establishing circuit courts with that scrupulous attention which its importance, and extensive operation merit; the following defects present themselves to the mind. They relate to the judges, — to the clerks, — to the course of proceeding in bringing criminals to justice, — and to regulations which are either unconstitutional or impolitic.

1. There are defects with relation to the judges of the proposed courts, as to their individual authority and character.

In the fifth section of the said act it is provided that the circuit courts shall have the same power, authority and jurisdiction as the quarter session and district courts; but no general provision is made as to the powers of the judges out of court, though by a special provision they are authorized to award injunctions, writs of certiorari, ne exeat, and habeas corpus.

But the quarter session justices are conservators of the peace. Laws of Kentucky. 171.

They may by warrant cause any offender to be apprehended and brought before the next quarter session court, although there be not three days intervening between the issuing of such warrant, and the next court day. Laws of Kent. 172.

If a quarter session justice neglect to act as such for six months together, his seat is vacated. Laws &c. 174.

A district judge may take special bail, in any action depending in a district court. Laws &c. 196.

In suits not cognizable in the district courts, a district judge may in certain cases, award a change of venue. Laws. 216

Any two district judges may admit a prisoner to bail if they think him entitled thereto, although the justices of the examining court were of a different opinion. Laws. 332.

They

G 1-280

They may licence a person to practice as an attorney at law. Laws 140

The powers above enumerated are no where given either to the circuit or associate judges by the act under consideration; nor are the powers of the district judges out of court, taken away, so that the office and consequently the salary still exists.

~~2. There are defects with relation to the clerks of the circuit courts.~~

The district and quarter session courts clerks are authorized to receive the acknowledgement and proof of deeds out of court, and are to transmit annually to the clerk of the court of appeals, lists of deeds recorded by them. Laws &c. 58. But no such power is given to the circuit court clerks, nor any such duty required of them.

No provision is made for the examination of their offices, nor are they required to keep their offices at any particular places.

The clerks of the district courts are entitled to a reasonable allowance for paper, books and presses: Laws &c. 178. No such allowance is authorized to be made to the clerks of the circuit courts.

3. There are defects with respect to the course of proceeding in bringing offenders to justice.

(1) Where persons are charged with offences in a county in which no circuit court is held, it is not directed in what jail they shall be confined previously to trial. It is only provided, (§ 19.) that the prisoners shall be removed to the circuit court.

(2)

(2) Although it is provided (§ 30) that the jail of the county shall be the circuit jail; and (§ 11) that prisoners from the county shall be confined therein; yet no provision is made as in the case of district jails, for charging the county with the expence of guards, in case the jail be insufficient, — nor is it determined whether they shall be under the custody of the county jailor, or whether, as in the district jails, they shall be kept by a jailor appointed by the executive.

(3) As the act concerning the escapes of debtors and other prisoners, relates only to those committed to any county jail, or to the jail of any district; it may be doubtful whether it can be construed to extend to the circuit jails. Laws Dr. 244.

(4) No mode of appointing or paying attorneys for the commonwealth in the several circuits is pointed out. The attorney general cannot attend the whole, — nor can the courts constitutionally appoint such officers.

The constitution (Art. 3. § 23) authorizes the courts to appoint attorneys for the commonwealth for the several counties: but as the attorneys for the commonwealth for the circuit courts, will not be county officers; they must be commissioned by the governor, with the consent of the Senate.

(5) The 11th section of the act provides that where a free person is adjudged by the examining court in a county in which

a circuit court is held, to undergo a farther trial; the clerk of the court shall transmit to the commonwealth's attorney for the circuit, a copy of the depositions and proceedings on such examination: but the 19th section which relates to cases occurring in counties in which no circuit court is held, is silent as to this point, unless it be considered as comprehended in the general provision that "the proceedings therein against persons charged with offences shall be as before."

(6) The 19th section directs in what manner venires shall be summoned from counties in which no circuit court is held; but no provision is made relative to the summoning of venires to the courts held in the counties in which they reside: but provision is made for the payment of venires (§ 27) in the latter case, - but none in the former.

(7) No provision is made for the removal of convicts to the penitentiary, which probably was necessary, inasmuch as the act to amend the penal laws, directs the sheriff to remove a prisoner only in the case of his being convicted in any district court. Laws &c 351.

4. There are provisions in the bill which are either unconstitutional or improper.

(1) It is enacted in the 33. section "that every bail bond & recognizance, of every description taken and executed before this act takes effect, for the appearance of any person or persons at any term of any quarter session or district court, which would have been held after the time this act takes effect, in case it had not been passed; such bail bond or recognizance shall be returned to the third day of the first term of the circuit court to be

Objections to the
Circ. Co. Act

be held in the county in which the quarter session or district court is held, to which such bail bond or recognizance may be returnable; and such bail bond or recognizance shall be as good and valid in said circuit court, and may be discharged in the same manner as it would have been, if this act had not been passed." It may well be questioned whether the legislature, in this provision have not altogether transcended the limits of their authority. The instruments of writing specified in the above clause, are in the nature of contracts between the individual bound and recognized, and the commonwealth. Can the commonwealth then alter the conditions of this contract, without the consent of the other contracting party?

(2) The 6th. section enacts that the assistant judges shall be residents of the county in which the circuit court shall be held, to which they may be appointed. But as these assistant judges are not county officers, but officers of the circuit or district; it is not compatible with the spirit of the constitution that the choice of them should be restricted to the county. The constitution (Art. 6. § 11) provides that all civil officers, for the commonwealth at large, shall reside within the state and all district, county, or town officers within their respective distri

counties, or towns: and surely it cannot tend to render the bench more able and respectable, to restrict the choice of the men who are to sit there, to those residing within limits more circumscribed than those which the constitution has designated.

(3) By section the 6th the two assistant judges can constitute a court and may proceed to the trial of criminals; though the circuit judge alone is not authorized to do it. In this all important case therefore, where justice is so frequently perverted by legal subtlety, where the first talents of the country

country are generally enlisted in favor of the accused, — and where the deleterious influence of the ingenuity of the bar can only be counteracted effectually by the sound sense & legal learning of the bench; — in this all important case, — the legislature has unhappily preferred numbers to knowledge.

(4.) The 33d section directs that the judges of the courts established by this act shall be appointed during the present session of the general assembly.

The constitution (Art. 3. § 9.) expressly vests the governor with the power of nominating, and by and with the advice and consent of the Senate appointing all officers, whose offices are established by the constitution or by law. He must of course be vested with that discretion necessarily incident to the proper exercise of this power. He must have the right of choosing the time at which he shall make his appointments, provided he makes them so soon as they are actually wanted, and as the nature of the case admits of.

If by an unnecessary interference of the legislature he can be precipitated into the making of appointments, before he has had time to inform himself of the different characters who are willing to accept the offices to be filled, and of their comparative merits and pretensions, — it will be impossible for him to exercise that judgment and foresight which the constitution unquestionably intended that he should exercise; — and though he will still nominally possess the power of making appointments; yet as he will not be able to know within the period in which the law compels him to make his election, who are willing to accept the offices, his choice will necessarily be confined to those to whom his attention may at the moment be directed; — and the effective power of filling the newly created offices will in fact devolve on other persons.

In the present case every consideration would urge to the maturest deliberation. The system is new: the public mind is considerably divided as to it's expediency: - it is desirable that it should go into operation with every advantage: and much will depend upon the character, the talents, and even the local distribution of the judges who may be appointed. Their functions will not commence for four months. Can there be any occasion for appointing them within so many days?

(5.) Policy would dictate that the new system should not go into operation so soon as it is to do. By allowing time for another district court to be held in all the districts, with the exception at most of Logan, much of the business now depending would be dispatched and suitors would not in so many cases be subjected to the charge of new fees to their attorneys on the removal of their causes to the circuit courts.